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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ALEJANDRO DIAZ,

Defendant and Appellant.

B245641

(Los Angeles County
Super. Ct. No. MA057513)

THE COURT:*

David Alejandro Diaz (Diaz) appeals his judgment of conviction for committing a forcible lewd act upon a child in violation of Penal Code section 288, subdivision (b)(1).¹ His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*), raising no issues. On April 3, 2013, we notified Diaz of his counsel's brief and gave him leave to file, within 30 days, his own brief or letter stating any grounds or argument he wants us to consider. That time has elapsed and Diaz failed to submit a letter or brief. Upon review of the entire record, we conclude that there are no arguable issues. We affirm the judgment.

* BOREN, P. J., ASHMANN-GERST, J., CHAVEZ, J.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

On September 25, 2012, F.O. reported that Diaz, her uncle, kissed her on the mouth and rubbed her vagina over her jeans. A deputy sheriff interviewed Diaz. He said F.O. had shown him a rash on her arm. At first he patted and hugged her. Then he kissed her. Diaz stated, “Something came over me. I have been clean for 13 years and all of a sudden something.” When the deputy asked Diaz if he had touched the victim’s vaginal area, Diaz said, “Yes.” Diaz was arrested and charged with committing a forcible lewd act upon a child in violation of section 288, subdivision (b)(1) (count 1), and committing a lewd act upon a child in violation of section 288, subdivision (a) (count 2). It was alleged that he had suffered a prior serious felony conviction pursuant to section 667, subdivision (a)(1), and that the conviction was for a sex offense specified in section 667.61, subdivision (c).

Diaz’s maximum exposure was 51 years to life. When the parties convened for the preliminary hearing, they indicated that they had reached a plea agreement. After Diaz was advised of his rights, he pleaded guilty to count one in exchange for a sentence of 25 years in state prison, which was the upper term of 10 years, doubled pursuant to the Three Strikes law, plus a five-year enhancement. Then, at the sentencing hearing, Diaz made a motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to relieve his attorney and appoint a new attorney. At the hearing, Diaz claimed that he had received ineffective assistance. In addition, he requested permission to withdraw his plea because, inter alia, his attorney failed to explain that after he was released from state prison, he could end up in a civil commitment for an indeterminate term. The trial court denied Diaz’s *Marsden* motion and the request to withdraw his plea. He was sentenced.

Diaz appealed from the judgment, stating: “[Diaz] contends he was improperly advised of his rights and lacking understanding of rights waived. Also[,] [the trial court] improperly denied [Diaz’s] request to withdraw [his] plea.” The trial court signed a certificate of probable cause.

We have examined the entire record and are satisfied that Diaz’s appellate counsel has fully complied with his responsibilities and that no arguable issue exists. We conclude that Diaz has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123–124.)

The judgment is affirmed.

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