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NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE, Plaintiff and Respondent, v. THOMAS MICHAEL CARNES, Defendant and Appellant.	C088174 (Super. Ct. No. CM029939)

Appointed counsel for defendant Thomas Michael Carnes asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We provide the following brief description of the facts and procedural history of defendant's case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

In August 2008, defendant met the underage victim at a park in Chico. According to the victim, they went back to defendant's apartment to eat and watch a show. The victim fell asleep and awoke to defendant fondling her. Although she told him to stop, defendant pulled her pants down and penetrated her vagina with his penis. He refused to let her leave his apartment until the following day.

In December 2008, Defendant was charged with forcible rape (Pen. Code, § 261, subd. (a)(2); count 1),[1] and unlawful sexual intercourse with a person under 16 years of age (§ 261.5, subd. (d); count 2). In February 2009, he pleaded no contest to count 2 and count 1 was dismissed.

In 2011, the trial court sentenced defendant to the middle term of three years, which the court deemed time served given defendant's custody and conduct credits.[2] Seven years later, in 2018, defendant filed a motion to reduce the felony unlawful sexual intercourse offense to a misdemeanor under section 17, subdivision (b). The trial court denied the motion, concluding it was unable to grant the relief requested because defendant had been sentenced to state prison; even if defendant were eligible for a reduction, the court indicated it would not exercise its discretion to grant the requested relief. (§ 17, subd. (b)(1).) Defendant appealed without a certificate of probable cause.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and requesting that this court review the record to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30

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[1] Undesignated statutory references are to the Penal Code.

[2] Prior to sentencing, defendant was found incompetent and all proceedings were suspended. In August 2011, defendant was found to be competent and the trial court reinstated criminal proceedings.

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.

/s/
BLEASE, Acting P. J.

We concur:

/s/
MAURO, J.

/s/
RENNER, J.