Filed 9/16/19 P. v. Valdez 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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>EVERADO ANTONIO VALDEZ,<br><br>Defendant and Appellant. | 2d Crim. No. B292791<br>(Super. Ct. No. 1455794)<br>(Santa Barbara County) |

Everado Antonio Valdez appeals his conviction, by jury, of aggravated sexual assault of a child involving digital penetration (Pen. Code, § 269, subd. (a)(5)),[1] aggravated sexual assault of a child involving rape (§ 269, subd. (a)(1)), kidnap for digital penetration, rape or oral copulation (§ 209, subd. (b)(1)), forcible lewd act on a child (§ 288, subd. (b)(1)), and aggravated sexual assault of a child involving oral copulation. (§ 269, subd.

[1] All statutory references are to the Penal Code unless otherwise stated.

(a)(4).) The trial court sentenced appellant to an aggregate term in state prison of 45 years to life. He contends that: the trial court erred when it admitted evidence of uncharged sexual misconduct and expert testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS); there is no substantial evidence of rape; video of his interrogation by law enforcement was not properly authenticated and was prejudicially altered; and his sentence violates his federal and state constitutional rights to be free of cruel and unusual punishment. We affirm.

*Facts*

Jane Doe was born in August 2000. Between 2005 and 2011, Doe lived in a house in Santa Maria with her father, her paternal grandparents, several paternal aunts and uncles, and cousins. Appellant, who was born in November 1989, is one of Jane Doe's uncles who lived in the Santa Maria house.

Count 1. When Jane Doe was about 11 years old and in sixth grade, appellant sexually assaulted her in the living room of the family home one afternoon. Appellant pushed Jane Doe into a sofa and "stuck his hands down [her] pants," putting his fingers inside her vagina. This was painful for Doe. She was "crying and screaming," punching appellant and trying to get away from him. Eventually, she hit him hard enough to make him bleed and he let her go.

Counts 2, 3 and 4. In 2005 or 2006, appellant, then aged 16 or 17, sexually assaulted Jane Doe, who was then five or six years old. Doe testified that she took a shower after school one day. When she was done with her shower, she wrapped a towel around herself, left the bathroom and walked toward the room where she kept her clothes. Appellant grabbed her around her stomach, put his hand over her mouth, picked her up and

carried her into his own bedroom. Appellant closed and locked the bedroom door. After removing Doe's towel, appellant kissed and fondled Doe, touched her vagina with his hands and inserted his fingers in her vagina. He later attempted to insert his erect penis into her vagina. Doe testified that appellant's penis touched her labia and went in between her labia "very little." She was squirming around a lot and trying to get away from appellant. The assault was painful and it lasted a very long time.

Doe's brother R.V. saw appellant take Doe into his bedroom. R.V. tried to open the door but it was locked. He started banging on the door. Appellant eventually opened it and started hitting R.V. R.V. ran downstairs and told one of his aunts what was happening. She yelled upstairs at appellant. Appellant opened the door and let Doe leave the room. She was crying and upset when R.V. saw her.

Count 5. When Jane Doe was in kindergarten, her class took a trip to a pumpkin patch. After Jane Doe got home from the field trip, she fell asleep on the living room sofa. She woke up in appellant's bedroom, where appellant undressed her and orally copulated her.

Uncharged Incidents. Appellant sexually assaulted Doe when she was five or six years old, while she was in the bathtub. During this incident, appellant reached into the bathtub to fondle Doe's nipples and digitally penetrate her. Appellant also tried to force Doe to orally copulate him. She resisted by refusing to open her mouth. Appellant took Doe out of the bathtub, wrapped her in a towel and laid her down on the bathroom floor where he orally copulated her. Appellant tried to insert his erect penis in Doe's vagina. When he failed, he rubbed it against her labia.

Doe described another incident in which she was in appellant's bedroom, watching her brother and some of her cousins play video games. While the other children were occupied by the game, appellant forced Doe onto his bed and digitally penetrated her. Doe called to her brother for help. When her brother approached the bed, Doe was able to get away from appellant.

Jane Doe's Disclosure. Appellant stopped sexually assaulting Jane Doe in about 2011. Jane Doe remained afraid of him and believed he was going to grab her every time he was near her.

