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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RICKY HATARI FREEMAN,

Defendant and Appellant.

B292839

(Los Angeles County
Super. Ct. No. BA463349)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jose I. Sandoval, Judge. Affirmed.

Mark S. Givens, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Ricky Hatari Freeman appeals from the judgment after a jury convicted him of committing six sexual offenses involving a teenage girl. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Freeman Has Sex with a Teenager*

The police arrested Freeman after 15-year-old V.N. told them she and Freeman had engaged in consensual sexual intercourse and oral copulation on multiple occasions after she had told him her true age.¹ V.N. testified she and her family moved into a motel where Freeman resided. In early October 2017 V.N. and Freeman began having sex in Freeman's room. They continued to engage in consensual sexual intercourse and oral copulation almost daily in the room until October 24, 2017 (V.N.'s birthday) and for a final time in Freeman's car on October 30, 2017. On that day, V.N.'s mother learned of her daughter's sexual relationship with Freeman and called the police. DNA evidence confirmed the sexual relationship.

At trial Freeman testified and denied having sex with V.N. on October 30th, but he acknowledged it could have happened one to four days earlier. He also admitted he and V.N. had engaged in intercourse and oral sex on other occasions in October 2017.

¹ V.N. was born on October 24, 2001. Freeman was born on October 9, 1959.

B. *The People Charge Freeman with Multiple Sex Crimes*

In January 2018 the People charged Freeman with three counts of willfully and lewdly committing a lewd or lascivious act upon a 15-year-old child (Pen. Code, § 288, subd. (c)(1)) and one count of participating in an act of oral copulation with a person under the age of 16 (former Pen. Code, § 288a, subd. (b)(2), now Pen. Code, § 287, subd. (b)(2)), from October 1 to 23, 2017. The People also charged Freeman with participating in an act of oral copulation with a person under the age of 18 (Pen. Code, § 288a, subd. (b)(1)) and one count of engaging in an act of unlawful sexual intercourse with a minor who was more than three years younger than the perpetrator (Pen. Code, § 261.5, subd. (c)), on or about October 30, 2017. The People alleged Freeman had three convictions for serious or violent felonies within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12). Represented by appointed counsel, Freeman pleaded not guilty and denied the allegations.

C. *Freeman Files Multiple Motions Before and During Trial*

In February 2018 the trial court heard and denied three motions by Freeman under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to replace his appointed counsel.² The court granted

² Under *Marsden*, a criminal defendant may seek substitution of court-appointed counsel if the record shows ““appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.”” (*People v. Zendejas* (2016) 247 Cal.App.4th 1098, 1108.)

Freeman's request under *Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525] (*Faretta*) to represent himself.³

In March 2018 Freeman filed a motion to dismiss the information (Pen. Code, § 995) and a motion, citing Penal Code section 654, "to limit counts." After the trial court denied his motion to dismiss, Freeman moved for the reappointment of counsel, which the trial court granted. Freeman's newly appointed counsel withdrew the motion to limit counts, immediately after which Freeman made another motion under *Marsden*. The court denied that motion.

In April 2018 Freeman again moved under *Marsden* to replace his appointed counsel. After the court denied that motion, Freeman moved under *Faretta* to represent himself again. The court granted that motion, and Freeman represented himself for the rest of the case.

In May and June 2018 Freeman filed several pretrial motions, all of which the court denied. The motions included motions to dismiss under *California v. Trombetta* (1984) 467 U.S. 479 [104 S.Ct. 2528]⁴ for the prosecution's failure to preserve exculpatory evidence and a motion apparently under *Brady v.*

³ In *Faretta* "the United States Supreme Court held that the Sixth Amendment to the United States Constitution gives criminal defendants the right to represent themselves." (*People v. Buenrostro* (2018) 6 Cal.5th 367, 425.)

⁴ Under *Trombetta*, "[t]he state has a duty to preserve evidence that both possesses "an exculpatory value that was apparent before the evidence was destroyed" and is of "such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*People v. Carrasco* (2014) 59 Cal.4th 924, 960.)

Maryland (1963) 373 U.S. 83 [83 S.Ct. 1194] (*Brady*) for the prosecution's failure to disclose exculpatory evidence. Freeman also made an oral pretrial motion for a mistrial.

During trial, Freeman repeatedly argued for a dismissal or a mistrial on various grounds and sought to present a consent defense. He also repeatedly raised Penal Code section 654 as a basis for a dismissal and for requesting an instruction on lesser included offenses. The trial court rejected Freeman's arguments.

D. *The Jury Convicts Freeman, and the Trial Court
Sentences Him*

The jury convicted Freeman on all charges. In a bifurcated proceeding, the trial court found true the prior conviction allegations.

Prior to sentencing, the trial court denied Freeman's motions for a new trial, to dismiss his prior convictions under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and to strike his prior convictions for failure to advise Freeman of his constitutional rights under *Boykin v. Alabama* (1969) 395 U.S. 238 [89 S.Ct. 1709] and *In re Tahl* (1969) 1 Cal.3d 122. The court also denied Freeman's motion under Penal Code section 654 to "remove from the sentencing" or stay execution of sentence on some of his convictions. The court also rejected Freeman's argument that requiring him to register as a sex offender violated his equal protection rights.

The court sentenced Freeman to an aggregate state prison term of 12 years eight months, consisting of six years (the upper term of three years, doubled under the three strikes law) for willfully and lewdly committing a lewd or lascivious act upon a 15-year-old child, plus consecutive terms of 16 months (one-third

the middle term, doubled) for each of the remaining five convictions. Freeman filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Freeman in this appeal. After reviewing the record, counsel filed a brief raising no issues. On May 17, 2019 we gave Freeman notice he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted the court to consider. We did not receive a response.

We have examined the record and are satisfied that appellate counsel for Freeman has complied with his responsibilities and that there are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.