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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re FRANCISCO B., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO B.,

Defendant and Appellant.

F063324

(Super. Ct. No. JJD064628)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Juliet L. Boccone, Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

* Before Gomes, Acting P.J., Detjen, J. and Franson, J.

STATEMENT OF THE CASE¹

On April 1, 2010, a first amended petition was filed, alleging that Francisco B. (minor) came within the provisions of Welfare and Institutions Code section 602 by virtue of his commission, against C.M., of forcible rape (Pen. Code,² § 261, subd. (a)(2); count 1), forcible lewd act on a child under the age of 14 (§ 288, subd. (b)(1); counts 2, 3, 4, 6, 8), forcible sexual penetration with a foreign object (§ 289, subd. (a)(1); count 5), attempted forcible sodomy (§§ 286, subd. (c)(2), 664; count 7), and attempted forcible oral copulation (§§ 288a, subd. (c)(2), 664; count 9); and his commission, against N.M., of forcible lewd act on a child under the age of 14 (§ 288, subd. (b)(1); counts 10, 11, 13, 14, 15), forcible rape (§ 261, subd. (a)(2); count 12), forcible oral copulation (§ 288a, subd. (c)(2); count 16), and attempted forcible sodomy (§§ 286, subd. (c)(2), 664; count 17). As to each count, it was further alleged minor committed an offense against more than one victim (§ 667.61, subd. (b)) and, as to counts 3, 4, 6, 8, 10, 11, 13, 14, and 15, that he engaged in substantial sexual conduct with the victim (§ 1203.066, subd. (a)(8)).

On June 24, 2010, the parties entered into a plea agreement. The court explained to minor his constitutional rights and secured waivers thereof. The court also advised minor of various potential consequences of his admissions.³ The parties stipulated the

¹ By separate order, we have taken judicial notice of the record and opinion in case No. F061632, minor's prior appeal in this matter. Portions of the statement of the case are derived therefrom.

² Further statutory references are to the Penal Code unless otherwise stated.

³ The court did not advise minor that one potential consequence was the requirement that he register as a sex offender for the rest of his life. In minor's previous appeal, which was taken following the disposition hearing, we affirmed, concluding the error, if any, was not prejudicial. (*In re F.B.* (Apr. 2, 2012, F061632) [nonpub. opn.])

police reports provided a factual basis for the admissions. Minor expressly acknowledged that at the time the offenses were committed, he understood they were wrong. With the concurrence of defense counsel, minor withdrew his previously entered denials and admitted counts 2, 3, 6, 11, and 15, and the attendant special allegations. The remaining counts were dismissed with the People retaining the right to discuss them for dispositional purposes. The court found minor understood his constitutional and statutory rights and knowingly, intelligently, and voluntarily waived them; understood the nature of the crimes charged and consequences of his admissions; and his admissions were free and voluntary. The court further found a sufficient factual basis for the charges, and that at the time he committed the offenses, minor was aware of the wrongfulness of his conduct.

On November 16, 2010, following a contested disposition hearing, minor was declared a ward of the court and committed to the California Department of Corrections and Rehabilitation, Department of Juvenile Justice (DJJ) for a maximum confinement time of 75 years to life, less 238 days of credit for time served. The court ordered minor and his parent to pay restitution and a restitution fine. The court further ordered minor to undergo a mental health assessment, submit to a blood test for AIDS, register as a sex offender, provide buccal swab samples, and provide thumb and palm prints. The court declared all five counts to be felonies, and requested that minor be considered for the sex offender program.

On December 9, 2010, minor was accepted by DJJ. On May 26, 2011, he filed a petition for change in dispositional level, pursuant to Welfare and Institutions Code section 779, and asked to be continued as a ward of the court in the home of his mother. Minor claimed DJJ was no longer able to offer a meaningful program that met his rehabilitative needs. The People opposed any change in disposition.

A progress report submitted by DJJ reflected that minor's treatment team found minor to be amenable to treatment and to benefit from a residential sexual behavior

treatment program. DJJ also submitted its current Sexual Behavior Treatment Program Guide.

After hearing argument on the matter and affording minor the opportunity to present witnesses in support of his position,⁴ the court found no basis upon which to conclude the program was not performing as it should, and, hence, insufficient reason to change the disposition. Accordingly, it denied the Welfare and Institutions Code section 779 petition and ordered minor returned to DJJ. Minor filed a timely notice of appeal, as authorized by Welfare and Institutions Code section 800, subdivision (a).

FACTS⁵

According to records of the Tulare County Sheriff's Department, on March 23, 2010, Deputy Lara was dispatched to a residence in the Orosi area regarding a report of sexual abuse of a juvenile. Upon his arrival, the reporting party stated that her nine-year-old daughter had been sexually abused by minor and E.D., two boys who lived in the neighborhood. The reporting party related that E.D.'s mother had informed her of the possible abuse. Ultimately, the boys, who were both 13 years old, admitted each had sexually abused the victim. Further investigation revealed there were two victims, ages nine and 11, and that they had been forcibly sexually abused by the boys on multiple occasions over the course of approximately three months.

APPELLATE COURT REVIEW

Minor's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436; see also *In re Kevin S.* (2003) 113 Cal.App.4th 97, 119.) The opening brief also includes the declaration of appellate

⁴ Defense counsel ultimately did not call any witnesses.

⁵ In light of minor's admissions, the facts are derived from the probation officer's report.

counsel stating that minor was advised he could file his own brief with this court. By letter dated February 14, 2012, we invited minor to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues. (See *In re Owen E.* (1979) 23 Cal.3d 398, 406 [juvenile court may not vacate proper commitment to DJJ unless it appears DJJ “has failed to comply with law or has abused its discretion in dealing with a ward in its custody”]; accord, *In re Antoine D.* (2006) 137 Cal.App.4th 1314, 1322-1323.)

DISPOSITION

The judgment is affirmed.