

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION TWO

TYRONE MICHAEL LUCIANO,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E057381

(Super.Ct.No. RIF086374)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Bernard Schwartz, Judge. Petition granted.

Tyrone Michael Luciano, in pro. per., for Petitioner.

No appearance for Respondent.

Paul E. Zellerbach, District Attorney, and Ivy B. Fitzpatrick, Deputy District Attorney, for Real Party in Interest.

The court has read and considered the petition for writ of mandate and the informal response filed by the real party in interest. Real party in interest concedes petitioner is entitled to the appointment of an attorney. Given this concession, this court may grant relief without issuance of an alternative writ or an order to show cause. (Code Civ. Proc., § 1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178-179.) Accordingly, the petition for writ of mandate is granted.

Penal Code section 1405, subdivision (b)(1), requires that a court appoint an attorney to represent an indigent convicted person to prepare a motion for performance of DNA testing. The appropriateness of filing a motion for DNA testing is not to be determined when the person requests the appointment of counsel. (*In re Kinnamon* (2005) 133 Cal.App.4th 316.) Therefore, we must conclude that the superior court erred in denying petitioner's request for appointment of counsel.

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to vacate its previous denial and to appoint counsel solely for the purpose of (1) investigating the appropriateness of DNA testing as to petitioner's conviction; and (2) filing a motion for DNA testing if counsel's investigation reveals that such testing would be appropriate under Penal Code section 1405.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.