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

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER GENE FORTINSMITH,

Defendant and Appellant.

H041696

(Santa Clara County

Super. Ct. No. F1241295)

I. INTRODUCTION

After the trial court found that defendant Christopher Gene Fortinsmith was competent to stand trial pursuant to Penal Code section 1368,¹ defendant pleaded guilty to four counts of committing a forcible lewd or lascivious act on a child under the age of 14. (§ 288, subd. (b)(1).) The trial court imposed a total term of 38 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

On the evening of January 12, 2012, four-year-old C. was at home with her 12-year-old brother, E., their teenage sister, their parents, and their grandmother. Defendant was visiting the home at that time as a friend of E. Although he was 19 years old, defendant had previously told the children's father that he was 14 years old.

The parents left the home for a short time to go to the store. When they returned, the children's mother found the door to the children's bedroom closed. She opened the door and saw that defendant and C. were in the room alone. Defendant was lying on his back with his jeans pulled down and C. was bent over his crotch area. It appeared to C.'s mother that C. had defendant's penis in her mouth. C. was naked except for a blanket draped over her back. When C.'s mother entered the room, defendant covered his crotch area.

C.'s mother called C.'s father to the bedroom. C.'s father saw that defendant's hands were under the blanket apparently fondling C. C.'s mother picked her up and C.'s father pinned defendant to the wall and then kept him in the home until police officers arrived.

When defendant was taken into custody and interviewed by police officers, he stated that after C.'s brother left him alone in the bedroom with C., he positioned C. on top of him so that he could lick her vagina while she sucked on his penis. Defendant told the police officer that he knew what he was doing was wrong. When C. was interviewed, she said that her brother was the person who had been touching her.

III. PROCEDURAL BACKGROUND

The complaint filed on January 18, 2012, charged defendant with two counts of oral copulation or sexual penetration of a child aged 10 or younger on January 12, 2012. (§ 288.7, subd. (b); counts 1 & 2.) Defendant was held to answer on both counts at the conclusion of the preliminary hearing on February 1, 2013.

On February 3, 2012, the trial court filed an order for the appointment of Leonard J. Donk, Ph.D., to provide information needed by defendant's attorney in order to advise defendant whether to enter or withdraw a plea based on insanity or to present a defense based on his mental or emotional condition, pursuant to Evidence Code section 1017.

On April 5, 2012, the trial court executed a certificate and order under section 1368 stating that a doubt had arisen before judgment as to the present sanity of defendant. Thereafter, in April 2012, the trial court appointed David Echeandia, Ph.D., and John R. Chamberlain, M.D., to examine defendant and provide a conclusion as to whether defendant was mentally incompetent to stand trial because he was "unable to understand the nature of the proceedings taken against [him] and to assist counsel in the conduct of a defense in a rational manner."

A court trial on the issue of defendant's competency to stand trial was held pursuant to section 1368 in October and November 2012. The trial evidence included the testimony and reports of the three mental health experts appointed by the court to evaluate defendant's competency pursuant to section 1368.

In his March 26, 2012 report, Dr. Donk diagnosed defendant with (1) schizophrenia, disorganized type; (2) post-traumatic stress disorder; (3) personality disorder [not otherwise specified]; and (4) psychosocial and environmental problems. Dr. Donk concluded that defendant "was incompetent in that he was not able to completely understand the nature and the purpose of the criminal proceedings against

him. He is able to assist his attorney in a rational manner in presenting his defense, and understand his own status and condition in the proceedings.”

Dr. Echeandia stated in his May 12, 2012 report that defendant had a long history of chronic mental health disorders, “most likely Schizophrenia, paranoid type,” and that defendant had continuing psychotic symptoms and cognitive limitations. Dr. Echeandia concluded that “defendant is competent pursuant to [section] 1368 criteria, in that [Dr. Echeandia did] not believe that [defendant’s] mental condition renders him incapable of having a basic of understanding [*sic*] of the legal proceedings and the charges against him, as well as making an effort to cooperate in the conduct of his defense.”

Dr. Chamberlain provided a report dated July 10, 2012. He determined that defendant met the diagnostic criteria for Asperger’s disorder and attention deficit hyperactivity disorder. Regarding competency, Dr. Chamberlain concluded that defendant was competent to stand trial because defendant “has an adequate ability to understand the nature of the criminal proceedings,” and “has an adequate ability to assist counsel in the conduct of a defense in a rational manner.”

The last report was an updated report, dated October 5, 2012, from Dr. Donk, who reevaluated defendant at the request of defense counsel. Dr. Donk performed memory tests and concluded that defendant’s “memory functioning is by and large extremely damaged (except in very specific areas), that his ability to understand/comprehend the courtroom proceedings is significantly deficient. These findings are fully in line with my previous findings and diagnoses.”

The trial testimonies of Drs. Donk, Echeandia, and Chamberlain were essentially consistent with their reports. The trial court also heard the testimony of defendant’s adult brother and defendant’s probation officer regarding defendant’s performance in school and while on probation for juvenile offenses.

The trial court issued its verdict from the bench on November 2, 2012. In addition to the expert opinions regarding defendant’s competency, the trial court found:

“[I]t’s clear that the defendant was able to cooperate and assist with . . . psychiatric exams. It’s undisputed that the defendant participated in a high school setting, he nearly graduated. . . . I have observed the defendant here in court on three separate days, and I have seen him confer with Counsel and interact with the deputies, apparently in an appropriate manner. [¶] He may be among the lowest six percent in memory and the lowest 14 percent in functional IQ, but he appears to be functional. . . . Much more important is his ability to learn in a real environment, such as he was able to do in high school and with his probation supervisors.”

The trial court rendered a verdict finding that defendant “is indeed competent to stand trial, despite his acknowledged challenges. Specifically, I find that he understands the nature and purpose of the proceedings against him. I find he’s able to assist, in a rational manner, his attorney in presenting his defense. And he understands his own status and condition of the criminal proceedings.”

The information filed on February 8, 2013, charged defendant with two counts of oral copulation or sexual penetration of a child aged 10 or younger on January 12, 2012. (§ 288.7, subd. (b); counts 1 & 2.) Defendant filed a section 995 motion to dismiss counts 1 and 2 on the ground that the evidence presented at the preliminary hearing was not sufficient to justify the holding order. The section 995 motion was denied.

Thereafter, defendant entered into a plea agreement. The People amended the information to add four counts of committing a forcible lewd or lascivious act on a child under the age of 14. (§ 288, subd. (b)(1); counts 3-6.) In exchange for a sentence no less than 35 years and no more than 40 years, defendant withdrew his plea of not guilty by reason of insanity and pleaded guilty to counts 3 through 6. At the sentencing hearing held on October 10, 2014, the trial court imposed a total term of 38 years and ordered defendant to pay various fines and fees.

Defendant filed a timely notice of appeal and requested a certificate of probable cause, indicating he would challenge the trial court's verdict that he was competent to stand trial. The trial court granted defendant's request for a certificate of probable cause.

IV. DISCUSSION

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

V. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

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