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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. JUAN D. FLORES, Defendant and Appellant.	B269218 (Los Angeles County Super. Ct. No. MA060680)

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles A. Chung, Judge. Affirmed.

The Defenders Law Group and Carlos Perez for Defendant and Appellant.

Kamala D. Harris, Attorney General, Kathleen Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, and Nathan Guttman, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Juan D. Flores appeals from a judgment sentencing him to 80 years to life in prison, plus sixteen years, after a jury convicted him of five counts of sexual molestation. Flores previously appealed his conviction to this court (*People v. Flores* (Apr. 30, 2015, B257339) [nonpub. opn.] (*Flores*)), contending insufficient evidence supported his conviction. We upheld his conviction, but remanded for resentencing because the court imposed consecutive sentences without knowing it had discretion to impose concurrent sentences for four of the counts. On remand, the court imposed consecutive sentences again. Flores appealed again, this time contending the court abused its discretion by improperly weighing the aggravating factors more heavily than the mitigating factors. We disagree and affirm.

BACKGROUND

Flores repeatedly sexually molested his niece, G., over a period of three years starting when she was just 8 years old. Flores first molested G. in August 2011 when they were living together in the same house. G. testified Flores "walked up behind her as she was using his computer in his room in the house, reached inside her trousers and underwear, and touched her genitals, moving his hand from side to side for approximately two minutes. He then said, ' "I'll hurt your mom." ' G. believed him and therefore did not tell anyone." (*Flores*, *supra*, B257339, at p. 2.)

G. and her mother later moved to a new house, but G. remained in close contact with Flores because G.'s mother took her every day to the family's market where Flores and G.'s

mother worked. (*Flores*, *supra*, B257339, at p. 3.) "[G.] testified that on at least one occasion in 2012 while [her mother] was working at the cash register, [Flores] came into the office, reached inside her underwear, put his hand on her genitals and moved it around, then exposed his penis and made her ' "move it back and forth" ' with her hand." (*Ibid.*)

Later, sometime between May and July 2013, G. and her mother visited her grandparents' home where Flores lived. (*Flores*, *supra*, B257339, at p. 3.) G. testified that as she was watching television in Flores's room, he "placed his hand beneath her underwear, put his fingers inside her vagina, and moved them around for about a minute." (*Ibid.*)

On August 10, 2013, G.'s mother held a party at her home to celebrate her father's birthday. (*Flores*, *supra*, B257339, at p. 3.) Relatives, including Flores, attended. (*Ibid.*) G. was alone in her room when Flores entered and shut the door. (*Ibid.*) "He reached inside her underwear and rubbed her genitals for about 30 seconds. He then put his fingers inside of her vagina and moved them ' "back and forth" ' for about 90 seconds. He then pulled down her trousers and underwear and attempted to insert his penis into her vagina for a minute. [G.] testified she felt pressure and pain and asked [him] to stop. [Flores] also made [G.] move her hand back and forth on his penis, placed his penis in her mouth, moved his penis back and forth in her mouth for about two and one-half minutes, and licked [G.]'s genitals for about a minute. When [he] left [G.]'s room, he again told her, ' "I'll hurt your mom." ' " (*Ibid.*)

Later that month, on August 20, 2013, Karla hosted another family party at her home. (*Flores*, *supra*, B257339, at p. 3.) G. testified that she, again, was alone in her bedroom when

Flores entered and shut the door. (*Id*. at pp. 3–4.) "This time, he placed a hamper in front of the door. He again reached inside her underwear, rubbed her genitals, pulled down her trousers and underwear, placed his fingers inside of her vagina and moved them back and forth, and again attempted to insert his penis into her vagina. She asked him to stop and tried to push him away, but he threatened, ' "I'm going to hurt your mom," ' and continued trying to enter her for ' "about five minutes or so." ' [G.] felt pressure and pain." (*Id*. at p. 4.) Flores then "licked [G.]'s genitals for about a minute and again put his finger inside her vagina. At some point, he also put his penis in [G.]'s mouth and used his hands to move her head back and forth." (*Ibid*.)

Eventually, [G.]'s mother opened the door and saw Flores " 'getting up from top of [G.] and sitting next to her and he put his face on [her] private part' while also touching himself." (*Flores*, *supra*, B257339, at p. 4.) [G.]'s mother screamed and Flores said, " 'Be quiet, please don't do this to me, be quiet.' " (*Ibid*.)

Forensic testing proved Flores's DNA was on the crotch of G.'s underwear and in her genitals and G.'s DNA was on his scrotum. (*Flores*, *supra*, B257339, at p. 5.) A rape kit revealed G. had trauma to her genitals. (*Id*. at p. 4.) Flores later confessed, and admitted additional details such as forcing G. to watch him masturbate and ejaculate and once causing her to vomit from putting his penis in her mouth. (*Id*. at p. 5.)

A jury convicted Flores on five counts of sexual molestation. (*Flores*, *supra*, B257339, at p. 2.) Four counts under Penal Code section 288.7, subdivisions (a)–(b), sexual intercourse and oral copulation or sexual penetration of a child 10 years of age or younger, and one count under section 288.5, subdivision (a),

continuous sexual abuse of a minor.[1] (*Ibid*.) Flores appealed. (*Ibid*.) We upheld his conviction, but remanded for resentencing because the trial court was unaware it had discretion to impose concurrent rather than consecutive terms on the section 288.7 counts. (*Ibid*.) On remand, the court imposed consecutive sentences again. Flores appealed.

