

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

CLAYTON GARNETT,

Defendant and Appellant.

B245925

(Los Angeles County
Super. Ct. No. BA384662)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gail Ruderman Feuer and Anne E. Egerton, Judges. Affirmed.

Allison H. Ting, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Clayton Garnett was charged in 2012 with one count of kidnapping to commit another crime, specifically a sex crime (Pen. Code, § 209, subd. (b)(1))¹, one count of forcible rape (§ 261, subd. (a)(2)), and one count of sodomy by use of force (§ 286, subd. (c)(2)). It was specially alleged as to counts 2 and 3 that defendant kidnapped the victim and personally inflicted great bodily injury on the victim in the commission of the rape and sodomy within the meaning of section 667.61, subdivisions (a) through (d).

The incident which gave rise to the charges against defendant occurred in September 1999. Defendant approached the victim at a nightclub. The victim was intoxicated. Defendant walked her to a van and pushed her inside where she was raped and sodomized.

After pleading not guilty, defendant moved, pursuant to section 995, to set aside and dismiss counts 2 (rape) and 3 (sodomy) on the grounds the claims were barred by the statute of limitations (six-year statute at § 800), and the prosecution had not presented evidence at the preliminary hearing showing any basis on which the claims could be deemed timely filed.

The trial court denied defendant's motion, citing *People v. Perez* (2010) 182 Cal.App.4th 231 (*Perez*). The court explained that "with respect to the factual issue on the 995 motion, the court is to draw all inferences in favor of the information," and that there was sufficient evidence presented at the preliminary hearing supporting the special circumstances alleged pursuant to section 667.61, subdivision (a), namely that defendant kidnapped the victim in connection with committing the rape and sodomy offenses. Accordingly, the court found the applicable statute of limitations was section 799, and not section 800, and counts 2 and 3 were therefore timely filed.

A plea agreement was then reached. Defendant agreed the information could be amended to add count 4, rape of an intoxicated person (§ 261, subd. (a)(3)), that he would plead no contest to count 4 and would waive a statute of limitations challenge to that new

¹ All further undesignated section references are to the Penal Code.

count. The prosecution agreed to request the low term of three years and dismiss counts 1 through 3 pursuant to section 1385. The plea agreement also provided defendant waived all rights to appeal save for the right to challenge the court's ruling on the section 995 motion as to the timeliness of counts 2 and 3.

The parties stipulated to a factual basis for the plea, and the plea agreement was duly placed on the record, with all requisite admonishments given to defendant. The court found defendant made a knowing and voluntary waiver of his constitutional rights in entering into the plea agreement. Defendant was sentenced to three years in state prison in accordance with the agreement and ordered to pay various fines and fees. Based on presentence custody credits, defendant was ordered directly to parole.

The court signed defendant's request for a certificate of probable cause and this appeal followed.

We appointed appellate counsel to represent defendant. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that she reviewed the record and sent a letter to defendant explaining her evaluation of the record. Counsel further declared she advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days. Defendant did not file a supplemental brief.

We have examined the entire record and are satisfied that appointed counsel fully complied with her responsibilities in assessing whether or not any colorable appellate issues exist. We conclude there are no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

We concur:

BIGELOW, P. J.

RUBIN, J.