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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOAQUIN LINARES,

Defendant and Appellant.

B296519

(Los Angeles County
Super. Ct. No. KA111360)

APPEAL from a judgment of the Superior Court of Los Angeles County, David C. Brougham, Judge. Affirmed and remanded with directions.

Sally Patrone Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General and William N. Frank, Deputy Attorney General for Plaintiff and Respondent.

INTRODUCTION

A jury convicted Joaquin Linares of possession of child pornography, six counts of annoying or molesting a child, and six counts of invasion of privacy. We reversed all of Linares's convictions except one of the invasion of privacy convictions and remanded for resentencing. (See *People v. Linares* (Nov. 29, 2018, B281309) [nonpub. opn.] (*Linares I*.)

On remand, the trial court resentenced Linares and ordered him to register as a sex offender under Penal Code section 290.006.¹ Linares argues the trial court abused its discretion in imposing the registration requirement because the court did not consider Linares's post-conviction progress and there is no substantial evidence he will reoffend. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Linares Secretly Records His Fiancée's 13-Year-Old Daughter on Multiple Occasions, Including While She Was Nude in the Bathroom*

On weekends Linares lived with his fiancée, Catherine, their child, and Catherine's other children at Catherine's apartment. Over the course of six months, Linares secretly videotaped Catherine's 13-year-old developmentally delayed daughter, Alyssa. The videos contained extended close-up footage of her clothed crotch and buttocks.

One day Linares set his cell phone to record and hid it in the bathroom. Linares's phone recorded Alyssa as she entered

¹ Statutory references are to the Penal Code.

the bathroom, brushed her hair, sang, danced, and disrobed before showering. Her pubic area, breasts, and buttocks were visible in the video. The video disappeared prior to trial, but multiple witnesses described its contents.

Linares admitted he placed the cell phone in the bathroom, but denied he intentionally recorded Alyssa. He claimed that he suspected Catherine was cheating on him and that he set up the camera to look for evidence of a “hickey” or marks on Catherine’s body. He also stated he retrieved the cell phone and deleted the video when he realized Alyssa, not Catherine, was in the shower.

B. *The Jury Convicts Linares on all Counts, This Court Reverses All but One of His Convictions, and the Trial Court Resentences Him*

A jury convicted Linares of possession of child pornography in violation of section 311.11, subdivision (a), six counts of invasion of privacy in violation of section 647, subdivision (j)(3), and six counts of annoying or molesting a child in violation of section 647.6, subdivision (a)(1). We reversed the judgment and vacated all of Linares’s convictions except for one count of misdemeanor invasion of privacy based on the shower video and remanded for resentencing. (*Linares I, supra*, B281309.)

The trial court resentenced Linares to 180 days in county jail on his invasion of privacy conviction and awarded him 180 days credit for time served. The trial court also ordered Linares to register as a sex offender under the discretionary registration provisions of section 290.006. Linares timely appealed.

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion in Requiring Linares To Register as a Sex Offender*

1. *The Sex Offender Registration Act*

Under the Sex Offender Registration Act, section 290 et seq., a defendant convicted of certain sex crimes must register as a sex offender under the mandatory registration provisions of the Act. (See § 290, subds. (a)-(c).) Section 290, subdivision (c), which lists the crimes for which registration is mandatory, does not include invasion of privacy under section 647. Therefore, the mandatory registration provisions did not apply to Linares.

The trial court, however, has discretion to order “[a]ny person . . . to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290 . . . if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.” (§ 290.006, subd. (a); see *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1197 (*Hofsheier*), overruled on another ground in *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 888 (*Johnson*).) In exercising its discretion to require registration, the court must “state on the record the reasons for its findings and the reasons for requiring registration.” (§ 290.006, subd. (a).) “By requiring a separate statement of reasons . . . even if the trial court finds the offense was committed as a result of sexual compulsion or for purposes of sexual gratification, the statute gives the trial court discretion to weigh the reasons for and against registration in each particular case.” (*Hofsheier*, at p. 1197.)

We review the discretionary imposition of sex offender registration under section 290.006 for abuse of discretion. (See *People v. Eastman* (2018) 26 Cal.App.5th 638, 648 (*Eastman*).) “To establish an abuse of discretion, defendants must demonstrate that the trial court’s decision was so erroneous that it ‘falls outside the bounds of reason.’ A merely debatable ruling cannot be deemed an abuse of discretion.” (*People v. Bryant, Smith & Wheeler* (2014) 60 Cal.4th 335, 390.)

2. *The Trial Court Did Not Abuse Its Discretion in Ordering Linares To Register as a Sex Offender*

The trial court acted within its discretion under section 290.006 in ordering Linares to register as a sex offender. The court found the offense “was committed as a result of sexual compulsion and for the purpose of sexual gratification.” The court cited Linares’s conduct in secretly filming a “young vulnerable girl” getting undressed and showering. The court explained Linares “didn’t call [his] wife [or] invite her in the shower,” but he “told [his] stepdaughter to come take a shower” and “secretly film[ed] her, [and] he kept that video of that naked child in the shower on his phone for some time.” The trial court stated that, although “some of the evidence may not have risen to the level of criminal conviction, the entire case . . . was about sexual compulsion and sexual gratification.” The trial court properly based its decision on the “individualized facts” of the case. (*Eastman, supra*, 26 Cal.App.5th at p. 648.)

