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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.

ROBERTO BEDOLLA AMBRIZ,

Defendant and Appellant.

G045999

(Super. Ct. No. 08NF2205)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William Lee Evans, Judge. Affirmed.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Laura A. Glennon, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted 55-year-old Roberto Bedolla Ambriz of sodomizing a child age 10 or younger, kidnapping to molest the child, a forcible lewd act on another child under 14 years old, and seven counts of lewd acts on children younger than age 14. The jury also found penalty enhancement allegations to be true on several of these counts, including kidnapping to commit the forcible lewd act, the offenses were committed against more than one victim, and substantial sexual conduct with victims under the age of 14. Ambriz argues the trial court lacked statutory authority to impose an order barring him from contact with his two victims. He also argues the 55-year prison sentence the trial court imposed constitutes cruel and/or unusual punishment under the federal and state Constitutions because it exceeds his remaining life expectancy. We find no merit in either claim, and therefore affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

Twelve-year-old Kenny M. lived in a group home, but visited his parents on weekends in Ambriz's Anaheim neighborhood. Ambriz preyed on Kenny's propensity to run away, inviting him into his apartment where he gave Kenny alcohol and cigarettes and showed him pornographic films depicting homosexual and heterosexual sex acts. Ambriz on two separate occasions sodomized Kenny two to five times and induced Kenny one or two times to perform sodomy on Ambriz. Ambriz also orally copulated Kenny two to five times and induced Kenny to do the same once or twice. Ambriz engineered the acts by luring Kenny to his bedroom to watch pornography. Kenny testified he did not want to have sex with Ambriz, and he attempted to escape, but Ambriz hit and pushed him and blocked the doorway to prevent him from leaving. The

sodomy resulted in lingering physical pain for Kenny, but he did not tell anyone because he was embarrassed.

Nine-year-old Jesus N. played in the alley near Ambriz's apartment and sometimes observed Kenny climb and later descend the stairs from Ambriz's residence. On one occasion, noticing Kenny appeared dizzy and complained about his legs after leaving Ambriz's place, Jesus asked Kenny what had happened, but Kenny responded, "Don't worry about it."

One day in June 2008, Ambriz hailed Jesus from his apartment window, "Come [up] and I have a toy for you." The child walked up the stairs into the apartment, where he followed Ambriz to his bedroom, and Ambriz closed the door behind him. The bedroom door had no inside handle. Ambriz played in the background a pornographic movie depicting acts of sodomy, disrobed, told Jesus to be quiet when he asked, "What are you doing," and pulled down the child's shorts and underwear. When the child became frightened and attempted to back away, Ambriz leaned into him against the bed and sodomized him. The boy unsuccessfully tried to push Ambriz away, and the abuse only stopped after several minutes when Jesus's friends called his name in the alley. Ambriz removed his penis from Jesus's behind, and the boy put on his clothes and quickly left for his home, where he went to the bathroom and noticed he was bleeding.

The child did not tell anyone what happened because he believed the incident was his fault and he would get in trouble. His mother eventually found his underpants two weeks later, stained with blood and feces. She noticed about the same time that her son was playing with his brother's private parts and when she scolded him, he revealed the abuse and could not stop crying.

Jesus identified Ambriz in a photographic lineup in a CAST (Child Abuse Services Team) interview as “the one who did it to me.” Ambriz admitted to police investigators that he performed sodomy and oral copulation on Kenny M. and a nine-year-old boy, but claimed the sex acts with the younger boy occurred a year before the alleged incident with Jesus N. Ambriz claimed both boys wanted him to show them how to have sex.

## II

### DISCUSSION

#### A. *No Contact Order*

Ambriz contends the no-contact order the trial court imposed constituted an unauthorized sentence. The Attorney General asserts Ambriz forfeited this claim by failing to object to the order below, but forfeiture applies to sentences imposed “in a procedurally or factually flawed manner,” *provided* the sentence is “otherwise permitted by law.” (*People v. Scott* (1994) 9 Cal.4th 331, 354 (*Scott*)). “A claim that a sentence is unauthorized . . . may be raised for the first time on appeal, and is subject to judicial correction whenever the error comes to the attention of the reviewing court.” (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6; *People v. Robertson* (2012) 208 Cal.App.4th 965, 995 (*Robertson*)). “[A] sentence is generally ‘unauthorized’ where it could not lawfully be imposed under any circumstance in the particular case. Appellate courts are willing to intervene in the first instance because such error is ‘clear and correctable’ independent of any factual issues presented by the record at sentencing.” (*Scott, supra*, 9 Cal.4th at p. 354.)

