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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.

JOSE DANIEL MEDINA CABALLERO,

Defendant and Appellant.

G046602

(Super. Ct. No. 11NF0602)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jonathan S. Fish, Judge. Appeal dismissed.

Johanna R. Pirko, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant Jose Daniel Medina Caballero was charged by felony complaint with four counts of committing a lewd act upon a child under the age of 14 (Pen. Code, § 288, subd. (a); counts 1 through 4),<sup>1</sup> and, with respect to counts 1 through 4, he engaged in substantial sexual conduct with a child under the age of 14 (§ 1203.066, subd. (a)(8)).

Before any preliminary hearing was held, and pursuant to the court's indicated sentence, defendant withdrew his not guilty pleas and pleaded guilty to all counts and allegations. Defendant signed and initialed the *Tahl* form<sup>2</sup> waiving his rights, inter alia, to a preliminary hearing, to trial by jury, to confront and cross-examine witnesses, to subpoena witnesses for his defense, to testify in his own behalf, and his privilege against self-incrimination. As the factual basis for his plea, defendant stated: "In Orange County, California, on and between 1/10/10 and 2/19/11 I willfully, lewdly and unlawfully committed . . . 4 separate lewd acts upon a minor under 14 with the intent to gratify my sexual desires."

Defendant also initialed the *Tahl* form waiving his appellate rights. The waiver stated: "I understand I have the right to appeal from decisions and orders of the Superior Court. I waive and give up my right to appeal from any and all decisions and orders made in my case, including motions to suppress evidence brought pursuant to Penal Code section 1538.5. I waive and give up my right to appeal from my guilty plea. I waive and give up my right to appeal from any legally authorized sentence the court imposes which is within the terms and limits of this plea agreement."

Pursuant to the plea and the indicated sentence, the court sentenced defendant to the low term of three years on count 1 (§ 288, subd. (a)), an additional consecutive two-year term (one-third the midterm) on count 2 (§ 288, subd. (a)), and concurrent low term sentences on the remaining counts, for a total of five years in state

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> *In re Tahl* (1969) 1 Cal.3d 122.

prison. Defendant was granted custody credits of 376 days of actual custody and 56 days of conduct credit, for total custody credits of 432 days.

Defendant timely filed a notice of appeal, and we appointed counsel to represent him. Counsel did not argue against defendant, but advised the court she was unable to find an issue to argue on defendant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was given 30 days to file written argument in his own behalf. That period has passed, and we have not received any communication from him.

Pursuant to *Anders v. California* (1976) 386 U.S. 738, counsel suggested we review the record to determine whether defendant's guilty plea was constitutionally valid, whether there was a proper factual basis for the plea, and whether there were any errors at defendant's sentencing. We have examined the entire record and have not found any of these issues to be arguable. Nor have we found any other arguable error in the proceedings. The record reflects defendant was painstakingly advised of his rights, both orally and in the *Tahl* form. Defendant's custody credits were correctly calculated, his sentence was lawful, and was "within the terms and limits" of the plea agreement.

Moreover, defendant cannot challenge his prison term on appeal. He agreed not to — and "must abide by the terms of the agreement." (*People v. Panizzon* (1996) 13 Cal.4th 68, 80.) The appeal is dismissed.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.