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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL PENATE,

Defendant and Appellant.

B283459

(Los Angeles County
Super. Ct. No. LA082960)

APPEAL from a judgment of the Superior Court of Los Angeles County. Thomas Robinson, Judge. Affirmed.

Patricia J. Ulibarri, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Manuel Penate appeals from his conviction, following entry of a plea of no contest to one count of sodomy by use of force on a victim under the age of 14, and two counts of lewd act upon a child. Defendant was sentenced to state prison for nine years eight months. We affirm.

On February 2, 2017, defendant was charged by information with eight felony counts involving sexual offenses against three separate minor victims: sexual intercourse or sodomy with a child 10 years old or younger (Pen. Code, § 288.7, subd. (a); victim J.S.; count 1), two counts of oral copulation or sexual penetration with a child 10 years old or younger (§ 288.7, subd. (b); victim J.S.; counts 2 and 3), lewd act on a child (§ 288, subd. (a); victim J.S.; count 4), lewd act on a child (§ 288, subd. (c)(1); victim K.C.; count 5), lewd act on a child (§ 288, subd. (a); victim B.S.; count 6), and two counts of sodomy by force on a victim under the age of 14 (§ 286, subd. (c)(2)(B); victim B.S.; counts 7 and 8).

Pursuant to a negotiated plea agreement, defendant initialed and executed a Felony Advisement of Rights, Waiver and Plea Form. Defendant repeated the waiver of his constitutional rights before the court, with the assistance of counsel and an interpreter. In accordance with the terms of the plea agreement, defendant pled no contest to counts 4, 5 and 7 in exchange for a sentence of nine years eight months. The court found defendant's waivers to be knowingly and voluntarily made, and counsel stipulated to a factual basis for the plea. The prosecutor stated on the record that the People had agreed to the plea, despite the fact that defendant was facing significant prison time, because two of the minor victims appeared to be too traumatized to testify at a trial.

The court selected count 7 as the base count and imposed, in accordance with the plea agreement, a state prison term of nine years eight months, calculated as follows: a low term of nine years on count 7, a consecutive term of eight months (one-third the midterm) on count 5, and a concurrent midterm of six years on count 4. Defendant was ordered to provide a DNA sample, print impressions and an AIDS test (Pen. Code, §§ 296, 296.1, 1202.1). The court imposed, per statute, various fines and fees and awarded defendant 470 days of custody credits. The court granted the prosecution's motion to dismiss the remaining counts. At the request of defense counsel, the court recommended fire camp.

Defendant filed a notice of appeal, but did not obtain a certificate of probable cause. On the form notice of appeal filed by defendant (Form CR-120), the only box checked as to the substance of the appeal is paragraph 2.a.(1) regarding the sentence or postplea matters not challenging the validity of the plea. Accordingly, those are the only issues cognizable by this appeal. (*People v. Panizzon* (1996) 13 Cal.4th 68, 74-75 (*Panizzon*).)

We appointed appellate counsel to represent defendant. Appellate 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.

We granted defendant permission to file a late brief. Defendant submitted a two-page handwritten brief that provides

as follows: “1. No evidence of my DNA was not shown. [¶] 2. No Medical report of any cain. [¶] 3. The witnesses were not present. [¶] 4. All the evidence in my agenst was not shown in court (tape-recording), they say that they losted the evidence. [¶] 5. In the Preliminery of the Court, they ofer me, the D.A. 6 years. The judge sad that were sufficient evidens for the trial.” The balance of the brief is written in Spanish and raises issues related to the substance of the charges as to which defendant pled no contest.

To the extent any of defendant’s points are understandable, none are cognizable on appeal as they are all directed to the substance of the sexual offenses to which defendant pled guilty. Defendant did not obtain a certificate of probable cause and therefore no such issues are cognizable. (*Panizzon, supra*, 13 Cal.4th at pp. 74-75.)

We have examined the entire record and are satisfied that appointed counsel fully complied with her responsibilities in assessing whether 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:

RUBIN, Acting P. J.

HALL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.