In 2013, Jane Doe got into a physical fight with her grandmother. The grandmother eventually punched Doe, leaving a bruise on her eye and scratches on her face. Doe persuaded her father to take her to the hospital, so she could see her mother. Doe's mother was at the hospital with one of her younger children, who was ill. A nurse at the hospital reported Doe's bruised, scratched face to child protective services.

The social worker eventually interviewed Jane Doe about one month after receiving the initial report. After Doe finished explaining about the argument with her grandmother, the social worker asked her if she had any other concerns about her safety in her grandmother's home. Doe then told the social worker that her uncle had been touching her inappropriately. The social worker terminated the interview and reported Doe's disclosure to the police department. Doe moved in with her mother and did not return to her grandparents' house.

Appellant's Interrogation. In February 2015, after an unexplained delay for nearly two years, the Santa Maria police department obtained a warrant for appellant's arrest. Appellant

submitted to a lengthy interrogation, which was audio and video-recorded.

Appellant admitted to fondling Doe's "private parts," orally copulating her, and rubbing her labia with his erect penis. He also denied having sexual intercourse with Doe. Appellant described these events as having occurred a long time ago. He thought Doe needed to "forget all that," "move forward," and talk to her family again. Appellant described Doe as flirtatious and said his conduct with her was "a mistake."

Appellant's Trial Testimony. Appellant testified that, prior to his interrogation, he smoked a large quantity of wax oil, a concentrated form of marijuana. He denied that his admissions during the interrogation were true. Instead, he testified, "I was so high, I don't even know what I was saying." Appellant testified that he did not do any of the acts Jane Doe described.

Child Sexual Abuse Accommodation Syndrome. Dr. Anthony Urquiza testified as an expert on the behavior of children who have been subjected to sexual abuse. He had no information regarding the specific facts of this matter. Dr. Urquiza testified that it is not uncommon for children to keep the fact of their sexual abuse a secret, even from parents or trusted adults. Similarly, children do not always fight back or take other actions to protect themselves from sexual abuse. Because their abusers tend to be bigger, older, and stronger, child victims often feel too helpless and vulnerable to fight back. Child victims also often delay reporting their sexual abuse. About 75 percent of victims do not disclose within the first year after their abuse and at least 33 percent do not report until they are over 18 years old. Dr. Urquiza did not offer an opinion on the question of whether Jane Doe's account of her abuse was credible.

*Discussion*

Evidence of Uncharged Sex Offenses. Appellant contends the trial court abused its discretion when it admitted evidence of uncharged sex offenses. Appellant notes that Doe's testimony describing the various sexual assaults was not corroborated. The jury, therefore, would either find Doe credible and conclude the assaults occurred, or find her not credible and conclude they did not. In his estimation, Doe's uncorroborated testimony was not relevant to prove he had a propensity to commit sexual assaults (Evid. Code, § 1108), or to demonstrate he had a common plan or scheme to commit sex crimes. (Evid. Code, § 1101, subd. (b).)

Evidence of uncharged offenses may be admissible "when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act." (Evid. Code, § 1101, subd. (b).) Evidence Code section 1108, subdivision (a) provides that, in a sex offense prosecution, "evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by [Evidence Code] [s]ection 1101, if the evidence is not inadmissible pursuant to [Evidence Code] [s]ection 352." Section 352 provides that evidence may be excluded "if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

We review the trial court's determinations on the admissibility of evidence for abuse of discretion. (*People v. Carter* (2005) 36 Cal.4th 1114, 1149.) "A court abuses its discretion when its ruling 'falls outside the bounds of reason.'" (*People v. Kipp* (1998) 18 Cal.4th 349, 371.) There was no abuse of discretion here.

As an initial matter, Doe's testimony about the uncharged offenses was corroborated. Appellant himself admitted during his interrogation that he had assaulted Doe in all the ways she described, even if he declined to provide a detailed account of each individual offense. In addition, Jane Doe's brother R.V. corroborated Doe's account when he testified that he saw appellant take Jane Doe to his bedroom and lock the door.

