

COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIFTH APPELLATE DISTRICT

People v. N.D.

F079695 · No. F079695 · Decided October 14, 2020

SUMMARY

The California Court of Appeal dismisses an appeal from a mental health commitment order under the Lanterman-Petris-Short Act because the order expired and the appeal is moot. The court also holds that Anders/Wende procedures are not required in such appeals, citing Conservatorship of Ben C.

CASE DETAILS

COURT	Court of Appeal of the State of California, Fifth Appellate District
WRITING FOR THE COURT	Levy, Acting P.J.; Peña, J.; Meehan, J.
JURISDICTION	California
DECIDED	October 14, 2020
DOCKET	F079695
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a judgment of the Superior Court of Kern County ordering N.D. to undergo additional treatment for up to 180 days under Welfare and Institutions Code section 5300. N.D. appealed, and appointed counsel filed an Anders/Wende brief requesting independent review. Respondent moved to dismiss the appeal as moot.
STANDARD OF REVIEW	Not applicable; the court addresses mootness and the applicability of Anders/Wende procedures.
PRECEDENTIAL VALUE	Unpublished
PARTIES	N.D. v. The People

TOPICS

- mootness
- appellate procedure
- health law

PRACTICE AREAS

- Mental Health Law
- Civil Commitment
- Appellate Practice

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed as moot because the 180-day commitment order expired before the opening brief was filed.
2. Whether the court should exercise discretion to conduct Anders/Wende review despite the holding in Conservatorship of Ben C.

HOLDINGS

1. The appeal is dismissed as moot because the 180-day commitment order expired before the opening brief was filed, so any ruling would have no practical impact.
2. The court declines to exercise its discretion to retain the appeal because the appeal is moot.

KEY QUOTATIONS

“A case is moot when any ruling by this court can have no practical impact or provide the parties effectual relief” (888)

“Nothing is served by requiring a written opinion when the court does not actually decide any contested issues.” (544)

FACTUAL BACKGROUND

N.D. has a history of mental health issues. On June 12, 2019, he was admitted to Kern Medical Center on an involuntary 72-hour hold under section 5150. On June 15, 2019, he was certified for an additional 14 days of treatment as a danger to himself and others and gravely disabled under section 5250. On June 27, 2019, Dr. David Weinstein petitioned for an order for additional treatment not to exceed 180 days under section 5300. After a three-day jury trial, the court found the conditions existed and ordered N.D. to undergo treatment for up to 180 days.

PROCEDURAL HISTORY

N.D. was involuntarily committed under section 5150, then certified for 14 days under section 5250, then a petition for 180-day treatment under section 5300 was filed. After a three-day jury trial, the court ordered the 180-day commitment. N.D. appealed. The commitment order expired on January 21, 2020, before the opening brief was filed in March 2020.

DISPOSITION

dismissed

CASES CITED

- Anders v. California (1967) 386 U.S. 738
- People v. Wende (1979) 25 Cal.3d 436
- Conservatorship of Ben C. (2007) 40 Cal.4th 529

- Woodward Park Homeowners Assn. v. Garreks, Inc. (2000) 77 Cal.App.4th 880

OPINION

PER CURIAM.

Filed 10/14/20 P. v. N.D. CA5 NOT TO BE PUBLISHED IN THE 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 FIFTH APPELLATE
DISTRICT THE PEOPLE, F079695 Plaintiff and Respondent, (Super. Ct. No. MI-6628) v. N.D.,
OPINION Defendant and Appellant. THE COURT* APPEAL from a judgment of the Superior
Court of Kern County. John D. Oglesby, Judge. Rudy Kraft, under appointment by the Court of
Appeal, for Defendant and Appellant.

Margo A. Raison, County Counsel, and Kathleen Rivera, Deputy County Counsel, for Plaintiff and
Respondent. -ooOoo- Appellant N.D. has a history of mental health issues. On June 12, 2019,
N.D. was admitted to Kern Medical Center on an involuntary 72-hour hold. (See Welf. & Inst.
*Before Levy, Acting P.J., Peña, J. and Meehan, J. Code, § 5150, subd. (a); all further statutory
references are to this code.)

On June 15, 2019, he was certified for an additional 14 days of treatment for being a danger to
himself and others, and because he was considered to be “gravely disabled.” (See § 5250, subd.
(a).) On June 27, 2019, Dr. David Weinstein of the Kern Medical Center petitioned the Kern
Superior Court for “an order requiring [N.D.] to undergo an additional period of treatment, not to
exceed 180 days, pursuant to [section 5300].” On July 25, 2019, following a three-day jury trial,
the prerequisite conditions for further confinement and treatment pursuant to section 5300 were
found to exist.

On the same day, the trial court issued an order remanding N.D. to an appropriate facility “for
further intensive treatment for a period not to exceed 180 days from the date of [the] order.” A
deputy public defender filed a notice of appeal on N.D.’s behalf and requested the appointment of
appellate counsel.

On or about March 9, 2020, N.D.’s appointed counsel filed the appellant’s opening brief (AOB). In
the AOB, counsel “requests that this court independently review the entire record on appeal”
pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*) and *People v. Wende* (1979) 25
Cal.3d 436 (*Wende*). Respondent opposes this request and asks for the appeal to be dismissed.

We will grant the request for dismissal. The California Supreme Court has used the phrase “Anders/Wende procedures” to refer to the Court of Appeal’s independent review of an appellate record if and when “appointed counsel represents he or she has found no arguable issues.” (Conservatorship of Ben C. (2007) 40 Cal.4th 529, 535 (Ben C.).)

The Ben C. opinion holds that Anders/Wende procedures are not required in appeals taken from proceedings under the Lanterman-Petris-Short Act (§ 5000 et seq.). (Ben C., supra, at p. 537.) In such cases, if appellate counsel informs the reviewing court he or she has found no arguable issues to be pursued, the court may dismiss the appeal. (Id. at p. 544.) “Nothing is served by requiring a written opinion when the court does not actually decide any contested issues.” (Ibid.)

2. N.D.’s counsel expresses his disagreement with the holding of Ben C., but he concedes it is binding precedent. However, relying on a footnote in the Ben C. majority opinion, counsel argues we should conduct Anders/Wende procedures as a matter of discretion. (See Ben C., supra, 40 Cal.4th at p. 544, fn. 7 [“The court may, of course, find it appropriate to retain the appeal”].)

Counsel has also attested to informing N.D. of his right to file a supplemental brief in this matter, which N.D. has not done. (See id. at p. 544, fn. 6.) Although this court has discretion to “retain the appeal” (see Ben C., supra, 40 Cal.4th at p. 544, fn. 7), we decline to do so. One reason is because the order from which the appeal is taken expired 180 days after it was issued, i.e., on or about January 21, 2020.

As noted above, the AOB was filed in March 2020. Therefore, any potentially arguable issues became moot before the AOB was even filed. (See Woodward Park Homeowners Assn. v. Garreks, Inc. (2000) 77 Cal.App.4th 880, 888 [“A case is moot when any ruling by this court can have no practical impact or provide the parties effectual relief”].) **DISPOSITION** The appeal is dismissed.

3.