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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.

JOSHUA JAMES BEEBE,

Defendant and Appellant.

E063595

(Super.Ct.No. RIF1302649)

OPINION

APPEAL from the Superior Court of Riverside County. Mac R. Fisher, Judge.

Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal, Michael Pulos, and Minh U. Le, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Joshua James Beebe (defendant) appeals from a judgment of felony child abuse. (Pen. Code, § 273d, subd. (a))¹ He argues that the trial court abused its discretion in declining to reduce the conviction to a misdemeanor pursuant to section 17, subdivision (b), and also that the trial court's decision represented a deprivation of due process. We disagree with both contentions and affirm the judgment.

I

STATEMENT OF FACTS

Defendant is the father of two children with Kristina Markovich, with whom he was no longer on good terms at the time of the offense. The children were S. and I. I. was then two and one-half years old, with speech difficulties.

On May 1, 2013, Ms. Markovich dropped the children off for an overnight visit with defendant.² I. had no bruises at that time. When defendant returned the children the next day to Ms. Markovich's mother, he did not, as usual, walk them to the door, but simply dropped them off in the front yard and drove off. When I.'s grandparents changed his diaper shortly thereafter, his grandmother saw swelling and red, black, and blue bruising on the child's buttocks. The marks looked like "a smash of fingers through the skin . . . on the butt." I.'s mother also described the marks as like "fingerprints."

¹ All subsequent statutory references are to the Penal Code.

² The drop-off took place at a police station.

A forensic pediatrician who reviewed photographs of the bruising gave the opinion that the bruises were caused by a hand striking the child's bare buttocks. The witness described the cause as "abusive trauma" with the use of "a lot of force."

Defendant had made no effort to see either of the children subsequent to the incident.

After the jury returned its verdict finding defendant guilty of inflicting an injury causing a traumatic condition, defendant moved to have the court reduce the conviction to a misdemeanor under section 17, subdivision (b)(3).³ Defendant argued that the injury was transient and noted that he had not been convicted of a felony for over 12 years.⁴ He also submitted supportive letters from family members, including his current wife, with whom he had a new child.

At the sentencing hearing, the trial court expressly noted that it had received and reviewed the probation report and the letters⁵ submitted supporting defendant's request.

³ "(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail . . . it is a misdemeanor for all purposes [¶] . . . [¶] (3) When the court grants probation . . . without imposition of sentence and at the time of granting probation . . . the court declares the offense to be a misdemeanor."

⁴ The probation report reflected two weapons-related convictions in 2002, a felony drug possession conviction from Minnesota in 2001, and misdemeanor convictions for, inter alia, spousal abuse in 1997, disorderly conduct and assault in 1999, and weapons possession in 2008.

⁵ Actually copies of e-mails.

It offered both sides the opportunity to submit additional information but both sides declined, submitting on the paperwork. The trial court denied the motion/request.

Explaining its decision, the trial court stated that it had not heard any “compelling argument” in favor of reducing the conviction to a misdemeanor. It clearly recognized that the current offense was not an aggravated one when it commented that “chances are this matter would have never seen a courtroom by way of a jury trial had this been a first brush with the law that Mr. Beebe had.” In this respect it also conceded that the prior felony convictions were “a long time ago,” but noted that “there is a long history of being placed on probation and violated [*sic*].”

It then summarized defendant’s criminal history, expressing particular concern over the repeated weapons violations, all of which apparently stemmed from his status as a felon.

II

DISCUSSION

Defendant asserts that both section 17, subdivision (b), and the due process clause of the United States Constitution required that his request be granted. He is incorrect.

The established rule is that the trial court’s decision on a motion under section 17 rests within the court’s broad discretion. (*People v. Sy* (2014) 223 Cal.App.4th 44, 66.) It is defendant’s burden to show that the sentencing decision was irrational or arbitrary. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977 (*Alvarez*).)

It is true, as defendant argues, that the trial court must consider all relevant factors before making its decision, and these factors include the nature and circumstances of the offense, the defendant's appreciation of his wrongdoing, his character and demeanor at trial, and the general objectives of sentencing. (*Alvarez, supra* at p. 978.) In short, the court must give "individualized consideration of the offense, the offender, and the public interest." (*Ibid.*)

Defendant's position is that the trial court only *expressly* commented upon his past criminal history, and therefore it necessarily failed to consider more favorable factors. First, this ignores the fact that the court also clearly acknowledged that the nature of the current offense was not in any way egregious. Second, the court's silence on factors such as his demeanor or family support does *not* require the conclusion that it "disregarded" such factors. A decision not to reduce a felony conviction to a misdemeanor is not one of the sentencing decisions listed in California Rules of Court, rule 4.406(b), as requiring a formal statement of reasons. This being so, unless the record shows otherwise we must assume that the trial court was aware of and followed the relevant statutory and case law. (*People v. Adanandus* (2007) 157 Cal.App.4th 496, 503.)

Of course, if the trial court's decision was in fact arbitrary or irrational, that would certainly be evidence that it did not consider all factors. However, the decision cannot be so characterized. As the trial court noted, defendant had a substantial history of assaultive conduct and had also demonstrated a repeated defiance of the law by continuing to possess weapons after he was legally disqualified from doing so. Due to

his age, the victim was particularly vulnerable to abuse. The evidence demonstrated that considerable force was used. The fact that felony violations of section 273d might also involve severe or life-threatening injuries does not mean that those which do not must be designated as felonies.⁶ The statute only requires a “traumatic condition” which may be “minor or serious.” (See CALCRIM No. 822.)

Defendant’s assertion that the trial court should have found that this case only involves “unreasonable discipline” is similarly unpersuasive. It is true that section 273d is designed to deal with, inter alia, inappropriate corporal punishment. However, there was no evidence that the injury to I. was the result of “unreasonable discipline” or that defendant struck the minor with the intent, misguidedly, to correct errant behavior. (Defendant did not testify.) While children are commonly disciplined by spanking on the buttocks, it is perfectly reasonable to suppose that defendant struck I. in that area just because it was convenient and exposed.

Finally, very arguably defendant demonstrated a sense of guilt by simply leaving his children in the grandparents’ yard rather than escorting them to the door. Although the communications in his support expressed the view that he was a loving father, the trial court was given no information to support the conclusion that he had been legally

⁶ Under the current statutory scheme, more serious offenses involving “circumstances or conditions likely to produce great bodily harm or death” are more commonly brought under section 273a, subdivision (a). Section 273d requires merely “any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition.”

prevented from seeing his children rather than that he had simply walked away from his parental role.

We uphold an exercise of discretion unless the decision “exceeds the bounds of reason” (*People v. Fuiava* (2012) 53 Cal.4th 622, 650) and cannot simply substitute our judgment for that of the trial court. (*Alvarez, supra*, 14 Cal.4th at p. 978.) We find no reversible error in the ruling here.

Although defendant captions his argument as one also implicating due process, citing *Hicks v. Oklahoma* (1980) 447 U.S. 343, 345, the basis for the argument is the same as that we have already rejected: that only one decision was appropriate as a matter of law. Accordingly, the due process claim does not assist him.

III

DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.