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

THE PEOPLE,

Plaintiff and Respondent,

v.

FELIX P. CHAVEZ,

Defendant and Appellant.

H037317

(Santa Clara County
Super. Ct. No. CC805220)

I. INTRODUCTION

Defendant Felix P. Chavez pleaded no contest to sodomy by use of force (Pen. Code, § 286, subd. (c)(2)),¹ forcible sexual penetration (§ 289, subd. (a)(1)), and two counts of forcible lewd conduct (§ 288, subd. (b)(1)). The victim in all counts, G., was under the age of 14 and more than 10 years younger than defendant. The trial court imposed a stipulated total term of 30 years in the state prison.

Defendant filed a timely notice of appeal, and we appointed counsel to represent him in this court. Appointed counsel has filed an opening brief that states the case and facts but raises no issue. We notified defendant of his right to submit written argument on his own behalf within 30 days. The 30-day period has elapsed and we have received no response from defendant.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record. Following the California Supreme Court's direction in *People v. Kelly, supra*, 40 Cal.4th at page 110, we provide "a brief description of the facts and procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed."

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Our summary of the facts is taken from the reporter's transcript of the preliminary hearing held on July 16, 2010 and the August 25, 2011 probation report. Defendant was the boyfriend of G.'s mother. When G. was three or four years old, defendant sat on the bed next to her and rubbed her vagina over her clothing. On other occasions, when G. was four years old and in bed, defendant took off her underwear and "put his penis in [her] butt." This happened about four times.

When G. was in second to fourth grade, defendant was living with her family. Defendant would sometimes come into her room and put his fingers in her vagina. This happened between 10 and 20 times. Defendant told G. that he would hit her if she told her mother about it. Defendant would also discipline G. by spanking her on her buttocks with his hand over and under her clothing.

When G. was nine years old, she told her mother that defendant had "touched [her] where he wasn't supposed to." Her mother told defendant to leave their home, but she did not contact the police. G. later told a counselor about what had happened, which led to contact with police officers.

B. Procedural Background

The complaint filed on May 14, 2008, charged defendant with one count of aggravated sexual assault of child who was both under the age of 14 and 10 or more years younger than defendant (§ 269). Defendant was held to answer at the conclusion of the preliminary examination held on July 16, 2010.

The information filed on July 22, 2010, charged defendant with 12 felonies involving a child victim under the age of 14 and 10 or more years younger than defendant, including two counts of aggravated sexual assault of a child (§ 269; counts 1 & 2), two counts of sodomy (§ 286, subd. (c)(1); counts 3 & 4), four counts of sexual penetration (§ 289, subd. (j); counts 5-8), two counts of lewd conduct (§ 288, subd. (a); counts 9 & 10), and two counts of forcible lewd conduct (§ 288, subd. (b)(1); counts 11 & 12).

Defendant entered into a plea agreement on January 3, 2011, in which he pleaded guilty to counts 3, 7, 9, and 10 in exchange for a state prison sentence of 30 years. The parties subsequently agreed that the stipulated sentence of 30 years could not be imposed on counts 3, 7, 9, and 10 as alleged in the original information. Thereafter, the first amended information was filed on April 7, 2011, which amended counts 3, 7, 9, and 10. The amended counts charged defendant with forcible sodomy (§ 286, subd. (c)(2); count 3), forcible sexual penetration (§ 289, subd. (a)(1); count 7), and forcible lewd conduct (§288, subd. (b)(1); counts 9 & 10).

On May 12, 2011, defendant pleaded no contest to counts 3, 7, 9, and 10 as alleged in the first amended information. The trial court imposed the agreed-upon state prison sentence of 30 years, which included the upper term of eight years on count 3 and consecutive upper terms of eight years on count 7 and count 9, plus a consecutive middle term of six years on count 10, pursuant to section 667.6, subdivision (d). All remaining charges were dismissed.

The court also ordered defendant to pay a \$200 restitution fine (§ 1202.4, subd. (b)(2)), suspended the imposition of a \$200 parole revocation restitution fine (§ 1202.45), and additionally ordered defendant to pay a court security fee of \$120 (§ 1465.8, subd. (a)(1)), a criminal conviction assessment fee of \$120 (Gov. Code, § 70373), and a sex offender fine of \$300 (§ 290.3). Defendant was ordered to register as a sex offender

pursuant to section 290 and to comply with section 290.85. The court also advised defendant of a five-year parole period.

Defendant filed a notice of appeal on August 31, 2011. He filed an amended notice of appeal on September 15, 2011, stating that the appeal was based on the sentence or other matters occurring after the plea that did not challenge the validity of the plea.

III. WENDE ANALYSIS

Having carefully reviewed the entire record, we conclude that there are no arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-443.)

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

DUFFY, J.*

*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.