Filed 7/9/18 P. v. Williams CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. RONALD CHAD WILLIAMS, Defendant and Appellant.	2d Crim. No. B271404 (Super. Ct. No. 1445497) (Santa Barbara County)

A jury found Ronald Chad Williams guilty of lewd or lascivious acts on a child (Pen. Code,[1] § 288, subd. (a)) and attempted sodomy of a person under age 14 by a person more than 10 years older (§§ 664/286, subd. (c)(1)). The trial court sentenced him to three years in state prison. Williams contends the court erred when it did not instruct the jury with CALCRIM No. 1193 sua sponte, and that counsel provided ineffective assistance when he did not request the instruction. Williams also

[1] All further undesignated statutory references are to the Penal Code.

contends the court abused its discretion and violated his due process rights when it declined to grant his request for probation. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Wendy and Marco J. met Williams in 1999. Over the years Williams grew close with Wendy, Marco, and their sons. Wendy and Marco's youngest son, Z.J., saw Williams as an older brother and authority figure.

In May 2005, San Marcos Christian Camp hired Williams as camp manager. Eleven-year-old Z.J. visited Williams at camp. While Z.J. was taking a shower after going for a swim, Williams walked into the showerhouse and entered Z.J.'s stall. He grabbed Z.J.'s shoulders, pulled his arm back, and forced Z.J. to masturbate him. Williams also tried to touch Z.J.'s penis. Z.J. tried to pull his hand away from Williams. He felt Williams's erect penis against his buttocks and anus. Williams tried to sodomize Z.J., but was unsuccessful. Z.J.'s anus hurt. He does not recall whether Williams ejaculated.

Z.J. asked what Williams what he was doing, but he did not reply. When Williams stopped his assault, he told Z.J. not to tell anyone what had happened. He walked out of the shower and left Z.J. in the stall.

After getting dressed, Z.J. walked back to Williams's house. Williams again told Z.J. not to tell anyone: "[T]his is our little secret." Williams also threatened that Z.J. would be in trouble if he told anyone about the assault. Z.J. did not tell his parents about the assault when he got home the next day because he felt ashamed and scared.

Williams and Z.J. had no contact after the assault. In the ensuing years, Z.J. grew angry whenever Wendy

mentioned Williams's name. Wendy intermittently suspected something inappropriate occurred at camp, but Z.J. denied that anything happened.

In 2013, Z.J. began to have nightmares about the assault. He could not sleep at night or concentrate in class. In October, Z.J. told his girlfriend, Carrie C., that Williams had molested him. He later told her that Williams had touched his buttocks with his penis.

Around Thanksgiving, Z.J. told his parents that Williams had raped him. After the disclosure, Z.J. and his parents met with Sergeant Ronald Williams. Z.J. told the sergeant that Williams entered his shower stall, grabbed his shoulders, and tried to sodomize him. Wendy told the sergeant that Z.J.'s behavior changed after he returned from camp. Sergeant Williams wrote in his report that "[Williams] inserted his erect penis into [Z.J.'s] rectum numerous times . . . and ejaculated into his rectum." Z.J. does not recall telling the sergeant that Williams penetrated his anus and ejaculated.

Later, Detective Michael Silva spoke with Z.J. and Carrie. Z.J. told the detective that Williams entered his shower stall and touched his penis and buttocks while the two were at camp. Williams restrained him and attempted to sodomize him. He grabbed Z.J.'s hand and forced him to touch his penis. Williams's penis did not penetrate his anus, however, and Williams did not ejaculate. Carrie told Detective Silva that Z.J. told her he was molested. Z.J. also told her that Williams raped him in the shower.

In May 2014, Z.J. made a pretext phone call to Williams. During the call, Z.J. asked Williams if he remembered what happened at San Marcos Christian Camp. Williams replied

that he did. Z.J. recounted what happened in the shower and told Williams that it was "really eating at [him.]" Williams said that "the last thing [he] would want to do is[] put [Z.J.] in a position where [he] would feel awkward." Z.J. said that he had not told anyone about the incident and did not know what to do. He wanted closure.

Williams denied that he forced Z.J. to do anything; he recalled that they "were messing around" in the shower. He said that if Z.J. remembered it differently, "then there's definitely legitimacy there." He said "perhaps [it] was wrong on [his] part" not to think more of the incident.

Z.J. asked Williams whether he was sorry about the incident as Z.J. remembered it. Williams said he was sorry that he hurt Z.J. "in any way, shape[,] or form." He "thought [they] were playing around and . . . obviously it was . . . something that [Z.J.] definitely didn't[] want or didn't enjoy." He was "just being goofy." The incident was "never any[thing] deeper . . . to [him]." If he had done anything wrong, he asked for Z.J.'s forgiveness.

