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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J.J., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.J.,

Defendant and Appellant.

A137427

(Alameda County
Super. Ct. No. OJ05001802-06)

This is an appeal from a judgment after a proceeding under Welfare and Institutions Code section 602 and is authorized by Welfare and Institutions Code section 800, subdivision (a). This is an appeal from the juvenile court’s disposition order of November 29, 2012. Appellate counsel has reviewed the file in this case and has determined there are no meritorious issues to raise on appeal. She has complied with the relevant case authorities, assuming *People v. Wende* (1979) 25 Ca1.3d 436 and its progeny apply here. She has also notified defendant of his right to file a supplemental brief, but defendant has not done so. Upon independent review of the record, we conclude that no arguable issues are presented for review and affirm the judgment.

STATEMENT OF FACTS

On August 22, 2012, a Welfare and Institutions Code section 602 petition was filed in Fresno County, alleging a violation of Penal Code section 288a, subdivision (c)(2)(A) (forcible oral copulation). A contested jurisdiction hearing was held on November 2, 2012. The trial court found the allegations true. On November 7, 2012, the case was transferred to Alameda County for disposition. On November 29, 2012, the court ordered placement.

The charges involved in this case were initiated by defendant's conduct that occurred in August 2012. Defendant was 15 at the time and in placement for a sexual assault. He shared a room with P.E., age 16, at a group home. P.E. knew defendant because the two had been in placement together previously.

One night, defendant told P.E. to turn off the light with P.E. complying. Defendant then ordered P.E. to engage in oral sex with him. The incident stopped because a staff person was doing bed checks.

The next evening, defendant again directed P.E. to turn out the light and come over to his bed. When P.E. first refused, defendant told him he would "sock" him in his chest if he did not, P.E. complied. Defendant had P.E. engage in oral sex again. Defendant also asked P.E. if he wanted to rape a staff member, which P.E. said he did not. Defendant told P.E. he would harm him if he told anyone about these events. P.E. believed defendant.

One week after these events, P.E. told staff person, Monique Roberts, what had happened. P.E. felt guilty and wanted to explain his fear about returning to his room at night. Roberts had P.E. repeat this matter to another worker. Roberts advised one of her superiors about the matter and that person notified the police.

In conducting his investigation, Police Officer Gabriel Ramirez spoke with defendant at the group home. He advised him regarding his *Miranda*¹ rights. Defendant told the police the events happened in the room, but they were consensual

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

between P.E. and himself. On the second evening, defendant admitted P.E. first refused to do anything sexual, but complied when defendant threatened to hit him. The boys engaged in oral sex for several minutes. Defendant knew this was wrong, but he could not control himself.

At the completion of the hearing, the court indicated that defendant had been in several residential treatment homes, but never completed any program. The court indicated that commitment to the Division of Juvenile Justice facilities for sexual violators presented a two-year waiting list, making this option unrealistic. Consequently, the court opted for the probation department placement recommendation, based on his age and remorsefulness.

DISCUSSION

This is an appeal of a juvenile delinquency proceeding. It has been presented to us as a *Wende* appeal and appropriately, defendant's counsel has certified she has reviewed the record finding no issues to raise in the appeal. Under *Anders v. California* (1967) 386 U.S. 738, and *People v. Wende, supra*, 25 Cal.3d 436 we have conducted an independent review of the proceedings. We find the evidence supports the finding by the trial court. Defendant was ably represented by counsel and the elements of the offense are proven beyond a reasonable doubt. We note it is unfortunate the juvenile justice system is lacking in sufficient programs to deal with juvenile sexual offenders in California. While it would have been preferred to place defendant in a facility that properly deals with these issues, the trial court believed that the indicated remorse of the minor along with a new placement may help address issues

reflected in his background. Needless to say, there was no appellate issue presented with the decision of the court.

With these principles in mind, we affirm the judgment.

Dondero, J.

We concur:

Margulies, Acting P.J.

Banke, J.