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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.

KEVIN KEABLES

Defendant and Appellant.

B234589

(Los Angeles County
Super. Ct. No. GA008899)

APPEAL from an order of the Superior Court of Los Angeles County.

Patricia M. Schnegg, Judge. Affirmed.

Carla Castillo, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On October 2, 1990, Kevin Keables was convicted after a no contest plea of attempted rape, a serious felony. (Pen Code, §§ 261, 664, 1192.7, subd. (c)(1), items [3] & [39].)¹ He was sentenced to five years probation and ordered to register as a sex offender. (§ 290, subd. (c).)

On November 15, 1991, the Los Angeles County District Attorney charged Keables with one count of forcible oral copulation with a minor, alleging he accomplished the act against the victim's will "by force, violence, duress, menace, and fear of immediate and unlawful bodily injury" to the victim and to another. (Former Pen. Code, § 288a, subd. (c).) It was further alleged that he had been convicted of attempted rape one year earlier. Keables again pleaded no contest, and on July 30, 1992, the trial court found him guilty of forcible oral copulation with a minor and found true the prior conviction allegation. It sentenced him to one year in county jail and five years probation.

On July 28, 1997, after Keables had completed his sentence and satisfied the terms of his probation, the trial court terminated probation, set aside the 1992 conviction, and dismissed the case in the interest of justice pursuant to section 1203.4.

Nearly 14 years later, on March 14, 2011, Keables petitioned the superior court for a writ of mandate to remove his name from the sex offender registry, contending mandatory sex offender registration violated the Equal Protection Clause of the United States Constitution. Keables argued he was entitled to relief pursuant to *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1208 (*Hofsheier*), which held that mandatory lifetime sex offender registration violated equal protection where the offender was convicted of voluntary oral copulation with a minor 16 to 17 years old. (§ 288a, subd. (b)(1).) He argued that a sex offender convicted of voluntary oral copulation with a 16- to 17-year-old minor, lewd acts upon a child

¹ All undesignated statutory references are to the Penal Code. Most references pertain to former provisions of the Penal Code, but any difference between former and current versions is immaterial.

under the age of 14, or unlawful sexual intercourse with a minor (§ 261.5) would be entitled to *Hofsheier* relief, so he should be entitled to such relief.

The trial court rejected the argument, noting Keables had not been convicted of voluntary oral copulation with a 16- to 17-year-old minor, lewd acts upon a child under the age of 14, or unlawful sexual intercourse with a minor; he was convicted of attempted *rape* and *forcible* oral copulation with a minor. He was therefore not entitled to *Hofsheier* relief.

Keables appeals the trial court's denial of his petition for writ of mandate.

On July 28, 2011, we issued an order to show cause whether the order denying Keables's petition for writ of mandate was appealable and requested briefing on that issue and on whether Keables was entitled to appointed appellate counsel. After concluding the order was appealable, we appointed counsel to represent Keables on appeal.

After examining the record, appointed counsel filed an opening brief raising no issues and asking this court to review the record independently. On November 19, 2012, we sent letters to appellant and appointed counsel, directing counsel to forward the appellate record to appellant immediately and notifying appellant that within 30 days he could personally submit any contentions or issues that he wished us to consider. To date, appellant has not responded.

We have examined the entire record and are satisfied that appellant's counsel has fully complied with the responsibilities set forth in *People v. Kelly* (2006) 40 Cal.4th 106, 109-110 and *People v. Wende* (1979) 25 Cal.3d 436, 441. No arguable issues exist.

Section 290 requires that any person convicted of an enumerated sex offense register for life as a sex offender. Expressly included in the list of offenses for which registration is required are the very crimes Keables committed—attempted rape and forcible oral copulation with a minor. (§ 290, subd. (c).) Although our supreme court in *Hofsheier* found mandatory registration violated equal protection where the predicate offense was voluntary oral copulation with a

16- to 17-year-old minor (*Hofsheier, supra*, 37 Cal.4th at p. 1207), Keables's offenses were nothing like this offense. He was therefore not entitled to *Hofsheier* relief. Keables identified no other ground for relief below and identifies none on appeal.

DISPOSITION

The order denying the petition is affirmed.

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CHANNEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.