The Attorney General justifies the no-contact order based on Penal Code section 1202.05 (all further statutory references are to this code), which requires the trial

court at sentencing to “prohibit all visitation” between a defendant and a child he or she has victimized by enumerated sexual offenses, including as here lewd acts committed against children under age 14 (§ 288). But Ambriz correctly points out the trial court’s order was broader than simply barring visitation in or out of prison, instead also forbidding “contact with the victims in this matter in any fashion,” thus precluding correspondence or other forms of contact. As noted in *Robertson*, however, section 1201.3, subdivision (a), provides statutory authority to preclude any such contact for a period of 10 years when the victim of a sex crime is a minor. (*Robertson, supra*, 208 Cal.App.4th at p. 996.) We presume the trial court understood and applied this limitation (Evid. Code, § 664), and we therefore affirm the trial court’s broad no-contact order with its implied expiration date. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [judgment presumed correct; ““All intendments and presumptions are indulged”” in its favor].) Properly interpreted, there is no basis to reverse the trial court’s order.

B. *Ambriz’s 55-Year Sentence Is Not Disproportionate to His Child Rape Offenses*

Ambriz contends the length of his 55 years to life sentence exceeds federal and state constitutional bounds. Specifically, he argues the sentence is “gratuitously extreme” because it most likely “cannot be served in a . . . 55-year old’s lifetime,” and therefore bears no relation to his “level of culpability.” He emphasizes his “minimal prior criminal record,” consisting of Vehicle Code violations, including driving while intoxicated, and he asserts he “took responsibility for most of his actions . . . by admitting [his] conduct” to investigating officers. We are not persuaded. We review claims of excessive punishment de novo, but must consider the record in the light most favorable to the judgment. (*People v. Martinez* (1999) 76 Cal.App.4th 489, 496.)

The Eighth Amendment to the United States Constitution barring “cruel and unusual” punishment “contains a ‘narrow proportionality principle’ that ‘applies to noncapital sentences.’ [Citations.]” (*Ewing v. California* (2003) 538 U.S. 11, 20), including “‘sentences for different terms of years’” (*Lockyer v. Andrade* (2003) 538 U.S. 63, 72). “A punishment violates the Eighth Amendment if it involves the ‘unnecessary and wanton infliction of pain’ or if it is ‘grossly out of proportion to the severity of the crime.’ [Citation.]” (*People v. Retanan* (2007) 154 Cal.App.4th 1219, 1230 (*Retanan*)). The high court has observed this tall bar to invalidate an otherwise valid sentence is surmounted “only in the ‘exceedingly rare’ and ‘extreme’ case. [Citations.]” (*Lockyer, supra*, 538 U.S. at p. 73 [two consecutive 25 years to life sentences for third strike petty theft of videotapes not invalid]; *Harmelin v. Michigan* (1991) 501 U.S. 957, 1001 [life without parole sentence for possessing 672 grams of cocaine not cruel and unusual]); *People v. Meneses* (2011) 193 Cal.App.4th 1087, 1092; cf. *Solem v. Helm* (1983) 463 U.S. 277, 296-297 [life imprisonment without the possibility of parole for uttering worthless \$100 check constitutes cruel and unusual punishment].)

Similarly, under our state constitutional proscription against “cruel or unusual” punishment (Cal. Const., art. I, § 17), “[f]indings of disproportionality have occurred with exquisite rarity in the case law.” (*People v. Weddle* (1991) 1 Cal.App.4th 1190, 1196.) The test is whether the punishment is “so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.” (*In re Lynch* (1972) 8 Cal.3d 410, 424, fn. omitted.) The defendant must demonstrate the punishment is disproportionate in light of (1) the offense and defendant’s background, (2) more serious offenses, or (3) similar offenses in other jurisdictions. (*Id.* at pp. 429-437.) The defendant must overcome a “considerable

burden” to show the sentence is disproportionate. (*People v. Wingo* (1975) 14 Cal.3d 169, 174.) Ambriz makes no effort on the second and third *Lynch* prongs to compare his sentence with punishment for more serious offenses in California or with punishment in other states for the same offense, which we deem a concession his sentence withstands intra- and interjurisdictional scrutiny. (*Retanan, supra*, 154 Cal.App.4th at p. 1231; *People v. Crooks* (1997) 55 Cal.App.4th 797, 808 [defendant bears burden to establish disproportionality].)

