

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ASARE FORDJOUR,

Defendant and Appellant.

H037996

(Santa Clara County  
Super. Ct. No. 197498)

ORDER MODIFYING OPINION  
AND DENYING REHEARING

NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on December 20, 2012, be modified as follows:

1. On page 3, line 4, the sentence beginning “Thirty days” and ending “from defendant” is deleted and the following sentence is inserted along with footnote 2:

We received nothing from defendant within the 30 days allotted for responding to our letter.<sup>2</sup>

<sup>2</sup>After we filed the original opinion, defendant filed a petition for rehearing. In that petition, defendant declares that he never received this court’s letter, and contends that he does not wish to abandon his appeal. He asks that we consider the letter attached to the petition for rehearing and retain the appeal. We have reviewed the letter submitted by the defendant and find that it fails to raise any arguable issues on appeal sufficient to warrant our retention of the appeal

There is no change in the judgment.

Appellant's petition for rehearing is denied.

Dated:

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.

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Defendant Charles Asare Fordjour appeals from an order entered denying his motion to withdraw his guilty plea. The grounds for the motion were that the prosecutor had breached the plea agreement, that the judge who took his plea failed to comply with Penal Code section 1016.5 which requires specific advisements about immigration consequences, that his speedy trial rights were violated, and that he was sentenced in violation of *People v. Arbuckle* (1978) 22 Cal.3d 749. The trial court held a hearing to consider the motion and in a written order denied it in its entirety. This timely appeal ensued.

This is the fourth appeal in “what has become an epic post-conviction procedural saga.” (*People v. Fordjour* (Apr. 25, 2011, H034568) [nonpub. opn.] [p.1]) (*Fordjour III*.) On July 3, 1997, defendant was charged with one count of obtaining money by false pretenses (Pen. Code, § 532). He pled guilty to that crime on September 22, 1997. On February 5, 1999, defendant filed a pro-per motion to withdraw his guilty plea. In his

motion he argued that his attorney, provided ineffective assistance of counsel by failing to adequately advise him about the immigration consequences of his plea. While the motion was pending, defendant filed motions pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, and *Faretta v. California* (1975) 422 U.S. 806. (*Fordjour III, supra*, H034568 [p. 3].) Defendant's counsel saw no merit in the motion to withdraw the plea, so the court sentenced defendant to three years in state prison without considering his *Marsden, Faretta* motions or his pro-per motion to withdraw his plea. (*Fordjour III, supra*, H034568 [p. 4].)

Defendant appealed the judgment of conviction. In case number H027293 this Court reversed the judgment and instructed the superior court to rule on defendant's *Marsden* and *Faretta* motions. (*Fordjour III, supra*, H034568 [p. 4].) On remand the trial court denied both motions. Defendant appealed a second time. In *People v. Fordjour* (Oct. 3, 2007, H030466) [nonpub. opn.] this Court affirmed the denial of the *Marsden* motion but reversed the denial of the *Faretta* motion. The superior court was ordered to grant the *Faretta* motion and allow defendant to present his motion to withdraw his plea. (*Fordjour III, supra*, H034568 [pp. 4-5].) On remand, the superior court granted defendant's motion to represent himself and scheduled a hearing on the motion to withdraw his plea. (*Id.* [pp. 6-7].) Before the motion could be heard, defendant was transferred to the custody of the Immigration and Customs Enforcement Agency (ICE). (*Id.* [p. 11].) At the behest of the prosecutor the court reinstated the judgment without making any effort to secure Fordjour's presence so he could present his motion to withdraw his plea. (*Id.* [pp. 11-13].) Defendant appealed for a third time. On April 25, 2011 this Court reversed once again and ordered the superior court to attempt to secure Fordjour's presence so he could present his motion to withdraw his plea. (*Id.* [p. 34].) Finally, after the third remand, the trial court considered and denied the motion to withdraw the plea.

On appeal, this court appointed counsel to represent defendant. Appointed counsel filed a *Wende*<sup>1</sup> brief, stating the facts and procedural background, but raising no specific issues. We notified defendant of his right to file a supplemental brief on his own behalf. Thirty days have elapsed and we have received nothing from defendant. Even though the defendant filed the motion to withdraw his plea prior to entry of judgment, *Wende* review is only available in a first appeal of right. This is defendant's fourth appeal. Therefore, he is not entitled to the benefit of *Wende* review, and we must dismiss the appeal. (*People v. Serrano* (Nov. 28, 2012, H036373) \_\_\_ CalApp.4th \_\_\_ [2012 WL 5936024].)

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<sup>1</sup> *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

**DISPOSITION**

The appeal is dismissed as abandoned.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.