In any event, Doe's credibility was not the only disputed issue at trial. Appellant's plea of not guilty put in issue all the elements of the charged offenses, not just the question of Doe's credibility. (*People v. Jones* (2011) 51 Cal.4th 346, 372.) Evidence of appellant's uncharged acts was probative on the issues of his intent, motive, common plan or scheme to sexually assault Doe, and absence of mistake. (See, e.g., *People v. Walker* (2006) 139 Cal.App.4th 782, 803-804.) Because the charged and uncharged offenses involved the same victim, similar sexual conduct, and occurred in the same house at around the same time of day, the uncharged offenses were relevant to prove appellant committed the charged offenses with the same intent and motive, and pursuant to a common plan or scheme, without mistake as to Doe's age or ability to consent. (*People v. Story* (2009) 45 Cal.4th 1282, 1293.)

The evidence was also not inadmissible under Evidence Code section 352. As we have explained, the evidence had probative value because it described the pattern or common plan appellant followed in sexually assaulting Doe. It also presented a minimal risk of confusing the jury because the prosecutor, in closing argument, specifically delineated the charged and uncharged offenses.

Nor was the evidence unduly prejudicial. Section 352 uses the term prejudice to refer to evidence which "'"'"uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. . . ."'"'" (*People v. Doolin* (2009) 45 Cal.4th 390, 439.) Evidence should be excluded as unduly prejudicial "'when it is of such nature as to inflame the emotions of the jury, motivating them to use the information . . . to reward or punish one side because of the jurors' emotional reaction. In such a circumstance, the evidence is unduly prejudicial because of the substantial likelihood the jury will use it for an illegitimate purpose.'" (*Ibid.;* see also *People v. Bell* (2019) 7 Cal.5th 70, 105.)

Here, both the charged and uncharged offenses involved similar conduct: fondling and oral copulation. The uncharged offenses were no more serious, violent or inflammatory than the charged crimes. In addition, the trial court instructed the jury to disregard evidence of the uncharged offenses unless the prosecution "proved beyond a reasonable doubt that the defendant in fact committed" those offenses. There is no substantial likelihood the jury used this evidence for an improper purpose or convicted appellant on the basis of facts not proved beyond a reasonable doubt. There was no error.

Testimony of Expert Witness. Appellant contends the trial court erred when it permitted Dr. Urquiza to testify as an expert witness on Child Sexual Abuse Accommodation Syndrome (CSAAS). He contends that expert testimony describing the syndrome violates his federal and state constitutional rights to due process and confrontation because the underlying premise of CSAAS is that the child reporting abuse is telling the truth. CSAAS testimony thus undermines the presumption of innocence and improperly bolsters the complaining witness' credibility by encouraging jurors to find the witness is credible because his or her behavior is consistent with the behavior of truthful complaining witnesses.

Like other courts, we have recently held that a CSAAS expert may not offer an opinion on the statistical probability that a child's report of sexual abuse is truthful. (*People v. Julian* (2019) 34 Cal.App.5th 878, 886 (*Julian*); see also *People v. Wilson* (2019) 33 Cal.App.5th 559 (*Wilson*).) However, as we explained in *Julian*, "Expert testimony on 'the common reactions of child molestation victims,' known as CSAAS theory evidence, 'is admissible to rehabilitate such witness's credibility when the defendant suggests that the child's conduct after the incident – e.g., a delay in reporting – is inconsistent with his or her testimony claiming molestation.' [Citation.] '"Such expert testimony is needed to disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the emotional antecedents of abused children's seemingly self-impeaching behavior."' [Citation.] [¶] But such evidence 'is not admissible to prove that the complaining witness has in fact been sexually abused.' [Citation.] 'The expert is not allowed to give an

opinion on whether a witness is telling the truth . . . .' [Citation.]" (*Julian*, at p. 885.)

One commonly held misconception about child sexual abuse is that "a child who is sexually abused will immediately disclose the abuse." (*Wilson*, *supra*, 33 Cal.App.5th at p. 566; see also *Julian*, *supra*, 34 Cal.App.5th at pp. 882-883.) An expert providing CSAAS testimony may dispel this misconception by informing the jury that a delay in reporting abuse is not inconsistent with the abuse having occurred. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300 (*McAlpin*).)

Here, appellant is not challenging a specific aspect of Urquiza's testimony, such as his opinion on the statistical probability of a false claim.[2] He contends instead, that the trial court should have excluded all CSAAS testimony because testimony describing the syndrome itself assumes the child's report of abuse is truthful. In addition, because CSAAS testimony describes behavior commonly seen in victims of sexual abuse, it inevitably invites the jury to compare the behavior of the complaining witness to that of the "typical" victim described by the expert witness.

