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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA COLOMBINI,

Defendant and Appellant.

A129164

(Alameda County  
Super. Ct. No. RM08379322)

Following a jury trial, the court extended appellant Joshua Colombini's commitment to the Department of Mental Health for treatment as a mentally disordered offender (MDO) pursuant to Penal Code sections 2970 and 2972. Appointed appellate counsel filed an opening brief raising no issues and asks this court to conduct a review of the record and disposition of the case in accordance with the procedures outlined in *Conservatorship of Ben C.* (2007) 40 Cal.4th 529 and *People v. Taylor* (2008) 160 Cal.App.4th 304. We do so, and dismiss the appeal.

**BACKGROUND**

Appellant was determined to be an MDO in 2009, following his 2003 conviction for assault with a deadly weapon or by means of force likely to commit great bodily injury. On March 11, 2010, the Alameda County District Attorney filed a petition to extend appellant's MDO commitment for a year, until May 14, 2011. The petition alleged that appellant continued to represent a substantial danger of physical harm to others by reason of a severe mental disorder that was not in remission or could not be kept in remission without treatment.

Atascadero State Hospital forensic psychologist Joe DeBruin, Ph.D., testified on behalf of the People and opined that defendant meets the criteria for extended MDO commitment. A psychiatric technician and a police officer at Coalinga State Hospital each testified that appellant had recently assaulted other patients. Called by the People, appellant testified about his diagnosis, treatment and the altercations at Coalinga State Hospital. The defense did not call any witnesses.

The jury found the allegations of the extended commitment petition true and the court ordered appellant's commitment extended. Appellant filed a timely appeal.

### **ANALYSIS**

In *Ben. C.*, the California Supreme Court concluded that “the *Anders/Wende* procedures are not required in appeals from LPS conservatorship proceedings. The conservatee is not a criminal defendant and the proceedings are civil in nature.” (*Conservatorship of Ben C.*, *supra*, 40 Cal.4th at p. 537.) “If appointed counsel in a conservatorship appeal finds no arguable issues, counsel need not and should not file a motion to withdraw. Instead, counsel should (1) inform the court he or she has found no arguable issues to be pursued on appeal; and (2) file a brief setting out the applicable facts and the law. Such a brief will provide an adequate basis for the court to dismiss the appeal on its own motion. Dismissal of an appeal raising no arguable issues is not inconsistent with article VI, section 14 of the California Constitution requiring that decisions determining causes ‘be in writing with reasons stated.’ Nothing is served by requiring a written opinion when the court does not actually decide any contested issues.” (*Id.* at p. 544, fns. omitted.) The court noted, however, that the appellate court “may, of course, find it appropriate to retain the appeal.” (*Id.* at p. 544, fn. 7.) The following year, *People v. Taylor*, *supra*, 160 Cal.App.4th 304 held that the procedures identified in *Ben C.* also apply to MDO commitments.

Appellant's counsel has submitted a brief requesting the level of review prescribed for appeals from MDO commitments in *Taylor* and *Ben C.* Counsel has advised appellant that he may personally file a supplemental written argument on his own behalf. Appellant has not done so. Appellant has also been advised of his right to request that

counsel be relieved. We have reviewed the trial court proceedings and conclude the appeal presents no arguable issues for appeal. We therefore dismiss the appeal.

**DISPOSITION**

The appeal is dismissed.

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Siggins, J.

We concur:

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McGuiness, P.J.

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Pollak, J.