Filed 7/25/17 P. v. Ramirez CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. ANASTACIO GONZALEZ RAMIREZ, Defendant and Appellant.	2d Crim. No. B279359 (Super. Ct. No. 2014036832) (Ventura County)

Anastacio Gonzalez Ramirez appeals his conviction by jury of two counts of unlawful act with a child 10 years old and under (Pen. Code, § 288.7, subd. (a); counts 1 and 2)[1] and one count of continuous sexual abuse (§ 288.5, subd. (a); count 3). The trial court sentenced appellant to two consecutive terms of 25 years to life on the first two counts and to a consecutive

[1] All further statutory references are to the Penal Code.

determinate term of 12 years on count 3. Fines and fees were imposed and presentence credits were awarded.[2]

The victim, M.R., was born in November 2001. Appellant is her biological father. At the time of the offenses, M.R. lived with appellant, her mother, C.N., and three siblings.

The family moved from Oxnard to Santa Paula in August 2010. When M.R. was in the fourth grade, she told C.N. that appellant had been touching "her thing." When C.N. told M.R. that she was going to call the police, M.R. recanted, saying she "didn't want [her father] to get in any problems because he would then hit her." C.N. confronted appellant, who said the allegation was a lie. He subsequently moved out of the house, but he moved back in after two weeks.

In December 2014, C.N. found a phone chip/card, which contained a video of appellant masturbating M.R. After M.R. told C.N. that appellant had touched her inappropriately, C.N. contacted the Ventura County Sheriff's Office and showed the video to Detective Frances Saleh.

Detective Saleh and C.N. placed two recorded telephone calls to appellant. In the first one, appellant confirmed that it was M.R.'s body in the phone card video and that he had been "doing that" with M.R. for "awhile." Appellant further admitted that what M.R. was saying is true and that he started "doing it to her" when they moved to Santa Paula.

In a second pretext call, appellant again said that M.R.'s accusations were true. C.N. asked if he had been putting his penis in M.R.'s vagina. Appellant said, "I did put it there but I don't know if . . . I don't know if it went as far as that." He said

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[2] On December 13, 2016, we granted relief from the late filing of appellant's notice of appeal.

he put his penis on her vagina, and that he put his finger in her vagina. He did not know if his penis went in her vagina. He denied putting his tongue in her private parts.

M.R. submitted to a sexual assault examination on December 4, 2014. The examiner found a rounded laceration to the external genitalia next to the hymen, which she believed was made by a fingernail within the last few days. M.R. told the examiner that appellant "used to lick my vagina," and that over the last few years he had put his penis and fingers in her vagina. M.R. reported that the last time appellant put his penis in her vagina was November 27, 2014.

M.R. testified that she was in the second grade and living in Oxnard when the first sexual incident happened. Appellant took off her pants, got on top of her and started to put his penis in her vagina. It hurt when appellant's penis went in her vagina. Appellant told her not tell her friends or her mother.

M.R. put his penis in M.R.'s vagina when she was in the third grade. On more than one occasion, appellant ejaculated on his shirt. After they moved to Santa Paula, appellant would kiss M.R.'s breasts and lick inside her vagina.

M.R. testified that appellant had sex with her when she was in the fifth, sixth and seventh grades. He would not put his penis in her vagina if she was having her period. He would resume sexual activity when she was done with her period.

Around Thanksgiving 2014, appellant went into M.R.'s bedroom, took off her pants, placed her on top of him, put his penis in her vagina and tried to move her up and down. After Thanksgiving, he came into her room and put his finger inside her vagina. His fingernails poked her and it hurt.

M.R.'s older half-brother, S.S., testified that appellant would frequently go into M.R.'s bedroom, lock the door, and be alone with M.R. for 10 to 20 minutes. Appellant would buy candy for M.R., do her chores for her and give her money, which he did not give to the other children. M.R. got an iPhone for her birthday, while S.S. received a much cheaper phone. M.R. also would not be punished when the other children were punished. Detective Saleh testified that "grooming" occurs when a child molester gradually draws a victim into a sexual relationship with special attention and gifts.

We appointed counsel to represent appellant in this appeal. After an examination of the record, counsel filed an opening brief requesting that the court make an independent review under *People v. Wende* (1979) 25 Cal.3d 436.

We subsequently advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. Appellant responded by filing a 15-page supplemental brief in which he claims that there is insufficient evidence to support the jury's verdict and that his trial counsel was ineffective in numerous respects. Specifically, he contends his counsel failed (1) to file a motion to suppress evidence of the pretext telephone calls, (2) to discover and introduce exculpatory evidence, (3) to properly prepare for his cross-examination of C.N., (4) to diligently pursue a plea bargain on appellant's behalf, (5) to file a timely notice of appeal and (6) to call M.R's younger sibling as a witness. We reject these contentions.

First and foremost, there is ample evidence to support appellant's conviction. Not only did M.R. provide detailed testimony regarding appellant's sexual abuse, but

appellant also admitted in the two pretext telephone calls that he had abused her. Moreover, the phone card video showed him masturbating M.R.

With respect to the ineffective assistance of counsel claims, only one has demonstrable merit based on the record before us. Trial counsel did fail to file a timely notice of appeal, but the error is non-prejudicial in that we allowed the late-filed appeal. As for the other claims, it is well established that if the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, the claim on appeal must be rejected. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266; see *People v. Lucas* (1995) 12 Cal.4th 415, 436-437 [defendant carries a heavy burden when a claim of ineffective assistance of counsel is made on direct appeal].)

We have reviewed the entire record and are satisfied that appellate counsel has fully complied with her responsibilities and that no arguable issue exists. (*People v. Wende*, *supra*, 25 Cal.3d at p. 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Mark S. Borrell, Judge
Superior Court County of Ventura

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.