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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,	
Plaintiff and Respondent,	E034523
v.	(Super.Ct.No. BLF1985)
WILLIAM FRANCES MARTIN,	OPINION
Defendant and Appellant.	

APPEAL from the Superior Court of Riverside County. Arjuna (Vic) Saraydarian, Judge. Affirmed.

Appellate Defenders, Inc. and Anita P. Jog, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Gil P. Gonzalez, Supervising Deputy Attorney General, S.A. Tyler, and Daniel Rogers, Deputy Attorneys General, for Plaintiff and Respondent.

In 2001, defendant was charged with committing lewd and lascivious acts on a minor (Pen. Code, § 288, subd. (a))[1] based on conduct that occurred in 1989. Although the six-year limitations period (§ 800) had expired, the complaint was filed within one year of the victim's report pursuant to section 803, subdivision (g)(1), which provides in relevant part: "Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section . . . 288 . . . ." After unsuccessfully demurring on statute of limitations grounds, defendant pleaded guilty and received a sentence of six years.

On appeal, defendant argues that section 803, subdivision (g) is an unconstitutional ex post facto law because it revived a time-barred cause of action. Defendant relies on *Stogner v. California* (2003) 539 U.S. 607 [123 S.Ct. 2446] (*Stogner*), where the court found section 803, subdivision (g) to be an unconstitutional ex post facto law when used to revive a cause of action that had expired long before section 803, subdivision (g) was enacted. (*Stogner*, *supra*, 123 S.Ct. at pp. 2448-2449.) However, *Stogner* is properly limited to cases where section 803, subdivision (g) is used to revive a limitations period that expired before section 803, subdivision (g) was enacted. (*Id*. at pp. 2453 [noting that its decision does not affect laws extending

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[1] All further statutory references will be to the Penal Code unless otherwise indicated.

unexpired limitations periods], 2461 [noting that its holding does "not prevent the State from extending time limits for . . . prosecutions not yet time barred"]; *People v. Superior Court* (*German*) (2004) 116 Cal.App.4th 1192, 1194, 1196-1197; *People v. Renderos* (2003) 114 Cal.App.4th 961, 963, 965; *People v. Robertson* (2003) 113 Cal.App.4th 389, 393-394; see also *Minton v. State* (Ind.App. 2004) 802 N.E.2d 929, 933; *State v. Steele* (Ohio.App. 2003) 802 N.E.2d 1127, 1130.) Section 803, subdivision (g) was enacted in 1994, long before the limitations period expired on defendant's crimes. Thus, as applied to defendant, section 803, subdivision (g) is a constitutional extension of an unexpired limitations period.

On a related note, defendant argues that section 803, subdivision (g) violates due process. Borrowing heavily from Justice Kennard's dissent in *People v. Frazer* (1999) 21 Cal.4th 737, 776-782, defendant argues that it is fundamentally unfair for the state to renege on a promise that a defendant will be free from prosecution. But, as in *Stogner*, the unfairness identified by Justice Kennard was the unfairness of reviving time-barred prosecutions. (See *Stogner*, *supra*, 123 S.Ct. at p. 2461 [deeming it "unfair" to "retroactively withdraw[] a complete defense to prosecution after it has already attached"].) Because section 803, subdivision (g) was enacted before defendant's prosecution was time-barred, there was no unfairness.

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Ramirez
P.J.

/s/ Ward
J.