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

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHANIEL BARRETT,

Defendant and Appellant.

H041453

(Santa Clara County

Super. Ct. No. C1237042)

I. INTRODUCTION

Defendant Nathaniel Barrett pleaded no contest to two counts of forcible rape (Pen. Code, § 261, subd. (a)(2)),¹ two counts of forcible penetration (§ 289, subd. (a)(1)), one count of forcible oral copulation (§ 288a, subd. (c)(2)), and one count of first degree burglary (§§ 459, 460, subd. (a)). In accordance with the plea agreement, the trial court imposed a total term of 44 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 (*Wende*) and *People v. Kelly* (2006) 40 Cal.4th 106 (*Kelly*), we have reviewed the entire record. Following the California Supreme Court's direction in *Kelly, supra*, 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 BACKGROUND

In November 2009, Z. Doe was over 60 years old and was the caregiver for an elderly woman. The two women lived together in an apartment in San Jose.

On November 2, 2009, a man knocked on the front door of the apartment. When Doe opened the door, the man forced his way in. He grabbed Doe and took her into the bedroom where he raped her by putting his penis in her vagina. He also orally copulated her and digitally penetrated her. Doe did not report the assault to the police.

A few months later, on the morning of February 8, 2010, Doe was about to leave the house when the same man entered the apartment through the bathroom window. The man grabbed Doe and took her into the bedroom where he bound her hands with zip ties and raped her by putting his penis in her vagina. After leaving the bedroom, the man returned and raped Doe again and digitally penetrated her. He cut off the zip ties before he left.

After the February 8, 2010 assault, Doe called the elderly woman's son, who employed her to take care of his mother. He called the police and Doe was taken to the hospital where she was examined by a sexual assault response team (SART) nurse. The nurse observed that Doe's injuries included petechia and abrasions on the labia minora, abrasions to the vaginal wall, edema to the labia majora, a laceration extending from the vaginal area towards the anus, and redness to the wrists.

Defendant was initially connected to the assaults on Doe through fingerprint evidence. The fingerprints that were lifted from the bathroom window after the

February 8, 2010 assault on Doe were matched to defendant's fingerprints, which had been taken after defendant's subsequent arrest for a DUI offense.

Defendant was also connected to the assaults on Doe by DNA evidence. Police officers obtained a cigarette butt that defendant had discarded after a court appearance on his DUI case. The DNA profile for the DNA recovered from the cigarette butt was included as a possible contributor to the DNA that was recovered from Doe's clothing after the February 8, 2010 assault. Police officers then obtained a buccal swab from defendant from which a DNA profile was developed. According to the analysis performed at the Santa Clara County crime lab, defendant was included as a possible contributor to the DNA found on Doe's panties.

III. PROCEDURAL BACKGROUND

The complaint filed in July 2012 charged defendant with two counts of forcible rape (Pen. Code, § 261, subd. (a)(2); counts 1 & 4), two counts of forcible penetration (§ 289, subd. (a)(1); counts 2 & 5), and one count forcible oral copulation (§ 288a, subd. (c)(2); count 3). In addition, the complaint specially alleged that defendant committed the offenses charged in all five counts during the commission of a burglary (§ 667.61, subs. (a) & (d)). As to counts 4 and 5, the complaint specially alleged that defendant had engaged in the tying or binding of the victim during the commission of the offense (§ 667.61, subs. (b) & (e)). Defendant was held to answer on all counts after the preliminary examination held on December 2012.

The information filed on December 13, 2012, included the same counts and special allegations as the complaint. On March 26, 2014, the information was amended to include the offense of first degree burglary (§§ 459, 460, subd. (a); count 6). On the same day, March 26, 2012, defendant pleaded no contest to all six counts alleged in the information in exchange for (1) a sentence of 44 years in the state prison; and (2) dismissal of the special allegations. The trial court struck the special allegations at the prosecutor's request.

The sentencing hearing was held on August 1, 2014. In accordance with the parties' plea agreement, the trial court imposed a sentence of 44 years in the state prison, comprised of the middle term of four years on count 6 (first degree burglary) consecutive to the upper term of eight years on each of the remaining five counts. The court noted that the upper term was imposed "by stipulation of the parties." The court also noted that "there was a stipulation of the parties that each of the offenses is a separate and distinct act, and that there is no dual punishment prohibition." Presentence custody credit of 859 days (747 actual days and 112 days pursuant to § 2933.1) was granted.

Additionally, the trial court ordered defendant to pay a \$10,000 restitution fine (§ 1202.4, subd. (b)(1)) and suspended the imposition of a \$10,000 parole revocation restitution fine (§ 1202.45). The court also ordered payment of a court security fee of \$240 (§ 1465.8, subd. (a)(1)), a criminal conviction assessment fee of \$180 (Gov. Code, § 70373), a criminal justice administration fee of \$129.75 payable to the City of San Jose (Gov. Code, § 29550.1), an AIDS education fine of \$70 (§ 288a, subd. (m)), and a fine of \$300 plus a penalty assessment of \$840 (§ 290.3).

IV. WENDE ANALYSIS

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

V. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MÁRQUEZ, J.