Citing *People v. Garcia* (2008) 161 Cal.App.4th 475, disapproved on another ground in *Johnson, supra*, 60 Cal.4th 871, Linares argues the trial court abused its discretion by failing to consider evidence of his post-conviction good behavior and

rehabilitation. The record is to the contrary. The trial court acknowledged “some equities of [Linares’s] life or some good things that are happening in his life.” But the court stated it was not going to make a ruling based on those equities and good things. Although Linares avoided any legal trouble for two years while his case was on appeal, that fact did not preclude the court from requiring Linares to register as a sex offender.

Linares also argues his case is unlike *Eastman*, where the trial court ordered the defendant, who surreptitiously recorded “upskirt” videos of 13 victims over 11 months, to register as a sex offender under the discretionary provision of section 290.006. (*Eastman*, *supra*, 26 Cal.App.5th at p. 638.) The trial court in that case found the defendant was likely to reoffend because of the number of videos, the secrecy of the defendant’s recordings, his targeting of women, the length of time over which he recorded his victims, and the defendant’s minimization of his behavior. (*Id.* at p. 648.) The Court of Appeal affirmed, holding “[t]he trial court could reasonably conclude that a man who had engaged in a lengthy pattern of sophisticated, sexually motivated misconduct against 13 victims but continued to deny that his admitted misconduct was the product of sexual compulsions was likely to succumb to those compulsions again.” (*Id.* at pp. 649-650.)

Linares argues that his case, unlike *Eastman*, involved a single victim and that he has not violated the protective order protecting the victim, so there is no risk he will reoffend. But substantial evidence supports the trial court’s implied finding there was such a risk. Linares secretly photographed and filmed his victim on multiple occasions, part of what the trial court found was “a clear-cut case of inappropriate sexual compulsion and sexual gratification.” Linares also targeted a particularly

young and vulnerable member of his family. (See *Johnson, supra*, 60 Cal.4th at p. 875 [the Supreme Court has recognized the Legislature’s “policy goals of preventing recidivism and facilitating surveillance of sex offenders who prey on underage victims” for sex offender registration].) That only one of Linares’s 13 convictions survived appeal does not mean substantial evidence did not support the trial court’s finding Linares committed that offense as a result of sexual compulsion or for purposes of sexual gratification. (See *People v. Garcia, supra*, 161 Cal.App.4th at p. 483 [a trial court should “consider all relevant information available to it at the time it makes its decision”].)

Linares’s reliance on *Lewis v. Superior Court* (2008) 169 Cal.App.4th 70 is similarly misplaced. The defendant in *Lewis*, a 22-year-old man, engaged in nonforcible oral copulation with a 17-year-old girl. (*Id.* at p. 73.) The jury convicted the defendant of two counts of voluntary oral copulation with a minor in violation of section 288a, subdivision (b)(1). (*Id.* at p. 74.) At sentencing, the trial court ordered the defendant to register as a sex offender under the mandatory registration provisions of section 290. (*Ibid.*) Twenty years later, the defendant filed a motion to lift the lifetime registration requirement, and the court held he did not need to register under the discretionary registration provision of § 290.006.² (*Id.* at p. 79.) The court

² At the time of the *Lewis* decision, imposing mandatory registration on convictions for voluntary oral copulation with a minor prosecuted under section 288a, subdivision (b)(1), was unconstitutional. (See *Hofsheier, supra*, 37 Cal.4th at pp. 1194-1198.) The People in *Lewis* conceded this point, but argued the court should require the defendant to register under section 290.006. (*Lewis, supra*, 169 Cal.App.4th at p. 75.) Seven

stated “there was no substantial evidence that [the defendant] had used force upon the victim, that he had threatened her, or that the victim’s age and relationship to [the defendant] was such that she was coerced into doing something she would not otherwise have done.” (*Ibid.*) The court also relied on the defendant’s 20-year period of good behavior as evidence he would not reoffend and observed the facts did “not suggest that [the defendant] was likely, in 1987, to prey upon young girls or to commit registerable sex offenses.” (*Ibid.*) In contrast, Linares took a series of pictures of Alyssa with a hidden camera, including the video of her naked in the shower, which he kept “for some time.” Linares may have managed to avoid engaging in any criminal conduct for two years, but his period of good behavior is a far cry from the 20-year period in *Lewis*. In addition, the court in *Lewis* expressed concern about defendants like Linares who “prey upon young girls” and yet may escape registration. (*Ibid.*)

B. *The Trial Court Should Correct the Minute Order on Resentencing*

Following our disposition in *Linares I*, the trial court dismissed all of Linares’s convictions except for his invasion of privacy conviction based on the shower video. The minute order for the hearing correctly states we reversed the other convictions, but incorrectly states the trial court dismissed those counts pursuant to a plea bargain. Linares is entitled to a correct record of judgment to “protect him against” the possibility of “subsequent prosecution for the same offense[s].” (*People v.*

years after *Lewis*, the Supreme Court overruled this holding of *Hofsheier*. (See *Johnson v. Department of Justice, supra*, 60 Cal.4th at pp. 881-888.)

Blackman (1963) 223 Cal.App.2d 303, 307; see § 1207.)

Therefore, we direct the trial court to correct it.

DISPOSITION

The trial court's order requiring Linares to register as a sex offender under section 290.006 is affirmed. The matter is remanded with directions for the trial court to correct the clerical error in the resentencing minute order.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.