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

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS ALBERTO HERNANDEZ,

Defendant and Appellant.

H037412

(Santa Clara County
Super. Ct. No. C1088683)

Defendant Luis Alberto Hernandez¹ was charged by complaint filed in September 2010, with sexual penetration with a child aged 10 or younger (Pen. Code, § 288.7, subd. (b); count 1)² and two counts of lewd conduct with a child under 14 (§ 288, subd. (a); counts 2 & 3).

On March 3, 2011, on motion of the prosecution, the complaint was amended to add a fourth count for continuous sexual abuse of a child (§ 288.5). Defendant, while represented by retained counsel, pleaded guilty to this count with the understanding that

¹ Defendant stated on the record in the trial court that his correct name is “Luis Alberto Martinez Hernandez.” The abstract of judgment identifies defendant as “Luis Alberto Hernandez.”

² All further statutory references are to the Penal Code.

he would receive 16 years in prison, the remaining counts would be dismissed, and his credits would be limited to 15 percent.

According to the probation report, which was based on information from the San Jose Police Department, defendant's nine-year-old stepdaughter had reported to the police that defendant touched her " 'all the time' " in the middle of the night. On at least three occasions, the victim awoke to defendant touching her inside her vagina and buttocks. When interviewed by the police, defendant admitted touching the victim on two occasions during the previous two months. Defendant stated that while the victim was in a deep sleep, he put his finger in her vagina on one occasion, and he touched her vagina on another occasion. Defendant did not recall the victim waking up.

In May 2011, defendant was sentenced to 16 years in prison for continuous sexual abuse of a child (§ 288.5) and the remaining counts were dismissed.

Defendant filed a notice of appeal on November 18, 2011, after this court granted his motion for relief from default for failure to timely file a notice of appeal. We appointed counsel to represent him in this court. Appointed counsel has filed a brief which states the case and facts but which raises no issues. We notified defendant of his right to submit written argument in his own behalf within 30 days. Defendant has exercised that right by filing on February 2, 2012, a three-page handwritten letter in Spanish. Defendant's appointed counsel provided an English translation of the letter.

We understand defendant to be contending that he is factually innocent, and that he received ineffective assistance of counsel. With respect to the latter contention, to the extent defendant is claiming that his trial counsel rendered ineffective assistance by failing to advise him about the right to appeal, defendant was permitted by this court to file, and ultimately did file, a notice of appeal. We understand defendant's remaining contentions to attack the legality of the proceedings, including the validity of his plea. However, defendant is precluded from challenging the legality of the proceedings, including the validity of the plea he entered on March 3, 2011, because he has not sought

and obtained a certificate of probable cause. (§ 1237.5; Cal. Rules of Court, rule 8.304(b); *People v. Mendez* (1999) 19 Cal.4th 1084, 1096.)

We have reviewed the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, and have concluded that there is no arguable issue on appeal.

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.