We are not persuaded. As appellant acknowledges, our Supreme Court has long held that expert testimony on CSAAS is admissible to rehabilitate the victim's credibility when the defense suggests the victim's conduct, including a significant

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[2] Such a contention would fail here because Dr. Urquiza offered his statistics on cross-examination, in response to questions from appellant's trial counsel. Appellant invited any error, and forfeited any claim relating to it, by soliciting the statistical testimony. (See, e.g., *People v. Powell* (2018) 6 Cal.5th 136, 145; *People v. Penunuri* (2018) 5 Cal.5th 126, 157.)

delay in reporting abuse, is inconsistent with the report being truthful. (*McAlpin*, *supra*, 53 Cal.3d at pp. 1300-1302.) Appellant's broad objection that all CSAAS evidence should have been excluded, is essentially an invitation to ignore *McAlpin*. We are, of course, required to follow *McAlpin*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450.)

In any event, we disagree with appellant's contention that CSAAS testimony assumes the victim is being truthful. Dr. Urquiza testified that, contrary to a "common misperception" that children will tell an adult about sex abuse right away, "lot of kids, most kids" keep quiet about sexual abuse. This is because children "often feel very embarrassed or afraid or disgusted" about the abuse and think something bad will happen to them if they report it. This statement refers to a victim of abuse, but it does not imply that every person who reports child sexual abuse is being truthful. Instead, it explains that children who report abuse may be telling the truth, even if they delayed reporting for some significant period of time.

The trial court reinforced this understanding when it instructed the jurors, just before Dr. Urquiza testified that, "The witness is an expert who's going to testify about the class of persons who are victims of sexual offenses. Jane Doe may or may not be a member of the class. The testimony is not evidence that defendant committed any of the crimes charged against him. You may consider this evidence only in deciding whether Jane Doe's conduct was not inconsistent with the conduct of someone who has been molested and in evaluating the believability of her testimony." It gave a similar instruction to the jury in its closing instructions.

Nor can we agree that jurors will inevitably rely on CSAAS testimony to compare behavior of the complaining witness to that of the typical victim described by the syndrome. The trial court instructed the jury that it was permitted to consider Dr. Urquiza's testimony "only in deciding whether Jane Doe's conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of her testimony." We presume the jury understood and followed the trial court's instructions. (*People v. Jackson* (2016) 1 Cal.5th 269, 352; *People v. Yovanov* (1999) 69 Cal.App.4th 392, 407.)

Substantial Evidence of Rape. Appellant contends there is no substantial evidence that he is guilty of rape as alleged in count 2. According to appellant, Jane Doe testified only that he thrust his penis between her labia "very little." She did not testify that he penetrated her. Appellant concludes Doe's testimony was not sufficient to support his rape conviction. We disagree.

"'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] In so doing, a reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' [Citation.]" (*People v. Powell* (2018) 5 Cal.5th 921, 944.) "Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding." (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.)

The jury found appellant guilty of the aggravated sexual assault in the form of the rape of a child under 14 years of age. (§ 269, subd. (a)(2).) Rape is "an act of sexual intercourse accomplished . . . against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another." (§ 261, subd. (a)(2).) "The crime is complete upon '[a]ny sexual penetration, however slight.'" (*People v. Earp* (1999) 20 Cal.4th 826, 888 (*Earp*); see also *People v. Mendoza* (2015) 240 Cal.App.4th 72, 79.) "Penetration of the external genital organs is sufficient to constitute sexual penetration and to complete the crime of rape even if the rapist does not thereafter succeed in penetrating into the vagina." (*People v. Karsai* (1982) 131 Cal.App.3d 224, 232 (*Karsai*), disapproved on another ground, *People v. Jones* (1988) 46 Cal.3d 585, 600, fn. 8.)

Doe testified that appellant was "humping" her, but she kept moving around, because "I didn't want this to happen." As a result of her constant movement, appellant "would miss my vagina and aim for the floor, but he would feel it and he would put it back, put his penis back in . . . where my vagina was, and I just kept moving and moving and he kept humping. . . . I don't know what he was doing. He was – I could feel it, but I didn't feel it inside of me." She testified that appellant attempted to put his penis in between her labia. "He went in very little, and that's when I – every time I pushed, he would push in harder, and it would – it would feel as if he was going in, but not necessarily into my hole."