Z.J. said he would not tell his parents. Williams thanked Z.J. for calling. A few minutes later, Williams sent Z.J. a text message: "I'm sorry."

Dr. Anthony Urquiza testified at trial as an expert on child abuse. He was unfamiliar with the facts of Z.J.'s case, did not review police reports or recordings, but did review some of the defense expert's report. He was not opining on Williams's guilt or innocence or assessing the credibility of Z.J. or any other witness.

Dr. Urquiza is familiar with child sexual abuse accommodation syndrome (CSAAS). CSAAS is an educational tool that helps therapists understand the dynamics of sexual abuse, but cannot be used to determine whether abuse has

occurred. It has five components: secrecy, helplessness, entrapment and accommodation, delayed disclosure, and retraction.

Dr. William O'Donohue testified as a defense expert. He reviewed police reports and listened to the pretext phone call between Z.J. and Williams. He also reviewed Z.J.'s and Wendy's testimony.

Dr. O'Donohue is familiar with CSAAS. He considers CSAAS a clinical tool inappropriate for courtroom use, but does agree with the portions related to secrecy and delayed disclosure. He criticized the tool for not considering that an allegation might be false.

"Suggestability" is a frequent problem in child abuse cases because children often make false accusations when asked leading questions. Dr. O'Donohue thinks suggestability may have occurred in this case. Dr. O'Donohue also questioned the accuracy of Z.J.'s disclosure because he was inconsistent when discussing whether anal penetration and ejaculation occurred. But he acknowledged that inconsistent statements do not necessarily mean that abuse did not happen.

DISCUSSION

CALCRIM No. 1193

Williams contends the trial court erred when it did not instruct the jury about CSAAS (CALCRIM No. 1193) sua sponte. We disagree.

When evidence is admissible for one purpose and inadmissible for others, the trial court shall, upon request, instruct the jury as to the proper scope of the evidence. (Evid. Code, § 355.) Absent a request, the court generally has no duty to provide a limiting instruction. (*People v. Smith* (2007) 40 Cal.4th

483, 516.) But "there might be 'an occasional extraordinary case in which . . . sua sponte instruction [is] needed to protect the defendant.'" (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1094.) We independently review whether such an instruction was required here. (*People v. Guiuan* (1998) 18 Cal.4th 558, 569.)

CALCRIM No. 1193 instructs the jury that "testimony about [CSAAS] is not evidence that the defendant committed any of the crimes charged against [them]" and that it "may consider this evidence only in deciding whether or not [the victim's] conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of [their] testimony." There is a split of authority whether a trial court has a sua sponte duty to provide CALCRIM No. 1193 when there is testimony about CSAAS. Most courts have held that there is no sua sponte duty. (See *People v. Mateo* (2016) 243 Cal.App.4th 1063, 1072-1074 (*Mateo*).) One court has expressed a contrary view. (*People v. Housley* (1992) 6 Cal.App.4th 947, 958-959 (*Housley*).)

We conclude that there was no sua sponte duty here. As the *Mateo* court noted, section 1127b requires a single instruction on expert testimony. (*Mateo*, *supra*, 243 Cal.App.4th at p. 1072.) Like the trial court in *Mateo*, and in contrast to that in *Housley*, the court below instructed the jury pursuant to CALCRIM No. 332, the general limiting instruction on expert witness testimony. (*Mateo*, at p. 1072; *Housley*, *supra*, 6 Cal.App.4th at pp. 956-959.) No more was required.

Moreover, the concerns that led *Housley* to conclude that sua sponte instruction was necessary there were absent here. The *Housley* court was concerned that CSAAS evidence "may be unusually susceptible of being misunderstood and

misapplied by a jury . . . because the expert commonly is asked to offer an opinion on whether the victim's behavior was typical of abuse victims, an issue closely related to the ultimate question of whether abuse actually occurred." (*Housley*, *supra*, 6 Cal.App.4th at p. 958.) The evidence could also "easily . . . be misconstrued by the jury as corroboration for the victim's claims." (*Ibid*.)

Here, Dr. Urquiza did not offer an opinion whether Z.J.'s behavior was typical of abuse victims. Nor did he corroborate any of Z.J.'s claims. Indeed, he made no statements about Z.J. *at all*. To the contrary, he explained that he was not opining on the guilt or innocence of Williams or the credibility of Z.J. This is not one of the "extraordinary cases" that required sua sponte CALCRIM No. 1193 instruction.

