

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33559
W/kmb

_____AD3d_____

Argued - November 10, 2011

WILLIAM F. MASTRO, A.P.J.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2009-00566

DECISION & ORDER

The People, etc., respondent,
v Bill Williams, appellant.

(Ind. No. 5121/07)

Lynn W. L. Fahey, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Ruth E. Ross of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Ingram, J.), rendered January 7, 2009, convicting him of rape in the first degree, criminal sexual act in the first degree (4 counts), course of sexual conduct against a child in the second degree, sexual abuse in the second degree (11 counts), and endangering the welfare of a child (2 counts), after a nonjury trial, and sentencing him, as a persistent violent felony offender, to an indeterminate term of imprisonment of 23 years to life upon his conviction of rape in the first degree, 4 concurrent indeterminate terms of imprisonment of 23 years to life upon his convictions of the counts of criminal sexual act in the first degree, an indeterminate term of imprisonment of 20 years to life upon his conviction of course of sexual conduct against a child in the second degree, 11 concurrent definite terms of imprisonment of one year upon his convictions of the counts of sexual abuse in the second degree, and 2 concurrent definite terms of imprisonment of one year upon his convictions of the counts of endangering the welfare of a child, with the sentences for rape in the first degree, criminal sexual act in the first degree, and course of sexual conduct against a child in the second degree to run consecutively to each other, and all other terms to run concurrently, for an aggregate sentence of imprisonment of 66 years to life.

ORDERED that the judgment is modified, on the law and as a matter of discretion in the interest of justice, (1) by vacating the convictions of sexual abuse in the second degree under

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counts 8, 15, 16, and 17 of the indictment, vacating the sentences imposed on those counts of the indictment, and dismissing those counts of the indictment, and (2) by providing that the sentence imposed upon the defendant's conviction of course of sexual conduct against a child in the second degree shall run concurrently with all other sentences; as so modified, the judgment is affirmed.

As the People correctly concede on this appeal, the evidence adduced at trial was legally insufficient to support the defendant's convictions of sexual abuse in the second degree under counts 8 and 15 of the indictment. The People further correctly concede that two additional convictions of sexual abuse in the second degree must be reversed as multiplicitous (*see People v Alonzo*, 16 NY3d 267). Accordingly, we reverse the defendant's convictions for sexual abuse in the second degree under counts 8, 15, 16, and 17 of the indictment, vacate the sentences imposed thereon, and dismiss those counts of the indictment. The defendant's remaining contentions regarding multiplicitous and duplicitous counts and other alleged defects in the indictment are unpreserved for appellate review and, in any event, without merit (*id.*).

Contrary to the defendant's contention, the trial court providently exercised its discretion in admitting expert testimony regarding sexual abuse of children. While the hypothetical situation described by the prosecutor during the direct examination of the expert bore some similarities to the facts of this case, the expert did not offer an opinion with respect to the credibility of the complainants, and expressly disavowed any intention of rendering an opinion as to whether the complainants were victims of sexual abuse (*see People v Spicola*, 16 NY3d 441, 465-466, *cert denied* _____US_____, 132 S Ct 400 [2011]; *see also People v Rich*, 78 AD3d 1200, 1202; *see generally People v Carroll*, 95 NY2d 375, 387; *cf. People v Diaz*, 85 AD3d 1047, 1051).

The defendant was not deprived of the effective assistance of counsel, as the record amply supports the conclusion that he received meaningful representation (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137).

Although the defendant's crimes are serious, we find that his aggregate sentence of 66 years to life in prison is excessive under the circumstances. Accordingly, we modify the sentence to make the term imposed upon the defendant's conviction of course of sexual conduct against a child in the second degree run concurrently to all other counts, thereby effectively reducing his aggregate sentence to 46 years to life in prison.

The defendant's remaining contentions are without merit.

MASTRO, A.P.J., CHAMBERS, AUSTIN and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court