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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

TOMARCO CLIFTON PARKER,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E059241

(Super.Ct.Nos. RIF1207102 &  
RIF1204717)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. David A. Gunn,  
Judge. Petition granted.

James M. Crawford for Petitioner.

No appearance for Respondent.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, William M. Wood and Meagan J. Beale, Deputy Attorneys General, for Real Party in Interest.

Petitioner seeks a writ of mandate challenging respondent court's order denying his request for a certificate of probable cause. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).) We have reviewed the petition and the opposition thereto, which we conclude adequately address the issues raised by the petition. We have determined that the trial court abused its discretion by denying the application for a certificate of probable cause. Because the resolution of the matter involves the application of settled principles of law, we issue a peremptory writ of mandate granting petitioner the requested relief.

*(Palma v. U. S. Industrial Fasteners, Inc. (1984) 36 Cal.3d 171, 178.)*

In order to appeal from a judgment of conviction in the superior court following a plea of guilty or nolo contendere, a defendant must ordinarily comply with the provisions of Penal Code section 1237.5, requiring a certificate of probable cause from the trial court and a written statement by defendant showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.

In this case, the superior court denied petitioner's request for a certificate of probable cause so that he now seeks a writ of mandate to direct the lower court to issue a certificate of probable cause. Review by writ of mandate is, indeed, the appropriate remedy. (See *In re Brown* (1973) 9 Cal.3d 679, 683, disapproved on another point in *People v. Mendez* (1999) 19 Cal.4th 1084, 1097, fn. 7.)

Penal Code section 1237.5 requires the trial court to certify any arguably meritorious appeal to the appellate courts. Thus, if the statement submitted by the defendant in accordance with Penal Code section 1237.5 presents any cognizable issue for appeal that is not clearly frivolous and vexatious, the trial court abuses its discretion if it fails to issue a certificate of probable cause. (See *In re Brown*, *supra*, 9 Cal.3d at p. 683, fn. 6; *People v. Holland* (1978) 23 Cal.3d 77, 84-85, disapproved on another point in *People v. Mendez*, *supra*, 19 Cal.4th at p. 1097, fn. 7.)

The trial court is empowered to review the statement of the grounds of the appeal to preclude those appeals that raise no issues cognizable after a guilty plea, or raise cognizable issues that are clearly frivolous and vexatious. It is not the trial court's responsibility to determine if there was an error in the proceedings. The trial court's sole objective is to eliminate those appeals having no possible legal basis by refusing to issue a certificate of probable cause.

Petitioner asserts that at the time he entered his guilty pleas, he was advised inaccurately that he would receive a sentence of 16 months, doubled to 32 months. The sentence actually imposed was for two years, doubled to four years.

Petitioner's claim finds some support in the record. Thus, while we do not determine the merits of defendant's contention, it is not clearly frivolous. Accordingly, we must conclude that the trial court abused its discretion in failing to issue a certificate of probable cause.

DISPOSITION

Let a peremptory writ of mandate issue directing the respondent superior court to vacate its order denying petitioner's application for certificate of probable cause.

Respondent court shall issue a new order granting the application. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 8.490(b)(3).)

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.

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HOLLENHORST  
Acting P. J.

We concur:

McKINSTER  
J.

KING  
J.