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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY RAY McFARLAND,

Defendant and Appellant.

H037711

(Santa Clara County

Super. Ct. No. BB619412)

Defendant Anthony McFarland appeals from a judgment in a special proceeding where he was found incompetent to stand trial. Defendant was ordered committed to the State Department of Mental Health for placement in a locked psychiatric facility for care and treatment. Defendant's appointed counsel has filed an opening brief in which no issues are raised. Counsel asks this court for an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

On May 21, 2012, defendant was notified of his right to file a supplemental brief within 30 days. Subsequently, we granted defendant an extension of time to file his brief. That time has passed and we have not received any response from defendant.

When an indigent defendant files his first appeal in a criminal case, as a matter of right, he is entitled to have the court independently review the record when appointed counsel files a brief indicating that he or she has found no arguable issues. (*Anders v. California* (1967) 386 U.S. 738, 739, 744; *Wende, supra*, 25 Cal.3d 436; *Conservatorship*

of *Ben C.* (2007) 40 Cal.4th 529, 535 (*Ben C.*.) This right to independent review by the appellate court does not extend to judgments that are civil in nature, even when those judgments result in the deprivation of a liberty interest. (See *Ben C.*, *supra*, 40 Cal.4th at pp. 535, 537, 544 [no *Wende* review in Lanterman-Petris-Short conservatorship appeals]; *In re Sade C.* (1996) 13 Cal.4th 952, 959 [no *Wende* review in appeals from orders affecting parental custody in juvenile dependency cases]; *People v. Taylor* (2008) 160 Cal.App.4th 304, 308, 313 [*Wende* review not required in appeal from order declaring the appellant a mentally disordered offender]; *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1425 [no *Wende* review of order denying outpatient status pursuant to petition to restore competency under Penal Code section 1026.2].)

The underlying order declaring defendant incompetent to stand trial is a judgment in a special proceeding. (*People v. Lawley* (2002) 27 Cal.4th 102, 131 [although it arises in the context of a criminal trial, a competency hearing is a special proceeding, governed generally by the rules applicable to civil proceedings]; *People v. Stanley* (1995) 10 Cal.4th 764, 807 [a proceeding to determine the mental competence of a criminal defendant to stand trial pursuant to Penal Code section 1368 is a special proceeding civil *in nature*]; *People v. Masterson* (1994) 8 Cal.4th 965, 969-970 [a proceeding to determine competency to stand trial is neither a criminal action nor a civil action; rather, it is a special proceeding].)¹ As such, it is akin to the civil judgments noted above, to which *Wende* does not apply.

In assessing the risk that the absence of *Anders/Wende* review would result in the erroneous resolution of competency appeals, we recognize there are numerous procedural protections against unwarranted commitments, including on-going supervision by the trial court. (Pen. Code, § 1368 et seq.) The trial court's ongoing supervision of the defendant provides the defendant with "a more immediate avenue for modification than

¹ Once the court declares a doubt as to the mental competence of the defendant and orders a hearing to determine the defendant's mental state, all criminal proceedings are suspended. (Pen. Code, § 1368, subd. (c).)

that afforded by the more cumbersome appellate review." (*Ben C., supra*, 40 Cal.4th at p. 543.)

In the instant case, appointed appellate counsel filed a brief setting out the applicable facts and law, and informed the court that she found no arguable issues to be pursued on appeal. As noted, this court invited defendant to submit additional briefing and state any grounds of appeal he may wish this court to consider. Defendant has failed so to do. Accordingly, we dismiss the appeal.

Disposition

The within appeal is dismissed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.