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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMIRO MARTINEZ GARCIA,

Defendant and Appellant.

E054336

(Super.Ct.No. FVA900556)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid Adamson Uhler, Judge. Affirmed.

Mark Alan Hart, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This is a second appeal by defendant and appellant Ramiro Martinez Garcia. A jury originally convicted defendant of one count of committing a lewd act upon Jane

Doe, a child under the age of 14 years (Pen. Code, § 288, subd. (a), count 3)<sup>1</sup> and three counts of committing a lewd act on Jane Doe, a child aged 14 or 15 by someone at least 10 years older (§ 288, subd. (c)(1), counts 5, 6, 7). The jury also found true that defendant committed count 3 against more than one victim (former § 667.61, subd. (e)(5)).<sup>2, 3</sup> As a result, defendant was sentenced to a total indeterminate term of 15 years to life, plus a total determinate term of four years four months, with credit for time served. (*People v. Garcia* (April 4, 2011, E050335 [nonpub. opn.] (*Garcia I.*))

In his first appeal, defendant claimed that he was improperly convicted of the multiple-victim allegation under former section 667.61, subdivision (e)(5), and that he was entitled to an additional two days of presentence custody credits. (See *Garcia I.*) We agreed, reversed the finding of the multiple-victim allegation, and remanded the matter for resentencing.<sup>4</sup> (*Ibid.*)

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Effective September 9, 2010, this was renumbered as subdivision (e)(4). At all times relevant to this case, it was subdivision (e)(5), and that is how we refer to it throughout this opinion.

<sup>3</sup> The jury found defendant not guilty of two other counts of committing a lewd act on Jane Doe, a child under 14 years of age as alleged in counts 1 and 2. The jury failed to reach a verdict on count 4 (another allegation of committing a lewd act on Jane Doe under § 288, subd. (a)) and count 8 (another count of committing a lewd act on Jane Doe under § 288, subd. (c)(1)). The trial court declared a mistrial as to those two counts. The People subsequently dismissed those two counts pursuant to section 1385. (See *Garcia I, supra*, E050335.)

<sup>4</sup> Because the trial court granted defendant's request to modify the judgment to award him the additional two days of presentence custody credits, we found defendant's second contention moot.

On remand, the trial court sentenced defendant to a total determinate term of 10 years in state prison with credit of 387 days for time served as follows: the upper term of eight years on count 3, plus consecutive terms of eight months each (one-third of the midterm of two years) on counts 5, 6, and 7.<sup>5</sup> Defendant appeals from the judgment. We affirm.

### FACTUAL BACKGROUND

Defendant repeatedly molested his daughter Jane Doe when she was between the ages of 13 and 16. Defendant touched her thighs, buttocks, and breasts. He also would get on top of Jane and rub his body and penis against her legs and buttocks. On one occasion, defendant pulled down her pajamas and penetrated her vagina with his finger. In another incident, defendant bit Jane's breast. (See *Garcia I, supra*, E050335.)

In March 2009, Jane's younger sister told Jane's mother that she saw defendant touching Jane. Jane confirmed the abuse to her mother. Jane had not disclosed the abuse earlier because she was afraid of losing her family. Jane's mother called the police, and defendant was arrested. (See *Garcia I, supra*, E050335.)

Defendant stipulated that he had been convicted of violating section 288, subdivision (a), in November 2000. In that matter, while defendant lived in his aunt's home, he was caught trying to force his six-year-old niece to orally copulate him. (See *Garcia I, supra*, E050335.)

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<sup>5</sup> On January 19, 2012, at the request of defendant's appellate counsel, the trial court amended the abstract of judgment to reflect a total of 918 days of presentence custody credits.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts, potential arguable issues, and requesting this court undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we independently reviewed the record for potential error. We have now completed our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

RICHLI  
Acting P.J.

We concur:

KING  
J.

MILLER  
J.