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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MAURILLO GONZALES,

Defendant and Appellant.

H042238

(Monterey County

Super. Ct. No. SS141017A)

By letter dated July 24, 2015, this court invited defendant Maurillo Gonzales to submit arguments on his own behalf because his appointed appellate counsel filed a brief which did not identify any arguable appellate issues. Defendant has submitted a letter in response, which we have reviewed along with the entire record to determine whether appointed counsel has correctly determined there are no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436, 441.) We present here a brief description of the facts, the procedural history, the crimes of which defendant was convicted, and the punishment imposed, and we address the contentions personally raised by defendant. (*People v. Kelly* (2006) 40 Cal.4th 106, 124.)

Defendant is currently serving a 20-year sentence after pleading no contest to seven violations of Penal Code section 288, subdivision (a).¹

¹ Undesignated statutory references are to the Penal Code.

According to testimony at the preliminary hearing, on the afternoon of April 24, 2014, Salinas Police Officer Stephen Craig went to an elementary school in Salinas to speak with an 11-year-old girl. She told him that her mother's boyfriend, "Mauri," lived with them and had been touching her chest, buttocks, and genital area since they all lived in Watsonville. She specified that he had touched her genital area under her clothing. It happened many times more than she could remember.

The touching continued after they moved to Salinas. In Salinas, the girl told her mother about the touching. Defendant left for Mexico after the mother confronted him. When he returned from Mexico after the girl's brother was born, the frequency of the touching increased. He touched inside her vagina and twirled his finger, which really hurt, and also touched her vaginal area outside her clothing. He reached into the front of her underwear as well as hugged her from behind. She used both her hands to push his hand away. She was unable to say when it last occurred.

Salinas Police Officer Guadalupe Gonzalez participated in an interview of the girl's mother. The mother said she confronted defendant about touching her daughter on August 13, 2012, and he left for Mexico the next day. He resumed living with her in February 2013.

Salinas Police Detective Gerardo Magana interviewed defendant in Spanish at the Salinas Police Department. Defendant waived his *Miranda*² rights and said that since March 2013, he had been living in Salinas with the victim, her mother, and other relatives including his own two children. He demonstrated how he had inserted his finger in the victim's vagina in 2012 when they lived in Watsonville. Shortly after that happened, the mother confronted him and he left to Mexico. The victim was 10 years old at the time.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

Defendant also said he touched the victim when they lived in Salinas. He lifted her up by grabbing her groin area with one hand and her buttocks with the other hand and swung her around. He also gave her a bear hug from behind, touching her breast area. He had last touched her vaginal area eight to 15 days earlier

After the preliminary examination in May 2014, defendant was held to answer for eight sexual offenses. Count one alleged oral copulation or sexual penetration of a child under 10 (§ 288.7, subd. (b)) in August 2012.³ The remaining counts alleged lewd touching of a child under 14 (§ 288, subd. (a)) based on: digital penetration of her vagina in August 2012 (count two); digital penetration for the first time (count three) and last time (count four) between March 1, 2013 and April 16, 2014; manual contact with her vagina for the first time (count five) and last time (count six) during the same time period; and touching the clothing over her vagina for the first time (count seven) and last time (count eight) within the same time period. Counts two through four included enhancements for substantial sexual conduct. (§ 1203.066, subd. (a)(8).) The allegations of the amended complaint were restated in an information filed after the preliminary examination and again in an amended information filed in June 2014.

Jury trial was scheduled for September 15, 2014. On that day, defendant agreed to waive his trial rights and plead no contest to seven counts of lewd conduct with a minor (counts two through eight; § 288, subd. (a)), with the understanding that he would receive a prison sentence of 20 years representing the upper term of eight years for count two plus two consecutive years for each of the remaining six counts, with count one being dismissed. Defendant initialed and signed a waiver of rights form. Part of the form

³ The punishment for someone over 18 years old “who engages in oral copulation or sexual penetration ... with a child who is 10 years of age or younger” is an indeterminate term of 15 years to life. (§ 288.7, subd. (b).)

provided: “I hereby waive and give up all rights regarding state and federal writs and appeals. This includes, but is not limited to, the right to appeal my conviction, the judgment, and any other orders previously issued by this court. I agree not to file any collateral attacks on my conviction or sentence at any time in the future. I further agree not to ask the Court to withdraw my plea for any reason after it is entered.”

Defendant acknowledged that due to the nature of his convictions he would have to serve at least 85 percent of his sentence. (§ 2933.1, subd. (a).) He also acknowledged the requirement that he register as a sex offender unless he is deported to Mexico, and that because his current crimes are serious felonies, he will be deported.

The sentencing hearing was continued when defendant obtained a new attorney and then filed a motion to withdraw his pleas. Defendant contended that in his recorded interview with Detective Magana, he admitted putting his finger only inside the victim’s underwear, not inside her vagina. According to defendant, his attorneys did not tell him about this defense to a life sentence. They told him to plead guilty or he would get life in prison.

At sentencing in February 2015, the trial court denied defendant’s request to withdraw his pleas, noting that defendant “went over the plea form line by line at great length” and then agreed in writing to not make such a motion. The trial court imposed the agreed-upon sentence of 20 years and required defendant to register as a sex offender for life. The court imposed the following fines and fees: \$5,000 restitution fine, \$1,230 under section 290.3 (the base fine of \$300 plus penalty assessments of \$930), \$280 court operations assessment (§ 1465.8, subd. (a)(i); \$40 for each of seven offenses), \$210 court facilities assessment (Gov. Code, § 70373; \$30 for each of seven offenses). The court ordered victim restitution in the amount paid by the Victims of Crime Program. It awarded defendant 347 days presentence credit, and granted the prosecutor’s request to dismiss the remaining count as well as an open misdemeanor case.

The court granted defendant a certificate of probable cause so he could challenge the denial of his motion to withdraw his pleas based on ineffective assistance of counsel. In response to appellate counsel's request, in June 2015, the trial court corrected the abstract of judgment nunc pro tunc to reflect defendant's entitlement to 348 days presentence credit.

In reviewing this appeal, we observe that a criminal defendant cannot plead no contest in the trial court and then claim on appeal that his plea lacks evidentiary support. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364.) Like his declaration in support of his motion to withdraw his pleas, defendant claims in his letter that he never said that he penetrated the victim digitally, in contrast to what his interviewer thought he said. Regardless of what was said during defendant's police interview, he pleaded no contest to two counts that alleged digital penetration and the victim described digital penetration.

An express waiver of the right to appeal further limits what a defendant can assert on appeal. (*People v. Panizzon* (1996) 13 Cal.4th 68, 84.) When, as in this case, a defendant is given the exact sentence contemplated by his plea bargain and he waives his right of appeal, that waiver includes any challenge to the agreed sentence. (*Id.* at p. 89.)

However, a general waiver of the right to appeal does not preclude a defendant from asserting post-waiver errors not contemplated by the waiver. (*People v. Vargas* (1993) 13 Cal.App.4th 1653, 1663; *People v. Sherrick* (1993) 19 Cal.App.4th 657, 659.) We have reviewed the post-waiver proceedings, namely the denial of defendant's motion to withdraw his pleas and the imposition of various fines and fees that were not an express part of his plea bargain. Having reviewed the record, we find no arguable appellate issue.

The judgment is affirmed.

Grover, J.

WE CONCUR:

Rushing, P.J.

Márquez, J.

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