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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY MIZNER,

Defendant and Appellant.

D060050

(Super. Ct. No. SCD229973)

APPEAL from a judgment of the Superior Court of San Diego County, Laura W. Halgren, Judge. Affirmed.

Jeffrey Mizner pled guilty to one count of committing a lewd act on a child under the age of 14, in violation of Penal Code section 1203.066, subdivision (a)(8). Mizner was sentenced to six years in state prison, and now appeals. We affirm.

BACKGROUND

In the summer of 2010, Mizner and his two daughters spent the night in sleeping bags in their living room. Mizner's older daughter, then eight years old, saw him

masturbating. Mizner explained that it helped him sleep. He asked her if she wanted to touch his penis, which she briefly did. Mizner then asked his daughter if she wanted him to help her sleep, and rubbed her genital area when she agreed.

Mizner was arrested by Naval Criminal Investigation Services personnel, and admitted the events to investigators.

Mizner accepted a plea bargain which provided for a stipulated six-year prison term. However, immediately before sentencing, he demanded and received a *Marsden* (*People v. Marsden* (1970) 2 Cal.3d 118) hearing, claiming his appointed counsel failed to explain to him what "stipulated" meant and failed to schedule a probation interview for him. At the hearing, Mizner's counsel explained the rationale for foregoing a probation interview, and offered evidence she had discussed the nature of Mizner's sentence with him. The court then reminded Mizner it had explained the stipulated sentence to him at the time the plea was entered, and did not find his counsel to be ineffective.

## DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*) counsel lists as a possible, but not arguable, issue that Mizner's request for a new attorney in his *Marsden* hearing was denied.

We gave Mizner an opportunity to file a brief on his own behalf. Although Mizner raised no constitutional objection to his sentence in the trial court, in his supplemental brief Mizner argues the residency requirements of Jessica's Law (Pen. Code, § 3003.5) are unconstitutional on a number of grounds. In *In re E.J.* (2010) 47 Cal.4th 1258, 1278 (*E.J.*) the court recently held that Jessica's Law does not constitute ex post facto or retroactive punishment and is not subject to the protections of the Sixth Amendment as set forth in *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490. With respect to claims Jessica's Law imposed overly broad and unnecessary intrusion on privacy and liberty interests protected by other aspects of the Constitution, the court in *E.J.* found that such claims fail as facial challenges to the law but that individuals subject to the law's restrictions may assert that as applied to them the law is invalid. (*E.J.*, *supra*, 47 Cal.4th at 1264-1265.) Because Mizner did not raise any constitutional claim in the trial court, this record will not support any as-applied challenge to Jessica's Law. Thus, on this appeal Mizner's constitutional claims have no merit. However, he may, by way of collateral proceedings, bring an as-applied challenge to Jessica's Law.<sup>1</sup>

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<sup>1</sup> We note this court has recently determined that as applied to individuals who are required to register as sex offenders and who are residents of the County of San Diego, Jessica's Law imposes unreasonable limitations on the individual's ability to find suitable housing and it may not be enforced. (See *In re Taylor* (2012) 209 Cal.App.4th 210 (*Taylor*.) *Taylor* is not yet final. Should *Taylor* become final and should Mizner be released in San Diego County, our opinion would plainly support a request by Mizner for collateral relief from application of Jessica's Law, subject of course to any additional substantive or procedural objection raised by the People.

Mizner also argues there was no factual basis for his plea. Because the record shows that in fact Mizner admitted the offense both in out of court statements!(AUG. CT 5)! and at the time of his plea!(RT 6-7)!, this claim has no merit. (See *People v. Holmes* (2004) 32 Cal.4th 432, 443.)

Thus a thorough review of the record pursuant to *Wende* and *Anders*, including the possible issues listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. Mizner has been competently represented by counsel on this appeal.

DISPOSITION

The judgment of conviction is affirmed.

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BENKE, Acting P. J.

WE CONCUR:

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HALLER, J.

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McINTYRE, J.