

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

In re

ANTHONY LAWS,

On Habeas Corpus.

F065405

(Kern Co. Sup. Ct. No. SF015496A)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus.

Anthony Laws, in pro. per., for Petitioner.

No appearance for Respondent.

-ooOoo-

* Levy, Acting P.J., Poochigian, 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 opinion filed on May 25, 2012, this court granted petitioner leave to file a belated request for a certificate of probable cause and a belated notice of appeal by June 18, 2012. (*In re Anthony Laws* (May 25, 2012, F064201) [nonpub. opn.]) Petitioner claims he did not receive a copy of this court's opinion granting him relief until June 19, 2012. The instant petition is a renewal of his previous request.

By an order filed on August 29, 2012, this court granted the Attorney General leave to file an informal response to the merits of the petition. The order provided "Failure to file a response may be deemed to constitute a consent that, for the reasons stated in the Attorney General's informal response filed in case No. F064201, relief limited to granting petitioner leave to file a belated request for a certificate of probable cause and a belated notice of appeal should again be granted without further proceedings." No response was filed.

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 October 23, 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 October 23, 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.