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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.

ROY FINEE ARANDA, JR.,

Defendant and Appellant.

E065544

(Super.Ct.No. INF1501045)

OPINION

APPEAL from the Superior Court of Riverside County. Charles Everett Stafford, Jr., Judge. Affirmed.

Joanna Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury found defendant and appellant Roy Finee Aranda, Jr., guilty of one count of felony indecent exposure (Pen. Code, § 314, subd. (1)).¹ In a bifurcated proceeding, the trial court found true that defendant had suffered a prior conviction for indecent exposure in 2005.² The trial court also found true that defendant had suffered four prior prison terms (§ 667.5, subd. (b)) and three prior strike convictions (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). As a result, defendant was sentenced to a total term of 10 years in state prison with credit for time served as follows: the upper term of three years for the substance offense, doubled to six years due to the prior strike convictions, plus four consecutive one-year terms for the four prior prison terms. Defendant appeals from the judgment. We find no error and affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

On June 20, 2015, at around 5:39 p.m., Nelly Aguilar drove her children to the Palm Desert Liquor store in Palm Desert, California, to buy chocolates. Her two sons went inside the store while Aguilar and her eight-year-old daughter waited in the car. Defendant then walked by Aguilar's car and sat in a chair in front of the store. Defendant was about eight to 10 feet away from Aguilar's view. While staring at Aguilar, defendant lowered his sunglasses and tried to get Aguilar's attention. Defendant then lowered his head and raised it back up, as if he wanted to show Aguilar something. When Aguilar

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

² The jury hung on the misdemeanor count of annoying or molesting a minor in violation of section 647.6, subdivision (a), and it was dismissed on the People's motion.

looked, she saw defendant pulling up the right leg of his shorts, separating his legs, and exposing his right testicle to her. Defendant repeated this motion three or four times over the course of about 15-20 seconds. Aguilar's daughter, who was sitting in the backseat of the car, also saw defendant sit down, pull up his shorts, and show his private parts.

Aguilar wanted to remove herself from the situation, because she thought defendant's conduct was "not proper" and it scared her, but her boys were still in the store. She also wanted to call the police at that moment, but she did not know how to unlock her son's phone, which he had left in the car, and she could not get a signal to the phone. When a store clerk came out, Aguilar asked the store clerk to tell her children to come out. She also pointed to defendant, who was still in the chair, and told the clerk what defendant had done, but the clerk did not say or do anything. After her boys came out of the store, with the help of one of her sons, Aguilar then called 911.

Officer Bryce Hubbard responded to the scene and detained defendant as he walked through the parking lot. Officer Hubbard then transported defendant to where Aguilar and her family were waiting. Aguilar and her daughter immediately identified defendant as the perpetrator.

Pursuant to Evidence Code sections 1101, subdivision (b), and 1108, 14-year-old A.A. testified that in 2013, she was riding a public bus, sitting in the back by herself, when defendant sat down next to her. Defendant came up to A.A., started rubbing his "penis area," and said " 'I put my dick in your vagina.' " A.A. felt very uncomfortable, got off the bus, and called her mother.

On August 18, 2015, defendant was charged with one count of felony indecent exposure with a prior conviction for indecent exposure in 2005 (§ 314, subd. (1)) and one count of misdemeanor annoying or molesting a minor (§ 647.6, subd. (a)). The information further alleged that defendant had suffered three prior strike convictions (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)) and four prior prison terms (§ 667.5, subd. (b)).

Trial was set to begin on October 15, 2015. At that time, defendant made a motion to relieve his court-appointed counsel. At defendant's request, the trial court thereafter held a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). The motion was denied. However, before the matter proceeded any further, the trial court reconsidered the motion and granted it. The public defender's office was then relieved and conflict counsel appointed.

On February 2, 2016, the trial court ordered the prior conviction allegations bifurcated, and denied the People's request to admit certified copies of defendant's prior felony convictions for indecent exposure in 1987 and 2005 as propensity evidence under Evidence Code section 1108. The trial court, however, granted the People's unopposed motion to offer evidence of the 2013 incident involving A.A. to show propensity to commit the misdemeanor, and the court also allowed it to be offered under Evidence Code section 1101, subdivision (b), to show intent, motive, and common plan.

On February 5, 2016, the jury found defendant guilty of indecent exposure. The jury was unable to reach a verdict on the misdemeanor count. That count was later dismissed by the People.

On February 8, 2016, in a bifurcated proceeding, the trial court found true that defendant had suffered a prior conviction in August 2005 for indecent exposure. The court also found true that defendant had suffered three prior strike convictions and four prior prison terms as charged.

Appellant was thereafter referred to probation for a Static-99R assessment pursuant to sections 1203e and 290.06, subdivision (a)(6). Defendant received a score of 6, placing him in the high risk category for committing another sex offense.

The sentencing hearing was held on March 7, 2016. At that time, defendant's counsel requested defendant be sentenced to the "minimum possible sentence, even though he ha[d] a bad record, based upon the facts in this case, which are somewhat minimal." The People requested the maximum sentence. The trial court sentenced defendant to the maximum sentence of 10 years in state prison with credit of 524 days for time served. In imposing the maximum sentence, the trial court explained: "[Defendant] has an extensive record; he has been convicted of three strikes. He has three [*sic*] prison priors and he has served most of his adult life in state prison. [¶] The activity that he was convicted of in front of a jury is very similar to some of his past actions. His risk assessment is high that he will reoffend. I have no doubt in my mind that that assessment is true. I'm surprised they evaluated him at a 6. In my mind, looking at his record and

listening to the testimony at trial, it should be higher. I agree he is a high risk to reoffend. He poses a serious danger to members of the community.”

Defendant filed a timely notice of appeal.

II

DISCUSSION

After defendant appealed, 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 conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST
J.

MILLER
J.