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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE LANCE B.

No. 1 CA-JV 21-0114
FILED 11-16-2021

Appeal from the Superior Court in Maricopa County
No. JV 204784
The Honorable Virginia L. Richter, Judge *Pro Tempore* (Retired)

AFFIRMED

COUNSEL

Maricopa County Public Advocate's Office, Mesa
By Suzanne W. Sanchez
Counsel for Appellant

Maricopa County Attorney's Office, Phoenix
By Amanda M. Parker
Counsel for Appellee

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MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Samuel A. Thumma and Chief Judge Kent E. Cattani joined.

C A M P B E L L, Judge:

¶1 Lance B. appeals his adjudication of delinquency and subsequent disposition. This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for the juvenile searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530 (App. 1999); *In re JV-117258*, 163 Ariz. 484, 485-88 (App. 1989). Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm the juvenile court’s orders.

BACKGROUND

¶2 Sally,¹ a minor, lived next door to Lance. Sally was friends with Lance’s younger sister, Rebecca, and would often go over to their house to play.

¶3 In August 2018, when Sally was seven and Lance was thirteen, Sally disclosed to her mother (Mother) that Lance had “raped” her. When Mother asked Sally to explain, she said that while visiting the neighbors, Lance had pulled her into the bathroom, pinned her to the ground, and tried to put his penis in her anus. The next day, Mother had a second conversation with Sally to confirm what had happened. Sally repeated her story, and Mother contacted the police.

¶4 Joy Lucero, a specialist in interviewing children, conducted a forensic interview of Sally. Sally told Lucero the same details she conveyed to Mother. Sally reported that she was alone with Lance when the assault began, explaining that his parents were not home and Rebecca had left the room to tend to a younger sibling. She also stated that at some point Lance let go of her hands. When that happened, she slapped him and was able to get away. She then left the bathroom and told Rebecca what had happened.

¹ Pseudonyms are used for all minors, except the juvenile, to protect their privacy.

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¶5 After the initial interview, Sally told Mother additional details about the assault, alleging vaginal penetration. Mother again contacted the police to convey the additional details, and in a second forensic interview, Sally disclosed the same additional information, adding that Lance threatened to hit her if she did not comply. She explained that she did not tell the whole story in the first interview because she was nervous and scared. After the interview, Sally underwent a medical exam to make sure there were no lasting physical injuries. The examiner did not notice anything abnormal but explained at trial that the lack of physical evidence did not rule out a sexual assault.

¶6 Lance was charged with three counts: Attempted Sexual Contact with a Minor, a Class 3 felony; Child Molestation, a Class 2 felony; and Sexual Contact with a Minor, a Class 2 felony. Sally testified at trial, recounting a story largely consistent with her prior disclosures.

¶7 During trial, Rebecca testified and denied saying that Sally told her anything about a sexual assault. Lance's mother also testified, denying Sally's claim that the children were ever left home alone. Lance testified on his own behalf, denying the allegations.

¶8 After the conclusion of trial, Lance moved for mistrial because the court had unintentionally reviewed materials not admitted into evidence. The court granted the motion, and the case was reassigned to a new judge. The parties agreed to forgo a second adjudication hearing and instead have the court rule based on the previous record, including the recorded testimony from the prior proceedings. After reviewing the record, the court adjudicated Lance delinquent on all three counts. The court placed Lance on probation, expiring ten days before his eighteenth birthday, and required him to pay restitution. Lance timely appealed.²

DISCUSSION

¶9 Substantial evidence, described above, supported the juvenile court's adjudication. The proceedings were conducted in compliance with the Arizona Rules of Procedure for the Juvenile Court. Lance was present

² On appeal from an adjudication of delinquency, we view the evidence in the light most favorable to upholding the court's judgment and resolve all reasonable inferences against the juvenile. *In re Jessi W.*, 214 Ariz. 334, 336, ¶ 11 (App. 2007).

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and represented by counsel at all stages of the proceedings and the disposition was within the court's discretion.

¶10 We note that the parties stipulated to an unorthodox method of having the evidence considered by the court, agreeing to have the court rule from the record instead of holding second adjudication hearing. There is no showing, however, that the stipulation was not knowingly, voluntarily and intelligently made by Lance. *See Pulliam v. Pulliam*, 139 Ariz. 343, 345, 678 (App. 1984) (“[C]ounsel may stipulate as to evidentiary matters such as the admission, exclusion or withdrawal of evidence from consideration.”). Moreover, the record included the recorded testimony of the prior adjudication hearing. Thus, Lance was present, consistent with his confrontation rights, when the witnesses testified in open court. Moreover, his ability to cross-examine the State's witnesses was not infringed. *Pinal Cnty. Juv. Action Nos. J-1123 & J-1124*, 147 Ariz. 302, 305 (App. 1985) (explaining that there is no violation of a juvenile's confrontation rights when “there is no curtailment of cross-examination”).

CONCLUSION

¶11 We have read and considered counsel's brief and searched the entire record for fundamental error. *See JV-117258*, 163 Ariz. at 488. We find none.

¶12 After the filing of this decision, defense counsel's obligations pertaining to Lance's representation in this appeal have ended. Defense counsel only need inform Lance of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984); Ariz. R.P. Juv. Ct. 107(A).



AMY M. WOOD • Clerk of the Court
FILED: AA