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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LANDE PATRICE BUTLER,

Defendant and Appellant.

B252954

(Los Angeles County
Super. Ct. No. BA411807)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed as modified.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL BACKGROUND

Sometime in November 2012, D.B., age 15 and a runaway, met defendant in Santa Monica. D.B.'s mother had discovered D.B. was speaking to men, and called defendant using the number she found on D.B.'s cell phone. D.B.'s mother disciplined her by taking away her phone and told D.B. she could not go out. A week later, D.B. was sent to a wilderness program, where she remained for a month and a half. She was then transferred to a boarding school residential treatment center. D.B.'s mother then removed her from the residential treatment center and D.B. returned to Los Angeles.¹

After returning from the residential treatment program, D.B. met defendant again, and defendant took D.B. to meet a young woman named Brittany. D.B. learned that Brittany was a prostitute, and Brittany taught D.B. "in's and out's" of prostitution. Defendant had paid for Brittany, who was 18, to move to Los Angeles from New Hampshire in 2012. Initially, defendant and Brittany had been boyfriend/girlfriend, but within days Brittany was out prostituting.

D.B. and Brittany would stay at different hotels that Brittany paid for with defendant's credit card. After returning from the residential treatment center, D.B. met defendant again, and the next day D.B. engaged in prostitution. D.B. continued to engage in prostitution for about three weeks. She gave the money she received to Brittany, but did not see what Brittany did with the money. D.B. did not keep any of the money she earned, and defendant paid for her basic necessities. Brittany would give the money D.B. earned from prostitution to defendant.

D.B. believed defendant lost respect for her after she began prostituting. Defendant started calling her names, told her she was worthless, and threatened to put her out on the streets. D.B. was afraid of defendant. D.B. had sex twice with defendant. The first time was before she began prostituting, and the second time was during the three-

¹ On cross-examination, D.B. testified to different time frames for the time she spent at the wilderness program and residential treatment center.

week period D.B. was prostituting. Defendant knew that D.B. was 15. D.B. denied that defendant told her to engage in prostitution.

D.B.'s relationship with defendant stopped at the end of three weeks because she and Brittany got lost while trying to find a "Wing Stop." Defendant called them, became angry, and told them to return. When they returned to the hotel, defendant ordered Brittany and D.B. under the covers and threatened to "beat the shit out of" Brittany. D.B. decided to leave, but did not feel free to leave because she did not want to go back to boarding school and also because she was afraid of defendant. D.B. asked defendant to take her to a drug store where she flagged down a security guard and asked him to call the police.

PROCEDURAL HISTORY

On June 24, 2013, a seven-count information charged defendant with two counts of human trafficking (Pen. Code, § 236.1, subds. (c)(2), (b)) (counts 1 & 2), two counts of pimping (§ 266h, subds. (a), (b)(2)) (counts 3 & 4), two counts of pandering (§ 266i, subds. (a)(1), (b)(2)) (counts 5 & 6); and one count of a lewd act (§ 288, subd. (c)(1)).

After the preliminary hearing held June 10, 2013, defendant made a motion to dismiss based on insufficiency of the evidence as to all counts. The court denied the motion and ordered defendant to answer to counts 1 through 7. On September 30, 2013, the information was amended to add an additional count of human trafficking (§ 236.1, subd. (c)(1)) (count 8) and one count of unlawful intercourse (§ 261.5, subd. (d)) (count 9).

Defendant waived his trial rights and withdrew his not guilty pleas to counts 2, 8, and 9, and pled no contest those counts. The court found defendant guilty on counts 2, 8, and 9, sentenced defendant to a total term of 10 years eight months in state prison, consisting of the low term of eight years on count 2, the base count; two years eight months on count 8, consisting of one-third of the midterm of eight years, to run consecutively, and the midterm of three years on count 9, to run concurrently with the

principal term. The remaining counts were dismissed. The court awarded 372 total custody credits based upon 186 actual days in custody.

On November 11, 2013, defendant requested a certificate of probable cause, asserting that the trial court erroneously denied his motion to dismiss, counsel was ineffective for inadequately advising him concerning the duration of the sentence he faced, counsel was ineffective in failing to present a defense to the charges, and defendant's lack of understanding of his plea. On November 21, 2013, the court denied defendant's request for a certificate of probable cause.

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. On March 13, 2014, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. To date, we have received no response.

As pointed out by appellate counsel, the record reveals that the trial court erred when it credited defendant with 372 days of actual custody credit. Defendant was arrested on March 28, 2013, and remained in custody until he was sentenced on September 30, 2013. He spent 187 days in actual custody and his precommitment credit award should be corrected accordingly to 373 days. With this one correction, we are satisfied that no arguable issues remain. In addition, we conclude that defendant's appellate attorney has fully complied with his responsibilities. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is modified to strike defendant's award of 372 days precommitment credit and to impose in its place an award of 373 days, consisting of 187 days of actual custody credit and 186 days of conduct credit. The superior court is directed to send an amended abstract of judgment to the Department of Corrections and Rehabilitation reflecting such modification. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.