DISCUSSION

On appeal, Flores argues the court abused its discretion in imposing consecutive rather than concurrent sentences because it improperly weighed the aggravating factors and did not give proper consideration to the mitigating factors. He requests we vacate his sentence and again remand for resentencing.

We review a trial court's sentencing decision for abuse of discretion. (*People v. Giminez* (1975) 14 Cal.3d 68, 72; see also § 669.) There is no authority to support Flores's request for de novo review of his sentence.

A. Aggravating Factors

1. G.'s vulnerability

Flores took advantage of G.'s vulnerability. Flores had power over G.: he was her uncle, her mother's coworker, 13 years older, and physically larger and stronger. He used these positions of power to molest her. Because of their familial relationship he knew when she would be alone; used his physicality to force himself on her; and he made her believe that if she told anyone he would harm her mother, whom he saw on a daily basis.

Flores argues "[t]here just was no evidence that this child was in any way unable to protest for herself had she have wanted

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[1] Undesignated statutory references are to the Penal Code.

to do so." This is a chilling argument. It implies G. wanted the molestation to continue and therefore did not say anything. The record does not contain a scintilla of evidence supporting this claim. The argument is also incorrect. G. did protest, but Flores refused to stop. (*Flores*, *supra*, B257339, at p. 3, 5.)

2. Flores's threats

Flores threatened G. on at least three occasions, telling G. after molesting her, " 'I'll hurt your mom.' " (*Flores*, *supra*, B257339, at p. 2–4.)

Flores argues this warning "is standard in these cases and does not, in and of itself, rise to the level of threatening without more." Flores is incorrect. The statement on its face is a threat. Flores spoke these words to scare G. into thinking that if she revealed his behavior, he would hurt her mother. In addition, a threat is a threat regardless of whether it is one made frequently. Flores further attempts to defend his words by arguing no evidence supported that he told G. "he'd kill her or hurt her if [s]he told or *anything of that nature*." (Italics added.) Again, Flores is incorrect. He did threaten to "hurt" someone—G.'s own mother. In addition, Flores cites no authority for the proposition that a threat must include the possibility of death; he also cites no authority that a threat must include physical harm directly to the hearer of the words. Flores plainly threatened G., and the court acted within its discretion in weighing Flores's threats in favor of imposing consecutive sentences.

3. Flores's coercive behavior

Flores's repeated, and mostly undetected, molestation of G. over a period of three years demonstrates he planned his attacks. Flores molested G. more than once when other family members were in the vicinity. To do so, he must have thought about when

G. would be alone and when he would have enough time to prey on her before being discovered. On one occasion he had the forethought to block the door with a hamper to prevent easy ingress or egress. He also used his position of trust as her uncle to gain access to her in private areas, like the family's bedrooms or the market's backroom, without raising alarm. His argument that he did not groom her is not compelling; he did not need to groom her because he was already in a relationship of trust with her. This type of forethought and manipulation does not weigh in favor of mitigation.

B. Mitigating Factors

1. Flores's age

Flores repeatedly references his young age as a factor favoring leniency. However, his appellate attorney has variously and inconsistently represented his age as "19 or 18 years of age or even younger, at the time when the offenses were committed," and 19 when he was sentenced. The record reveals these representations to be inaccurate. Flores was born in early 1990. He was therefore 21 when he first molested G., and 25 when he was sentenced. Flores's age is not a mitigating factor.[2]

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[2] The misrepresentation of Flores's age was not the only troubling aspect of Flores's appellate representation. Counsel also argued for two standards of review without explanation, one of which was wholly unsupported by any authority and the other which is not the proper standard of review here. Yet more problematic is appellate counsel's failure to provide an adequate record on appeal, including many key documents pertaining to the defense and his claims on appeal.

2. Flores's drug use and addiction

Flores argues his drug addictions weigh toward mitigation. Before the resentencing hearing, the superior court reviewed a psychologist's report submitted by Flores which apparently stated Flores had substance abuse and addiction issues. The court found the report unconvincing. Flores did not request the report to be included in the record under California Rules of Court rule 8.224, thereby hindering our review; nevertheless, even assuming this document showed Flores had addiction problems, the trial court did not abuse its discretion in finding his drug troubles did not outweigh the aggravating factors. Although Flores may indeed have been high when he committed some or all of the acts against G., his sustained and prolonged abuse indicates a deliberate pattern of sexual predation not attributable to his drug use.

3. Flores's personal life

Flores asserts his girlfriend aborted their child without his permission when he was 18, causing him distress. He also asserts he has suffered from psychological issues from age 10. Neither of these assertions finds support in this limited record. Again, even assuming the truth of these claims, the trial court did not abuse its discretion in determining these factors did not outweigh the aggravating factors.

4. Flores's criminal history and propensity

Finally, Flores essentially argues that he is not a criminal. He points to the absence of a criminal record, his voluntary confession, and his identification as a category one offender, which does not carry a high rate of predicted recidivism,[3] as

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[3] While appellant asserts that the trial court improperly disregarded the psychologist's report and the "Static 99

indications that he is not an inherently dangerous person. Again, Flores failed to include his criminal record or the Static 99 Assessment in the record, thereby hindering analysis of his arguments. Regardless, the above factors are not dispositive, and the court did not abuse its discretion in determining whatever mitigating factors they showed did not outweigh the aggravating factors. In short, the fact that Flores could have been a worse offender does not mitigate the crimes he committed against this child.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.

Assessment" (which supposedly labeled him a category one offender), the record in this case does not include either of these documents.