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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ELICEO OLAIZ BERNAL,

Defendant and Appellant.

G045097

(Super. Ct. No. 08SF0010)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
David A. Thompson, Judge. Affirmed.

Patricia J. Ulibarri, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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This is a companion to a separate appeal filed by plaintiff Eliceo Olaiz Bernal from his conviction for three counts of sexual intercourse or sodomy with a child under 10 and three counts of committing a lewd act on a child, with a multiple victim enhancement. The facts are set out in detail in the opinion in that case and we incorporate them into this opinion. (*People v. Bernal* (May __, 2012, G044064) [nonpub. opn.])

As a result of his convictions defendant was required to register as a sex offender under Penal Code section 290, subdivision (b) (all further statutory references are to this code). Section 1203e, subdivision (a) mandated the probation department to “complete a Facts of Offense Sheet,” which must contain, among other things, the “circumstances of the offense for which registration is required” and the “results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO).” The SARATSO is documented using a method described as the “Static-99 risk assessment scale” (both documents collectively referred to as the SARATSO assessment). The purpose of the SARATSO assessment is to “predict[] sex offender risk of recidivism.” (§ 290.04, subd. (a)(2).)

After probation officer Miramontes completed the SARATSO assessment, defendant moved to strike it entirely and alternatively portions of the Facts of Offense Sheet and a Static-99 scoring worksheet from the probation report on the ground there were certain errors of fact and there was a lack of foundation because there was no information as to Miramontes’ training or experience in administering or completing the SARATSO assessment. The court granted the motion as to certain of the claimed factual errors, requiring an amended SARATSO assessment and probation report to be prepared, and otherwise denied it.

After defendant appealed we appointed counsel to represent him. Counsel filed a brief that set forth the facts of the case and the disposition. She did not argue against defendant but advised the court she had not found any claims to present on behalf

of defendant. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant's counsel suggested four issues to assist us in our independent review of the record. The first is the question of the constitutionality of section 1203e for failing to set out basic training standards for probation officers who complete the SARATSO assessment. But section 290.05, subdivision (a) provides for a training committee to include representatives of the Attorney General's office, the Chief Probation Officers and the departments of mental health and corrections and rehabilitation. The training committee is required to develop a program to train probation officers to complete the SARATSO assessment. (§ 290.05, subd. (b); see also §§ 290.04, subd. (b)(1), 290.06, subd. (a)(6).) Further, "training [is to] be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk." (§ 290.05, subd. (d).) We see nothing constitutionally deficient in the training standards provided by statute.

Defendant also raised the question of Miramontes' qualifications to complete the SARATSO assessment. Prior to ruling on defendant's motion the court held an evidentiary hearing where defendant was allowed to question Miramontes as to her training and qualifications. Miramontes had been trained to complete both forms and had completed 10 to 15 Static-99's and a few fact sheets. Based on the training standards set out above and Miramontes' own training, there was sufficient foundation for her completing the SARATSO assessment.

In the same vein counsel pointed to the fact Miramontes relied on the police report, rather than trial testimony, to answer certain questions on the facts sheet. But the court reviewed the trial testimony and ordered incorrect answers changed to accurately reflect it, resulting in lowering the score on the Static-99 to zero, which is the lowest possible score. Any error was harmless.

Counsel suggested we consider whether the court abused its discretion in denying part of the motion to strike based on lack of sufficient evidence. In deciding the motion, the court allowed defendant to cross-examine Miramontes and also reviewed the

portions of the trial transcript provided by defendant in support of his claims. Section 1203e, subdivision (b) allows the court to correct the Facts of Offense Sheet. This requires a factual determination. We defer to the court's findings unless there is no support in the record. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) We see no error in the court's ruling.

Finally, counsel points out that, during the time the motion was being resolved, defendant was not transferred to prison but remained in jail. Therefore he was entitled to additional presentence custody credits. But section 2900.5, subdivision (e) provides that it is "the duty of any agency to which a person is committed to apply the credit provided for . . . the period between the date of sentencing and the date the person is delivered to the agency." There is nothing in the record to show the Department of Corrections and Rehabilitation has not correctly calculated the credits.

Defendant was given 30 days to file written argument on his own behalf, which he did not do. We have examined the record and found no arguable issue. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Johnson* (1981) 123 Cal.App.3d 106, 111-112.)

The postjudgment order is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.