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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

FEDERICO REYES,

Defendant and Appellant.

C067620

(Super. Ct. No.
SF111814A)

M.D. was born in 1994 and went to live with her grandparents in the summer of 2003. Starting in the summer of 2004, her grandfather, defendant Federico Reyes, started to act like her boyfriend. Defendant touched her vagina five to ten times, both over and under her clothes. He once dug inside her vagina with his hand, and would also touch her breasts and

buttocks. He tried to have intercourse with her one time, but stopped after she told him to quit. One other time, defendant had her touch his penis for about a minute. Defendant last touched her when she was 12 years old.

M.D. told her grandmother and aunt about the incidents after seeing defendant looking at her sister in her bedroom. M.D.'s grandmother and aunt went to the bedroom and asked M.D.'s sister if defendant had touched her. This was when M.D. learned that defendant had also touched her sister.

Defendant was interviewed by law enforcement in December 2008. He said that when M.D. was 10 or 11 years old, she asked him so many questions about sex and bugged him so much that he finally had to touch and do things to her. Defendant admitted touching her on two or three occasions and having orally copulated her. He stopped when she was 13 because she would get mad when he touched her.

Defendant said that M.D. would tell her sister to undress him. He once kissed M.D.'s sister after M.D. forced her to get undressed, and admitted touching the girl the same way he touched M.D. on two or three occasions.

Defendant pled guilty to continuous sexual abuse of a child (Pen. Code, § 288.5, subd. (a); further statutory references are to the Penal Code), and two counts of lewd and lascivious acts on a child under the age of 14 years (§ 288, subd. (a)), with a stipulated term of 20 years.

Defendant subsequently moved in propria persona to withdraw his guilty plea. The trial court appointed substitute counsel

for the purpose of examining defendant's motion. After reviewing the motion and the plea, substitute counsel told the trial court any motion to withdraw the plea would be frivolous. Defendant's original counsel then suggested a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. The trial court later held a *Marsden* hearing and found no reason to dismiss trial counsel.

The trial court sentenced defendant to the stipulated 20 year prison term, imposed various fines and fees, and awarded 472 days of presentence custody, consisting of 411 actual days and 61 days of conduct credits (§ 2933.1). The trial court later amended the award of credits to 446 actual days and 66 days of conduct credits, for a total of 512 days' presentence credit.

Defendant appeals. The trial court issued a certificate of probable cause.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

HULL, J.

DUARTE, J.