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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CLEMENTINO ALARCON,

Defendant and Appellant.

H037232

(Santa Clara County

Super. Ct. No. CC962827)

Defendant Clementino Alarcon sexually penetrated his four-year-old niece on multiple occasions. He told his fearful niece not to tell anyone about his conduct. He was originally charged by information with sexual penetration with a child aged 10 or younger (Pen. Code, § 288.7, subd. (b)) and lewd conduct with a child under 14 (Pen. Code, § 288, subd. (a)). A jury trial commenced in February 2011. The information was amended at trial to add a second lewd conduct count. The jury was unable to reach a unanimous verdict despite lengthy deliberations, and the court declared a mistrial.

The information was thereafter amended again to add two counts of forcible lewd conduct with a child under 14 (Pen. Code, § 288, subd. (b)(1)). Defendant entered into a plea agreement under which he would enter guilty or no contest pleas to the two new counts in exchange for dismissal of the remaining counts and an agreed sentence of six years in state prison. He entered these pleas, and the court imposed the agreed term. The six-year sentence was composed of the three-year lower term for one count and, under

Penal Code section 667.6, subdivision (d), a fully consecutive three-year lower term for the other count.¹ Defendant timely filed a notice of appeal that challenged only his sentence.

Appointed appellate counsel has filed an opening brief which states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf but has failed to avail himself of the opportunity. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

Duffy, J. *

¹ There is a mistake on the abstract of judgment. As to the second count, the box for “CONSECUTIVE 1/3 VIOLENT” is checked rather than the box for “CONSECUTIVE FULL TERM.” The correct number of years appears in the appropriate box for this count on the form, and the total number of years is correct. There does not appear to be any need to correct this mistake.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.