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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
DENNIS WILLIAM HALE,  
Defendant and Appellant.

A145158  
(Solano County  
Super. Ct. No. FCR301832)

Defendant Dennis Hale appeals an order discharging him from parole and placing him on postrelease community supervision (PRCS). Hale’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 Hale of his right to file a supplemental brief, but Hale did not file one. We dismiss the appeal as abandoned because Hale is not entitled to *Wende* review and has raised no claims of error.

**I. BACKGROUND**

On February 25, 2010, Hale entered a plea of no contest to a charge of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, former subd. (a)(1)).<sup>1</sup> He was also convicted by plea of unlawful sexual intercourse (§ 261.5, subd. (c)) on June 25, 2010. On July 23, 2010, the court sentenced Hale for these two convictions, imposing concurrent terms of three years’ imprisonment. The abstract of

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

judgment incorrectly describes Hale’s assault conviction under section 245, former subdivision (a)(1) as a conviction of assault with a deadly weapon involving the infliction of great bodily injury (listed on the abstract as “ASSAULT W/DEADLY WPN—GBI”), rather than as a conviction of assault by means of force likely to produce great bodily injury.<sup>2</sup>

Hale was released on parole on October 5, 2011. On April 4, 2014, the district attorney filed a petition to revoke Hale’s parole based on violations of his parole terms. Hale admitted the violations, and the trial court reinstated parole with the condition that Hale serve an additional county jail term.

The district attorney filed another petition to revoke Hale’s parole on October 29, 2014. At a hearing on that date, the court, the district attorney and the public defender agreed that, based on his offenses of conviction, Hale had been mistakenly placed on parole.<sup>3</sup> The court stated Hale might be appropriately placed on PRCS instead. Hale was

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<sup>2</sup> In 2010, when Hale entered his plea and was sentenced, section 245, former subdivision (a)(1) encompassed both assault with a deadly weapon and assault by means of force likely to produce great bodily injury. (§ 245, former subd. (a)(1); see Stats. 2004, ch. 494, § 1, p. 4040 [specifying punishment for “[a]ny person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm *or* by any means of force likely to produce great bodily injury”], italics added.) In the current version of section 245, the latter offense is contained in subdivision (a)(4).

<sup>3</sup> Section 3000.08 provides that persons who have served prison terms for specified crimes (including those statutorily designated as serious or violent felonies) are subject to parole supervision, while persons who have served prison terms for other crimes are instead subject to PRCS. (§ 3000.08, subds. (a)–(b).) The parties agreed in the trial court that Hale’s actual offense of conviction (assault by means of force likely to produce great bodily injury) did not qualify him for parole supervision, and that he was mistakenly released on parole supervision due to the incorrect description of his offense on the abstract of judgment.

Subdivision (l) of section 3000.08 currently provides that a person who is released on parole supervision generally is to remain on parole supervision even if it is later determined he should have been released on PRCS. In the trial court, the parties agreed that this portion of section 3000.08, which took effect after Hale’s release on parole (see Stats. 2013, ch. 32, §§ 8-9, No. 4 West’s Cal. Legis. Service, pp. 1160, 1162), was not retroactive and thus did not provide a basis for keeping him on parole.

released, and the hearing was continued. At a hearing in January 2015, the court stated it had modified the abstract of judgment to reflect Hale's actual offenses of conviction.

Also in January 2015, Hale filed a motion to be discharged from parole. He argued that his offenses of conviction did not make him eligible for parole under section 3000.08, and that the court had authority to order him discharged from parole but lacked authority to convert his parole to PRCS.

In a written response, the district attorney agreed Hale had been improperly placed on parole supervision, but argued that the court lacked authority to discharge him from parole, and that Hale instead needed to file a habeas corpus petition to obtain that relief. The district attorney argued alternatively that, if the court discharged Hale from parole, it should place him on PRCS.

At a hearing on April 1, 2015, Hale was not present and was subject to an outstanding bench warrant. After hearing argument, the court ordered Hale discharged from parole and placed on PRCS.

At a hearing on April 10, 2015, Hale was present. The court restated its order that Hale be discharged from parole and placed on PRCS, with a tentative expiration date of August 21, 2016, subject to further calculation by the parties. Hale filed a notice of appeal on May 8, 2015, challenging the order placing him on PRCS and the court's calculation of the expiration date of PRCS.

In a letter submitted to this court on August 27, 2015, Hale's appellate counsel stated that, on July 9, 2015, the trial court discharged Hale from any supervision. Appellate counsel thereafter filed a *Wende* brief.

## **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. Martinez* (2016) 246 Cal.App.4th 1226, 1238; *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, Hale’s appeal of the trial court’s order discharging him from parole and placing him on PRCS is not a first appeal of right from a criminal conviction, and Hale 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*, 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; *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.

Hale asserts the court’s order placing him on PRCS is appealable under section 1237, subdivision (b), which authorizes a defendant to appeal “any order made after judgment, affecting the substantial rights of the party.” But, assuming the order is appealable pursuant to statute, this does not entitle Hale 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 also *Serrano, supra*, 211 Cal.App.4th at pp. 500–501.)

Hale’s appointed counsel notified Hale 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.

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Streeter, J.

We concur:

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Reardon, Acting P.J.

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Rivera, J.