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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM ALLEN,

Defendant and Appellant.

B234854

(Los Angeles County
Super. Ct. No. TA097832)

APPEAL from a judgment of the Superior Court of Los Angeles County.

David Sotelo, Judge. Affirmed in part, reversed in part and remanded with directions.

Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

On June 10, 2008, the Los Angeles District Attorney charged defendant and appellant William Allen in count 1 with sodomy of a minor under 18 years old in violation of Penal Code section 286, subdivision (b)(1),¹ and in count 2 with forcible lewd act on a child under 14 years old in violation of section 288, subdivision (b)(1).

Defendant pled no contest to count 1, and count 2 was dismissed. Defendant was placed on five years of formal probation with 90 days in jail and other conditions. He was ordered to register as a sex offender under section 290, but reserved the right to appeal that part of his sentence.

Defendant timely appealed.

STATEMENT OF FACTS

On June 6, 2008, J.S.'s father heard voices coming from his son's bedroom. He entered the locked room with a key and saw J.S. and defendant naked on the bed. He called the police, who arrested defendant. J.S. said that he and defendant had an ongoing relationship and had engaged in oral and anal sex between December 2007 and June 6, 2008.²

DISCUSSION

On appeal, defendant argues that his mandatory sex offender registration for a violation of section 286, subdivision (b)(1) violates equal protection under *People v. Hofsheier* (2006) 37 Cal.4th 1185 (*Hofsheier*) and *People v. Thompson* (2009) 177 Cal.App.4th 1424 (*Thompson*). The People concede that defendant is correct.

Pursuant to *Hofsheier, supra*, 37 Cal.4th at pages 1206 to 1207 [holding that mandatory sex offender registration for conviction of voluntary oral copulation with a minor under section 288a, subdivision (b)(1), violated equal protection because there was no such requirement for one convicted of unlawful sexual intercourse under section 261.5] and *Thompson, supra*, 177 Cal.App.4th at pages 1430 to 1431 [applying *Hofsheier*

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² J.S.'s age is not in the record. Defendant was 30 years old at the time of the sex acts.

to the sodomy statute at issue here, section 286, subdivision (b)(1), and finding that equal protection prohibits mandatory registration], we remand the matter so that the trial court can exercise its discretion under section 290.006 to determine whether defendant should be required to register. (*Hofsheier*, at p. 1209; *Thompson*, at p. 1431.)

DISPOSITION

The judgment is reversed in part. The matter is remanded to the trial court with directions to determine whether defendant is subject to discretionary registration and, if so, to exercise its discretion whether to require defendant to register. In all other respects, the judgment is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD