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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

RALPH WILLIAM CARLTON,

Defendant and Appellant.

C067749

(Super. Ct. No. 10F3103)

Appointed counsel for defendant, Ralph William Carlton, asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We find no arguable error and no concerns regarding presentence credits. We will affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2002, when Colleen R. was 13 years old, defendant (her stepfather) came into her bedroom and fondled Colleen's breasts and buttocks. Defendant also fondled J.D., a friend of

Colleen's who was sleeping over. The molests were reported to the police and defendant was later convicted of committing a lewd and lascivious act on a minor in violation of Penal Code section 288, subdivision (a) and placed on probation until 2009.

Eight years later, Colleen was addicted to pain pills, sometimes selling drugs to support her habit. In 2010, she lost her job because of her drug use and had to move back in with her mother and defendant. After returning to her home, Colleen stole defendant's pain medication. Defendant confronted Colleen about the theft and asked her if she had ever "sold her body for pills." The question made Colleen uncomfortable and she told defendant she had not, and would never sell her body for pills.

On April 8, 2010, defendant told Colleen (who was then 21 years old) that she "deserve[d] a spanking." Defendant proceeded to pull down the pajama pants Colleen was wearing and spank her buttocks. As he spanked her, Colleen asked defendant to stop, to leave her alone. As Colleen tried pulling her pants back up, defendant again told her: "You deserve a spanking." Colleen never reported the incident.

Two days later, defendant told Colleen to go into his bedroom; Colleen complied. Defendant followed her into the bedroom, put his hand inside Colleen's shirt, and fondled her bare breast. Colleen left the room crying but did not report this incident either.

On April 19, defendant was scheduled to drive Colleen to the doctor (her car had been repossessed). Colleen went into defendant's bedroom that morning and sat on the edge of

defendant's bed. Lying on the bed, defendant reached out, grabbed Colleen's hand, and pulled her to him in a "bear hug."

While Colleen lay on the bed in defendant's grasp, she tried to get away but defendant was holding her too tightly. Defendant, who was bigger and stronger than Colleen, told her that he "wanted to just cuddle." Defendant then turned Colleen on her side, pulled down her pajama pants, and spanked her bare buttocks. Colleen struggled with defendant, trying to pull up her pants and get away from him, but defendant used his strength to keep her pinned to him.

Defendant then moved Colleen around again and put his hand down the front of her pajama pants. With his finger, defendant touched Colleen's vagina, reaching inside the labia and said, "Ooh, look what I found." Colleen reported the assault to her ex-boyfriend, her mother, and her pastor.

Colleen's mother asked her not to go to the police but Colleen ignored her request. Colleen reported the assault to the police; the police took photographs of bruises on Colleen's buttocks and legs that resulted from her struggle with defendant. The police then asked Colleen to make a pretext phone call.

During the pretext phone call, defendant told Colleen, "You know what I did[,] I am very sorry that I did that to you." When Colleen asked him why he had done that to her, defendant responded, ". . . I felt that you were vulnerable and I took advantage of you." Defendant admitted he had "destroyed

everybody's lives here." Defendant then said he would go back to counseling with Jerry Blassingame¹ for his sickness.

Defendant was subsequently arrested and charged with three counts of sexual battery (Pen. Code, § 243.4, subd. (a)),² assault with intent to commit rape (§ 220), genital penetration with a foreign object (§ 289, subd. (a)), and false imprisonment (§ 236). It was further alleged that defendant was a habitual sexual offender pursuant to section 667.71, and previously had been convicted of a serious felony pursuant to sections 1170.12 and 667.6, subdivision (a).

Defendant pleaded not guilty to the charges and a jury trial commenced in November 2010. The jury later found defendant guilty of three counts of sexual battery, genital penetration, and false imprisonment. The jury deadlocked on the charge of assault with intent to commit rape and the charge was later dismissed on the People's motion.

Following the jury's verdict, there was a court trial on the sentencing enhancement allegations. The court found true the allegations that defendant was a habitual sexual offender and previously had been convicted of a serious felony.

At sentencing, the trial court struck the section 1170.12 enhancement pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and granted the People's motion to strike the

¹ At trial the parties stipulated that Jerry Blassingame specializes in counseling sex offenders.

² Undesignated statutory references are to the Penal Code.

section 667.6, subdivision (a) enhancement. Defendant was then sentenced to an aggregate term of 25 years to life plus six years in state prison. Defendant was awarded 348 days of custody credit (303 actual and 45 conduct) and ordered to pay various fines and fees as well as victim restitution.

II. WENDE REVIEW

Appointed counsel filed an opening brief that sets forth the facts of the case and asked this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 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 have elapsed and we have 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.

_____ MURRAY _____, J.

We concur:

_____ NICHOLSON _____, Acting P. J.

_____ ROBIE _____, J.