In an interview with the investigating officer, Detective Stowasser, Doe stated that appellant's penis "'went in a little bit and skimmed off the top.'" In his police interview,

appellant first agreed that he put his penis in Doe's vagina and that they just had "normal sex." He then said, "Nah, not even that" and later said that he "didn't even go in her." A few moments later, appellant agreed that he penetrated Doe "a little bit and then felt bad and stopped."

Doe's testimony, her statement to Det. Stowasser and appellant's admissions are substantial evidence that appellant raped Doe. Appellant agreed at least twice that he penetrated Doe. She testified that his penis penetrated her labia and went inside her "a little bit." This is sufficient to establish rape. (*Earp*, *supra*, 20 Cal.4th at p. 888; *Karsai*, *supra*, 131 Cal.App.3d at p. 232.)

Video of Appellant's Interrogation. Exhibit 8 is a DVD of appellant's interview with Det. Stowasser and Det. McGeehee. The video portion of the exhibit goes dark on two separate occasions, for a total of 110 seconds out of the DVD's 92-minute running time. The audio portion of the exhibit continues uninterrupted during these periods. This occurred because the legal assistant who prepared Exhibit 8 removed the audio captured on the original DVD and replaced it with a separate audio recording made by Det. Stowasser using a separate audio recorder.[3] The assistant testified she did not alter the content of either recording, but she did not compare the original audio to Stowasser's. Det. Stowasser testified that Exhibit 8 is a fair and accurate depiction of her interview with appellant.

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[3] Det. Stowasser explained the police department's video recording system is old and "glitchy." Sometimes the system stops recording randomly. It also stops while the DVD is being changed, about every 60 to 90 minutes.

Appellant contends the trial court erred when it admitted Exhibit 8 into evidence. He contends the exhibit was not properly authenticated because the legal assistant who created the exhibit did not compare the two audio recordings. In addition, the exhibit is not accurate or complete because of the dark video segments. Use of the exhibit, appellant contends, violated his federal and state constitutional rights to confrontation, to present a defense and to due process. We conclude there was no error.

A video recording must be authenticated before it may be received in evidence. (Evid. Code, § 1401.) Authentication is evidence that the video recording is "a fair and accurate representation of the scene depicted. [Citations.] This foundation may, but need not be, supplied by the person taking the photograph or by a person who witnessed the event being recorded. [Citations.] It may be supplied by other witness testimony, circumstantial evidence, content and location." (*People v. Goldsmith* (2014) 59 Cal.4th 258, 267-268.) Here, Det. Stowasser testified that Exhibit 8 was a fair and accurate representation of her interview with appellant. The legal assistant testified that she did not alter the content of the audio or video recordings in the process of merging them together. This testimony provided the necessary foundation that Exhibit 8 is a fair and accurate recording of appellant's interview.

We also reject appellant's contention that the breaks in the video recording deprived him of the ability to present the defense that his admissions were not knowing or voluntary because he was under the influence of marijuana during the interview. The video on Exhibit 8 goes dark for about 2 minutes during the 92-minute run of the video. For the remainder of the

video, appellant's voice and physical appearance are fully visible. Exhibit 8 was sufficient to permit the jury to evaluate appellant's intoxication claim, despite the missing seconds.

*Crane v. Kentucky* (1986) 476 U.S. 683 (*Crane*), on which appellant relies, is not to the contrary. There, a 16-year old defendant confessed to the murder of a convenience store clerk. The trial court found his confession to have been voluntary and denied a motion to suppress it. It then excluded all testimony bearing on the circumstances under which the confession was obtained. (*Id.* at pp. 685-686.) The Supreme Court concluded this was prejudicial error because the evidence was relevant to the credibility of the confession and its "blanket exclusion" deprived him of the opportunity to present a complete defense. (*Id.* at pp. 689-690.)

Unlike the jury in *Crane*, *supra*, 476 U.S. 683, the jury here was able to see all but about two minutes of his 92-minute interview with police; it could hear the entire interview. There was no blanket exclusion of evidence concerning the circumstances under which that interview occurred. Nor does appellant claim that officers engaged in coercive or abusive conduct while the video was disabled, or that his own demeanor changed so drastically during those moments that the missing video would be essential to the jury's evaluation of his intoxication claim. We conclude appellant was not denied the right to present a defense.