Ambriz instead simply relies on the fact he did not kill his victims and that this was the first time he had been prosecuted for sex offenses. He insists a sentence that prevents him from “ever being eligible for parole for conduct which involved no loss of life *does* shock the conscience.” (Italics added.) Not so. The Legislature rationally designed its punishment scheme for serious sex offenses to result in long prison sentences, even for those without a prior criminal record. (*People v. Palmore* (2000) 79 Cal.App.4th 1290, 1296.) Sex offenses devastate children, society’s most vulnerable victims. (*Kennedy v. Louisiana* (2008) 554 U.S. 407, 435 [“the victim’s fright, the sense of betrayal, and the nature of her injuries caused more prolonged physical and mental suffering than, say, a sudden killing by an unseen assassin”; “attack was not just on her but on her childhood”; rape “has a permanent psychological, emotional, and sometimes physical impact on the child”; “[w]e cannot dismiss the years of long anguish that must be endured by the victim of child rape”].) Accordingly, convictions for multiple sexual offenses exceeding a defendant’s expected lifetime generally pass constitutional muster. (See, e.g., *People v. Wallace* (1993) 14 Cal.App.4th 651, 666 [283-year sentence for 46 sex crimes against seven victims] (*Wallace*); *People v. Bestelmeyer* (1985) 166 Cal.App.3d 520, 532 [129 years for 25 sex crimes against one victim].)

Citing *Miller v. Alabama* (2012) 132 S.Ct. 2455 (*Miller*), Ambriz suggests the high court's jurisprudence concerning proportionality in criminal punishment "is in a rapid state of change," implying it has evolved to bar life sentences for adults who rape children. Ambriz's reliance on *Miller* is badly misplaced. *Miller* had nothing to do with adult sex crimes. Rather, it concerned *mandatory* life without parole terms for *juvenile* homicide offenders, which bears no relation to Ambriz or his sentence. The trial court here had discretion to run Ambriz's 25-year and two 15-year sex offense terms concurrently; unlike in *Miller*, the trial court was under no mandatory statutory obligation to impose an actual or virtual life without parole term. In any event, Ambriz challenges only the length of the term and not its consecutive nature, which was well within the trial court's discretion. (See Cal. Rules of Court, rules 4.406(b)(5) & 4.421 [factors for consecutive sentencing include degree of cruelty, viciousness, and callousness, vulnerability of victims, abuse of trust, danger to society, separate crimes against separate victims, and predator's opportunity to reflect].) As noted, length alone does not implicate constitutional concerns (e.g., *Wallace, supra*, 14 Cal.App.4th at p. 666), and the principle that "juvenile offenders cannot with reliability be classified among the worst offenders" (*In re Nunez* (2009) 173 Cal.App.4th 709, 728) has no application to a 55-year-old pedophile. (Cf. *People v. Caballero* (2012) 55 Cal.4th 262, 268, fn. 4 [juvenile sentencing requires consideration of "hallmark features" of youth, including "immaturity, impetuosity, and failure to appreciate risks and consequences"].)

Ambriz incorrectly asserts the length of his sentence "can serve no rational legislative purpose." Valid penological goals include retribution, rehabilitation, and deterrence. (*In re Nunez, supra*, 173 Cal.App.4th at p. 730.) In addition to just retribution for the horror Ambriz inflicted on multiple child victims, his lengthy sentence serves

deterrent and incapacitating purposes, leaving little doubt he will have no opportunity to reoffend. High recidivism rates and lack of amenability to rehabilitation among pedophiles reasonably concerned the Legislature and supports the sentence the trial court imposed. (*People v. Alvarado* (2001) 87 Cal.App.4th 178, 187; *People v. Groomes* (1993) 14 Cal.App.4th 84, 89; see *People v. Jeffers* (1987) 43 Cal.3d 984, 994-996 [“A pedophile or fixated offender” is “defined as a man (there are virtually no female pedophiles) who throughout life is sexually attracted exclusively to children, usually boys, within a particular age range,” fn. omitted].)

Here, no evidence showed Ambriz was immature emotionally or intellectually (*People v. Dillon* (1983) 34 Cal.3d 441, 482-483), and no evidence otherwise mitigated his culpability. Instead, Ambriz in his mid-fifties serially molested a nine year old and a twelve year old, luring the younger boy to his apartment by offering him a toy, and then Ambriz viciously sodomized the child until he bled from his anus. The boy’s mother found blood and feces in his underwear after the assault. Ambriz plied the other boy, who suffered an unspecified mental disability, with alcohol and tobacco and then sodomized and performed oral copulation on him, and forced him to reciprocate the acts. The boy testified he told Ambriz he did not want to engage in the acts, but Ambriz on at least one occasion struck and pushed the boy to keep him from leaving. Both boys testified the sexual acts frightened them and were painful and embarrassing.

While Ambriz admitted molesting the older boy and at least one younger boy, his admissions were hardly mitigating for he shirked personal responsibility by claiming each boy sought his instruction in sexual matters, falsely claimed he did not use force, and could not remember whether the younger victim was the boy who testified or another one. Ambriz faced a possible sentence of 130 years to life, but received a

sentence less than half the maximum. There is not the faintest doubt the sentence imposed passes muster under both the federal and state Constitutions. Ambriz's sentence is nowhere near disproportionate to his offense, and neither shocks the conscience, nor offends fundamental notions of human dignity.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.