Ineffective assistance of counsel

Williams alternatively contends counsel provided ineffective assistance when he did not request that the trial court instruct the jury with CALCRIM No. 1193. We disagree.

To establish his ineffective assistance of counsel claim, Williams must show that counsel's performance was deficient and resulted in prejudice. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1003; see *Strickland v. Washington* (1984) 466 U.S. 668, 687.) Counsel's performance was deficient if the record reveals no conceivable reason for his actions. (*Cunningham*, at p. 1003.) Williams was prejudiced if there is a "reasonable probability" he would have obtained a more favorable result absent counsel's alleged errors. (*Ibid*.) We independently review whether Williams has demonstrated ineffective assistance of counsel. (*In re Alvernaz* (1992) 2 Cal.4th 924, 944-945.)

Williams does not show deficient performance because the record does not reveal why counsel failed to request

CALCRIM No. 1193. (*Mateo*, *supra*, 243 Cal.App.4th at p. 1076.) Perhaps counsel did not want to highlight the expert testimony with a jury instruction. (*Ibid.*) And Williams does not show prejudice because Dr. Urquiza testified in general terms and said he had neither met Z.J. nor reviewed the facts of the case, which made it "unlikely the jury interpreted [his] statements as support for [Z.J.'s] credibility." (*Housley*, *supra*, 6 Cal.App.4th at p. 959.) Additionally, the evidence against Williams was strong, and included the phone call in which he tacitly admitted he committed the acts Z.J. described. Considered alongside Z.J.'s description of the assault, it is not reasonably probable Williams would have obtained a more favorable result had counsel requested CALCRIM No. 1193. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1133-1134.)

Denial of probation

Williams contends the trial court abused its discretion and violated his due process rights when it denied his request for probation. We are not persuaded.

Probation is reserved for those criminals whose release into society poses little risk to public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) Where, as here, a defendant has been convicted of lewd or lascivious acts on a child and the factors listed in section 1203.066, subdivision (a), were not pled and proven, the trial court may grant probation only if specific conditions are met. The defendant's rehabilitation must be feasible, the defendant must be amenable to treatment, and the defendant must not pose a threat of physical harm to the victim. (§ 1203.066, subd. (d)(1).) If those conditions are met, the court must then consider the factors set forth in rule 4.414 of the California Rules of Court. We review the court's decision

whether to grant probation for abuse of discretion. (*Carbajal*, at p. 1120.)

There was no abuse of discretion here. The forensic psychologist appointed pursuant to section 288.1 recommended that the trial court grant Williams's request for probation because he has a low risk of reoffending and is amenable to treatment. The probation officer also concluded that several factors weighed in favor of probation.[2] But several factors supported the denial of probation: (1) Z.J. was vulnerable, only 11 years old at the time of the assault; (2) Williams inflicted physical and emotional injury on Z.J.; (3) Williams took advantage of Z.J.'s trust; and (4) the crimes were particularly serious since Williams spent years grooming Z.J. and warned him not to tell his parents.

The trial court considered the psychological evaluation and probation report before pronouncing sentence. It also considered factors related to Williams, his crime, and the general objectives of sentencing. The court felt it important to send a message that there should be consequences when an adult violates a child's trust, and denied probation. That denial was not an abuse of discretion. (*People v. Roe* (1983) 148 Cal.App.3d 112, 119; see *People v. Bradley* (2012) 208 Cal.App.4th 64, 89-90 [upholding denial of probation to defendant in a position of trust];

---

[2] The probation officer initially indicated that Williams had a moderate to high risk of reoffending, but later determined that Williams's score on the risk assessment actually showed a low to moderate risk of reoffending. Because the officer provided the court with updated, correct information, we reject Williams's assertion the court violated his due process rights by relying on erroneous information. (See *People v. Eckley* (2004) 123 Cal.App.4th 1072, 1080-1081.)

People v. Ramirez (2006) 143 Cal.App.4th 1512, 1530-1531 [upholding denial of probation where victim was particularly vulnerable].)

Williams's reliance on *People v. Bruce G.* (2002) 97 Cal.App.4th 1233 is misplaced. *Bruce G.* did not consider the situation here: whether the denial of probation is an abuse of discretion. Cases are not authority for propositions not considered. (*People v. Avila* (2006) 38 Cal.4th 491, 566.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Pauline Maxwell, Judge

Superior Court County of Santa Barbara

Valerie G. Wass, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Marc A. Kohm and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.