Cruel and Unusual Punishment. The trial court sentenced appellant to a total term in state prison of 45 years to life.[4] Appellant contends the sentence violates his federal and

[4] At appellant's original sentencing hearing on September 18, 2018, the trial court did not order appellant to pay victim

state rights to due process and to be free of cruel and unusual punishment because the trial court failed to give mitigating weight to appellant's youth and because the sentence is functionally equivalent to a term of life without possibility of parole (LWOP).

The Eighth Amendment prohibition on cruel and unusual punishment "encompasses the 'foundational principle' that the 'imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.' [Citation.] From this principle, the high court has derived a number of limitations on juvenile sentencing: (1) no individual may be executed for an offense committed when he or she was a juvenile [citation]; (2) no juvenile who commits a nonhomicide offense may be sentenced to LWOP [citation]; and (3) no juvenile who commits a homicide offense may be automatically sentenced to LWOP [citation]." (*People v. Franklin* (2016) 63 Cal.4th 261, 273-274 (*Franklin*).) Consistent with these principles, a juvenile offender sentenced to a term of 25 years to life or greater is entitled to a youth offender parole hearing (YOPH) after 25 years of incarceration. (§ 3051, subd. (b)(3).) Penal Code section 4801 requires the parole board to "give great weight to the diminished

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restitution nor did it set a date for his youthful offender parole hearing (YOPH). Appellant filed his notice of appeal on the same day. The trial court later recalled appellant's sentence and held a second hearing to address victim restitution. On December 20, 2018, the trial court found it was not necessary to set a date for appellant's YOPH. It imposed victim restitution of $2150, recalculated custody credits and reinstated the original sentence in all other respects. Appellant filed a second notice of appeal from the December 20, 2018 judgment. Our opinion refers to the judgment entered December 20, 2018.

culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (§ 4801, subd. (c).)

Appellant will be entitled to a YOPH during the 20th year of his incarceration, provided he does not commit an additional disqualifying crime. (§ 3051, subds. (b)(2), (h).) Because appellant has a meaningful opportunity for release by the time he is less than 45 years old, his "sentence is neither LWOP nor its functional equivalent." (*Franklin, supra*, 63 Cal.4th at p. 280.)

We reject appellant's contention that the trial court failed to give adequate mitigating weight to his youth and related factors. Prior to sentencing, the trial court held a *Franklin* hearing at which appellant was able to make a record of facts relevant to his future YOPH. In addition to receiving letters of support from friends and family, the trial court received a lengthy confidential psychological report prepared by a clinical psychologist and an academic article on adolescent brain development. The trial court also heard testimony from appellant's mother and a cousin relating to appellant's personal growth between the time of the offenses and the time of sentencing. Appellant's youth was adequately considered as a mitigating factor. There was no error. (*People v. Phung* (2018) 25 Cal.App.5th 741, 759.)

*People v. Contreras* (2018) 4 Cal.5th 349 (*Contreras*), is not to the contrary. There, juvenile offenders convicted of kidnapping and sexual offenses were sentenced to terms of 50 years to life and 58 years to life respectively under the One Strike law. Our Supreme Court held the sentences violate the Eighth

Amendment because they are the functional equivalent of LWOP. (*Id.* at p. 356.) The *Contreras* court explained, "What emerges from *Graham* [*v. Florida* (2010) 560 U.S. 48] is not a constitutional prohibition on harsh sentences for juveniles who commit serious crimes. (*Graham*, *supra*, 560 U.S. at p. 71 ['Society is entitled to impose severe sanctions on a juvenile nonhomicide offender to express its condemnation of the crime and to seek restoration of the moral imbalance caused by the offense[]'].) . . . But *Graham* 'does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society.' [Citation.) 'What the State must do . . . is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.' [Citation.]" (*Contreras*, *supra,* at p. 367, second brackets original.)

As we have explained, appellant is currently eligible for a YOPH within the next 20 years. Consequently, his sentence affords him a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." (*Graham*, *supra*, 560 U.S. at p. 75.)

*Disposition*

The judgment is affirmed.

NOT TO BE PUBLISHED

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

John F. McGregor, Judge

Superior Court County of Santa Barbara

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Emry J. Allen, under appointment by the Court of Appeal for Defendant and Appellant.

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