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

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDRICK LAMONT JOHNSON,

Defendant and Appellant.

H038674

(Monterey County

Super. Ct. No. SS110094)

In 2011, defendant Fredrick Lamont Johnson pled guilty to one felony count of transportation of methamphetamine (Health & Saf. Code, §11379, subd. (a)) and one misdemeanor count of possession of controlled substance paraphernalia. (Health & Saf. Code, § 11364.) He also admitted a strike prior and two prison priors. (Pen. Code, §§ 1170.12, subd. (c)(1), 667.5, subd. (b).) After striking the prior serious felony conviction pursuant to Penal Code section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504), the trial court sentenced defendant to serve the upper term of four years for the felony plus two consecutive one year terms for the prison priors. The court ordered the sentence suspended and placed defendant on probation for three years. On February 15, 2012, a notice of violation of probation was filed based on a new offense. On June 6, 2012, defendant admitted the probation violation. On August 8, 2012, the court imposed the previously suspended sentence of six years, and awarded defendant 223 days of credit plus 110 days of good time credit. Defendant filed

a notice of appeal on August 9, 2012, and an amended notice of appeal on October 9, 2012.

On appeal, we appointed counsel to represent defendant in this court. Appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) which states the case and the facts but raises no specific issues. *Wende* review is only available in a first appeal of right. (*People v. Serrano* (2012) 211 Cal.App.4th 496, 501 (*Serrano*)). Because defendant's appeal is from an order after judgment, and not a first appeal of right, he is not entitled to *Wende* review. (*Ibid.*) Therefore, we will proceed with this appeal pursuant to the standard we enunciated in *Serrano*.

Pursuant to *Serrano*, on March 14, 2013 we notified defendant of his right to submit written argument in his own behalf within 30 days. On April 22, 2013, we received a letter from defendant. In his letter defendant contends that his sentence was cruel and unusual and should be modified pursuant to the Realignment Act. Nothing in defendant's letter raises any arguable issues on appeal.¹ Therefore, we decline to retain the case, and will dismiss the appeal as abandoned. (*Serrano.*, *supra*, 211 Cal.App.4th at pp. 503-504.)

¹ We note that in conjunction with his *Serrano* letter, defendant submitted a "Petition for Modification of Sentence" to this Court. Such a petition is properly filed in the Monterey Superior Court. We have, therefore, forwarded defendant's petition to the superior court for consideration and disposition.

DISPOSITION

The appeal is dismissed as abandoned.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.