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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.

RALPH ORANTES, JR.,

Defendant and Appellant.

E056707

(Super.Ct.No. RIF1105628)

OPINION

APPEAL from the Superior Court of Riverside County. Helios (Joe) Hernandez,
Judge. Affirmed.

Leslie A. Rose, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On November 4, 2011, a felony complaint charged defendant and appellant Ralph Orantes, Jr., with violations of Penal Code¹ section 269, subdivision (a)(1) for rape of a child under the age of 14 years and seven or more years younger than the defendant (counts 1 & 2); and section 288, subdivision (b)(1) for lewd and lascivious acts upon a minor under the age of 14 years (counts 3-12). Defendant pled not guilty.

On May 8, 2012, defendant withdrew his not guilty plea and entered into a negotiated settlement whereby he pled guilty to counts 3 through 7. As a condition of the plea, the parties agreed that the remaining counts would be dismissed and that defendant would receive a determinate term of 40 years in state prison (upper term on all counts, full and consecutive). Defendant waived his right to appeal.

On July 11, 2012, the parties appeared for sentencing. Defendant indicated that he wished to withdraw his guilty plea, so the case was sent to another courtroom for a hearing under *People v. Marsden* (1970) 2 Cal.3d 118. Following the hearing, the court denied the *Marsden* motion.

Thereafter, defendant returned to the sentencing court. The trial court sentenced defendant pursuant to the agreed-upon term of 40 years. Defendant was awarded 253 days of actual credit, plus 37 days of credit under section 2933.1, for a total of 290 days. The court then imposed a restitution fine and various fees.

¹ All statutory references are to the Penal Code unless otherwise specified.

On July 11, 2012, a timely notice of appeal was filed. Defendant did not request a certificate of probable cause.

STATEMENT OF FACTS

For the factual basis of his plea, defendant agreed that he “did the things that are stated in the charges that [he was] admitting.”

Defendant pled guilty to five violations of section 288, subdivision (b)(1) in that he did willfully, unlawfully and lewdly commit a lewd and lascivious act upon and with the body and certain parts and members of Jane Doe, a child under 14 years of age, by use of force, violence, duress, menace and fear of immediate and unlawful bodily injury, with the intent of arousing, appealing to, and gratifying defendant’s lust, passions and sexual desires.

ANALYSIS

After 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, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his 10-page handwritten brief, defendant appears to argue that: (1) there is insufficient evidence to support his conviction because the victim was allegedly 15 years old at the time the acts took place and the acts were consensual; (2) defense counsel

rendered ineffective assistance of counsel; and (3) he was pressured to sign the plea agreement. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

“When a defendant pleads not guilty and is convicted as the result of a trial, in general any issue bearing on the determination of guilt and apparent from the record is cognizable on appeal. (See § 1237.) By contrast, when a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the ‘jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.’ [Citations.]” (*In re Chavez* (2003) 30 Cal.4th 643, 649.) In addition, “section 1237.5 authorizes an appeal [following a guilty plea] only as to a particular category of issues,” and to have these issues considered on appeal, a defendant must first take the additional procedural step of obtaining a certificate of probable cause.² (*Id.* at p. 650.)

² Section 1237.5 states as follows: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

In the absence of a certificate of probable cause, we may not consider the validity of the plea, whether the change of plea was knowingly, intelligently, or voluntarily made, or whether defendant was deprived of effective assistance of counsel. (§ 1237.5; see also *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.)

Here, because defendant failed to obtain a certificate of probable cause, his contentions are not cognizable on appeal, and we cannot address them. (*People v. Shelton* (2006) 37 Cal.4th 759, 766; *People v. Panizzon* (1996) 13 Cal.4th 68, 76.)

Pursuant to *People v. Kelly*, we have now concluded our independent review of the entire record and find no arguable issues on appeal.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

KING
J.