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

In re

ANTHONY LAWS,

On Habeas Corpus.

F064201

(Kern Co. Sup. Ct. No. HC012461A)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus. John S. Somers,
Judge.

Anthony Laws in pro. per., for Petitioner.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney
General, Julie A. Hokans and Ryan B. McCarroll, Deputy Attorneys General, for
Respondent.

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* Wiseman, A.P.J., Cornell, J., and Detjen, J.

Petitioner pleaded guilty to one count of second-degree robbery on May 18, 2010. Petitioner claims he was not competent at the time of the plea and that original trial counsel did not present a defense. Petitioner asserts that he directed his appointed trial counsel, Joseph Whittington, to file an appeal based on the denial of his motion to withdraw his plea, but counsel failed to do so.

By an order filed on March 2, 2012, this court granted the Attorney General leave to file an informal response to the merits of the petition. On April 30, 2012, the Attorney General filed an informal response stating respondent does not oppose this court's granting petitioner leave to file a belated notice of appeal and a request for a certificate of probable cause.

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. (Pen. 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 June 18, 2012, in Kern County Superior Court No. SF015496A. Let a writ of habeas corpus issue

directing the Kern County Superior Court, if the court receives the request and the notice of appeal on or before June 18, 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.

This court takes no position on the merits of the request for a certificate of probable cause.