

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DJOLIBA NARCISSE,

Defendant and Appellant.

A142897

(San Mateo County  
Super. Ct. No. SC025987A)

Defendant Djoliba Narcisse appeals the denial of his petition to seal and destroy arrest records. Narcisse’s appointed appellate counsel filed a brief asking this court to conduct an independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel also informed Narcisse of his right to file a supplemental brief, but Narcisse did not file one. We dismiss the appeal as abandoned because Narcisse is not entitled to *Wende* review and has raised no claims of error.

**I. BACKGROUND**

In February 1991, Narcisse entered a plea of no contest to a charge of sale of a controlled substance (Health & Saf. Code, § 11352). In April 1991, the trial court placed Narcisse on probation for two years, with a condition that he serve six months in jail.<sup>1</sup>

---

<sup>1</sup> The complaint charging Narcisse was initially filed in municipal court (Mun. Ct. No. F207721); the change of plea document signed by Narcisse refers without elaboration to a different case number, reciting Narcisse’s understanding that “Case No. F-207643 will be dismissed”; and the case in which Narcisse entered his plea was certified to the superior court for sentencing (Super. Ct. No. SC025987A).

In August 2011, Narcisse filed a petition asking the court to (1) set aside his no contest plea and dismiss the action (Pen. Code,<sup>2</sup> § 1203.4) and (2) reduce his conviction to a misdemeanor (§ 17). In August 2012, the court granted Narcisse’s request for dismissal but denied his request to reduce his crime to a misdemeanor.

In February 2014, Narcisse, representing himself, filed a petition to seal and destroy arrest records pursuant to section 851.8. The court appointed counsel for Narcisse. Narcisse sought to replace his counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*), and the court held a *Marsden* hearing in June 2014. At the conclusion of that hearing, the court concluded Narcisse was not entitled to relief under section 851.8 and denied his *Marsden* motion. Narcisse appealed.<sup>3</sup>

## II. DISCUSSION

In *People v. Serrano* (2012) 211 Cal.App.4th 496, 503 (*Serrano*), the Sixth District Court of Appeal held that a defendant is entitled to *Wende* review in “a first appeal of right” from a criminal conviction but is not entitled to such review “in subsequent appeals, including collateral attacks on the judgment.” (See *People v. Kisling* (2015) 239 Cal.App.4th 288, 290 (*Kisling*)). The *Serrano* court concluded that such a subsequent appeal must be dismissed as abandoned if neither the defendant nor appointed counsel raises any claims of error. (*Serrano, supra*, at pp. 503–504.) *Serrano* involved an appeal from the denial of a motion to vacate a conviction under section 1016.5. (*Id.* at p. 499.) Like that appeal, Narcisse’s appeal of the denial of his petition to seal and destroy arrest records under section 851.8 is not a first appeal of right from a criminal conviction, and Narcisse is not entitled to *Wende* review.

The *Wende* procedure was fashioned to protect an indigent defendant’s federal constitutional right to effective assistance of counsel in the first appeal of right from a conviction. (*People v. Kelly* (2006) 40 Cal.4th 106, 117–118 (*Kelly*); *Serrano, supra*,

---

<sup>2</sup> All statutory references are to the Penal Code unless otherwise stated.

<sup>3</sup> On May 18, 2015, Narcisse, proceeding in propria persona, filed a petition for a writ of habeas corpus (No. A145145), challenging the validity of his 1991 conviction. We address that petition in a separate order filed concurrently herewith.

211 Cal.App.4th at pp. 499–500.) The federal Constitution does not require states to provide such an appeal (*In re Sade C.* (1996) 13 Cal.4th 952, 966 (*Sade C.*)), but if a state provides one, the state must ensure that indigent defendants are provided with effective assistance of counsel. (See *Douglas v. California* (1963) 372 U.S. 353, 355 (*Douglas*); *Kelly, supra*, at pp. 117–118; see also *Pennsylvania v. Finley* (1987) 481 U.S. 551, 554 (*Finley*).)

In *Anders v. California* (1967) 386 U.S. 738, 741, 744 (*Anders*), the United States Supreme Court held that effective assistance of counsel cannot be assured when court-appointed appellate counsel is allowed simply to move to withdraw when unable to identify any meritorious issue. Instead, assuring effective assistance requires that appointed counsel at least submit “a brief referring to anything in the record that might arguably support the appeal” to facilitate an independent review by the court. (*Id.* at pp. 744–745.) In *Wende*, our Supreme Court adopted a “modified procedure” to fulfill the requirements of *Anders*. (*Kelly, supra*, 40 Cal.4th at pp. 117–118; see *Wende, supra*, 25 Cal.3d at pp. 441–442.)

The United States Supreme Court has refused to extend *Anders* to appeals of decisions in postconviction proceedings because it has never recognized a constitutional right to effective assistance of counsel in those appeals: “The holding in *Anders* was based on the underlying constitutional right to appointed counsel established in [*Douglas*]. . . . *Anders* established a prophylactic framework that is relevant when, and only when, a litigant has a previously established constitutional right to counsel. [¶] . . . We think that since a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal on direct review of his conviction, *a fortiori*, he has no such right when attacking a conviction that has long since become final upon exhaustion of the appellate process.” (*Finley, supra*, 481 U.S. at pp. 554–555.) Applying *Finley*, our Supreme Court has held that *Anders* does not require independent review in appeals from conservatorship proceedings or dependency proceedings because such appeals are not first appeals of right from criminal convictions. (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 535–537; *Sade C., supra*, 13 Cal.4th at pp. 982–983.) It is thus settled

that *Anders* does not require independent review in appeals other than first appeals of right from criminal convictions.

We note that, by statute, a party whose request for destruction of arrest records is denied may appeal that determination. (§ 851.8, subd. (p).) But this does not entitle such a party to independent review under *Anders*. Under *Finley*, the determinative factor is whether the defendant has a federal constitutional right to effective assistance of counsel in a particular appeal, not whether the defendant has a state-created right to appeal or right to counsel. (*Finley, supra*, 481 U.S. at p. 556; see *Serrano, supra*, 211 Cal.App.4th at pp. 500–501.)

Narcisse’s appointed counsel notified Narcisse of his right to file a supplemental brief raising any substantive issues. He has not done so. Because neither he nor his counsel has raised any claims of error, we dismiss the appeal as abandoned. (See *Serrano, supra*, 211 Cal.App.4th at pp. 503–504; see also *Kisling, supra*, 239 Cal.App.4th at p. 292 & fn. 3.)

### **III. DISPOSITION**

The appeal is dismissed.

---

Streeter, J.

We concur:

---

Ruvolo, P.J.

---

Reardon, J.

A142897/*People v. Narcisse*