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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCOS MATA,

Defendant and Appellant.

B233123

(Los Angeles County
Super. Ct. No. BA346772)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Bob S. Bowers, Judge. Affirmed.

Marcia C. Levine, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Marcos Mata appeals from the judgment entered on remand for resentencing. His appointed counsel filed a *Wende* brief. (*People v. Wende* (1979) 25 Cal.3d 436.) On October 20, 2011, we directed appointed counsel to send the record and a copy of her brief to appellant and notified him of his right to respond within 30 days. We received no response.

In *People v. Mata* (Jan. 31, 2011, No. B220804 [nonpub. opn.], *Mata I*), we summarized the facts and procedural history that led to the original appeal: “From January 2006 to September 2008, appellant allegedly committed various sex crimes against three different children under the age of 14. He was arrested and charged as follows: sex/sodomy with a child under 10 years old (Pen. Code, § 288.7, subd. (a))¹ in counts 1 and 2; oral copulation/sexual penetration with a child under 10 years old (§ 288.7, subd. (b)) in counts 3, 4, 5, 9, and 12; and lewd acts upon a child under 14 years old (§ 288, subd. (a)) in counts 6, 7, 11, and 13. As to all four counts of lewd acts upon a child, it was further alleged that appellant committed the offenses against more than one victim. (§ 667.61, subds.(b), (c).) Appellant was found guilty by jury of counts 3, 4, 5, 6, 9, 11, and 13. The special allegations as to counts 6, 11, and 13 were found true. Appellant was sentenced to 15 years to life on counts 4, 5, 6, 11, and 13, imposed consecutively, for an aggregate term of 75 years to life. The sentences in counts 3 and 9 were stayed pursuant to section 654.”

In *Mata I*, we concluded that the trial court did not appear to have been aware of its discretion to impose concurrent sentences for counts 6, 11, and 13, citing *People v. Rodriguez* (2005) 130 Cal.App. 4th 1257, 1262. We reversed the consecutive sentences for these counts and remanded with directions that the trial court exercise its discretion in selecting concurrent or consecutive terms for these counts. On remand, the trial court reimposed the original sentence, clarifying that it was doing so in its discretion. Appellant’s counsel objected that the aggregate term of 75 years to life was absurd

¹ All subsequent references are to the Penal Code.

because appellant would have to live to the age of 114 in order to even qualify for parole.²

We have reviewed the record of the proceedings on remand under *People v. Kelly* (2006) 40 Cal.4th 106. No arguable issues for appeal exist.

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J

² That appellant may not live long enough to qualify for parole does not make the sentence absurd, cruel, or unusual. (See *People v. Byrd* (2001) 89 Cal.App.4th 1373, 1383 [“it is immaterial that defendant cannot serve his sentence during his lifetime. In practical effect, he is in no different position than a defendant who has received a sentence of life without possibility of parole: he will be in prison all his life”].)