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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL F. O'RILEY,

Defendant and Appellant.

D066428

(Super. Ct. No. SCE292080)

APPEAL from a judgment of the Superior Court of San Diego County, Louis R. Hanoian, Judge. Appeal dismissed.

Christian C. Buckley, under appointment by the Court of Appeal for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This appeal is taken from a judgment of the superior court determining that Michael F. O'Riley is a mentally disordered offender (MDO) and counsel has filed a brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v.*

*California* (1967) 386 U.S. 738 (*Anders*). Because we conclude that *Wende/Anders* procedures do not apply to appeals in MDO commitment cases, we dismiss the appeal.

#### FACTUAL AND PROCEDURAL BACKGROUND

O'Riley suffers from bipolar or schizoaffective and antisocial personality disorders and has been medically treated for his conditions since the 1990s. In June 2009, O'Riley was charged with robbery and other offenses arising out of an incident in which he robbed a Starbucks store while armed with a hatchet and several knives. Shortly thereafter, he was determined to be incompetent to stand trial and committed to Patton State Hospital for treatment, including an involuntary psychiatric medication regimen.

By February 2010 O'Riley's competency was restored; he then pled guilty to robbery and was sentenced to time served and placed on three years' probation. Upon his release, O'Riley failed to report to probation and in April, the court summarily revoked probation and issued a bench warrant for his arrest. O'Riley was thereafter arrested and admitted that he had possessed a weapon in violation of his probation; the court formally revoked his probation and sentenced him to two years in prison.

During his incarceration, O'Riley was charged with several rules violations, including assault on a peace officer resulting in the use of force and fighting. In June 2011, he was admitted to Atascadero State Hospital (Atascadero) and in December 2013, he was transferred to the California Medical Facility at Vacaville.<sup>1</sup>

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<sup>1</sup> O'Riley's opening brief indicates that after his admission to Atascadero, he was at some point released from custody but later reincarcerated after pleading guilty to burglary in July 2013. The current record does not reflect these events.

When O'Riley was certified for parole in January 2014, the Department of Corrections designated him as a MDO and he was committed to Atascadero as a condition of his parole under Penal Code section 2962. (All further statutory references are to the Penal Code.) During this commitment, O'Riley continued to show active psychiatric symptoms, including auditory hallucinations and grandiose delusions, and he made death threats against hospital staff.

With O'Riley's parole set to expire in September 2014, the district attorney's office filed a petition seeking his involuntary commitment as a MDO. O'Riley denied the allegations of the petition and waived his right to a jury trial.

At the July 2014 bench trial, the district attorney presented a forensic psychologist's report detailing O'Riley's treatment history and behavioral performance during his most recent commitment at Atascadero (which included his threatening confrontations with hospital staff) and opining that O'Riley met the criteria for an extended commitment.<sup>2</sup> The district attorney also called a second psychologist, who testified that O'Riley suffered from schizoaffective disorder and antisocial personality disorder, which made him behave in aggressive ways and entertain grandiose thinking during episodes, and that because of O'Riley's belief that he was not mentally ill and his past noncompliance, it was very unlikely that O'Riley would continue treatment or his medication regimen if released. Although the psychologist thought that O'Riley could be

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<sup>2</sup> O'Riley refused to see the psychologist, so the report was based on her review of his records.

safely treated in a conditional release program (CONREP), O'Riley had refused that option.

O'Riley testified on his own behalf, indicating that he did not suffer from mental illness, did not need to take medication and would not accept a CONREP placement. He also explained that the medications he was taking were "killing" him, that he just needed to "get some good beer and some sleep" and that his family was a driving force in this country and posed a substantial threat to the country.

The court found beyond a reasonable doubt that O'Riley suffered from a severe mental disorder, that the disorder was not in remission and could not be kept in remission without continued treatment and that because of the disorder and his unwillingness to comply with treatment, O'Riley presented a substantial danger of physical harm to others. It granted the petition to extend O'Riley's commitment to Atascadero for a one-year term beginning on September 16, 2014, his maximum commitment date.

O'Riley appeals. The appellate brief filed on his behalf indicates that his counsel has been unable to identify any argument for reversal and asks this court to review the record for error as mandated by *Wende*. We invited O'Riley to file a brief on his own behalf but he has not done so.

## DISCUSSION

*People v. Taylor* (2008) 160 Cal.App.4th 304 considered whether *Wende/Anders* procedures were applicable to MDO commitment cases and concluded they were not. (See *In re Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 538 (*Ben C.*) [holding that appeals from Lanterman-Petris-Short Act (Welf. & Inst. Code, §§

5000 et seq.) conservatorship proceedings were not subject to *Wende/Anders* review].) In accordance with these authorities, we decline to apply *Wende/Anders* procedures to this MDO case. Because the appellant has failed to file a brief identifying any reasonably arguable appellate challenge to the order of recommitment, we dismiss the appeal. (*Ben C.*, *supra*, at p. 544; see generally *People v. Serrano* (2012) 211 Cal.App.4th 496, 500-502.)

DISPOSITION

The appeal is dismissed.

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O'ROURKE, J.

WE CONCUR:

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NARES, Acting P. J.

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HALLER, J.