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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re

HERIBERTO G. IBARRA,

On Habeas Corpus.

F064096

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus. Michael G. Bush, Judge.

Douglas F. Moffat, for Petitioner.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Rebecca Whitfield Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, A.P.J., Kane, J., and Detjen, J.

Petitioner seeks leave to file a belated notice of appeal. The petition reflects that on September 29, 2011, pursuant to a plea of nolo contendere to one count of violation of Health and Safety Code section 11351, petitioner was sentenced to two years in state prison. Due to trial counsel's oversight, as set forth in counsel's declaration, a notice of appeal was not filed until December 3, 2011. The document was rejected by the trial court as untimely. The instant petition followed.

By an order filed on January 24, 2012, this court granted the Attorney General leave to file an informal response to the merits of the petition. On February 7, 2012, the Attorney General filed a response urging this court to grant petitioner's requests.

DISCUSSION

A notice of appeal and a statement in support of a certificate of probable cause must be filed within 60 days of the date of the rendition of the judgment. (Penal Code § 1237.5; Cal. Rules of Court, rules 8.304, 8.308.) Although a criminal defendant has the burden of timely filing a notice of appeal, the burden may be delegated to trial counsel. (*In re Fountain* (1977) 74 Cal.App.3d 715, 719.) "A criminal defendant seeking relief from his default in failing to file a timely notice of appeal is entitled to such relief, absent waiver or estoppel due to delay, if he made a timely request of his trial attorney to file a notice of appeal, thereby placing the attorney under a duty to file it, instruct the defendant how to file it, or secure other counsel for him [citation]; or if the attorney made a timely promise to file a notice of appeal, thereby invoking reasonable reliance on the part of the defendant [citation]." (*People v. Sanchez* (1969) 1 Cal.3d 496, 500.)

DISPOSITION

Petitioner is entitled to relief. Petitioner is granted leave to file a request for a certificate of probable cause and a notice of appeal to be filed on or before March 9, 2012, in Kern County Superior Court No. BF130654A. Let a writ of habeas corpus issue directing the Clerk of the Kern County Superior Court, if the Clerk receives the request and the notice of appeal on or before March 9, 2012, to file the request and the notice of

appeal, to treat the request and the notice of appeal as being timely filed, and to process the request and the appeal in accordance with the applicable rules of the California Rules of Court.