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

In re

MARIO DULANEY,

On Habeas Corpus.

F071199

(Fresno Super Ct. No. F13904091)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for writ of habeas corpus.

Mario Dulaney, in pro. per., for Petitioner.

No appearance for Respondent.

-ooOoo-

Mario Dulaney (petitioner) seeks permission to file a belated appeal by way of a petition for writ of habeas corpus. We grant petitioner's request based on his trial counsel's admission that petitioner timely asked him to file an appeal on petitioner's behalf and he failed to follow through on filing the notice of appeal. Petitioner's additional habeas claims are denied without prejudice for consideration in the appeal.

* Before Gomes, A.P.J., Detjen, J., and Franson, J.

STATEMENT OF FACTS

The petition in the above entitled action seeks a belated appeal from petitioner's felony conviction in Fresno County Superior Court action No. F13904091. The petition contains a declaration of trial counsel, which asserts under penalty of perjury, that petitioner timely requested that an appeal be filed. The declaration also asserts that trial counsel timely prepared a notice of appeal which he placed in the "filing box at the Fresno County Public Defender's Office." Two days later, trial counsel left the employment of the Fresno County Public Defender's Office. The declaration further asserts:

"I was unaware that the Notice of Appeal was never filed, and because of this, no further action was ever taken in this matter."

On May 14, 2015, this court filed an order granting the Attorney General leave to file an informal response to said petition. The order provided that "[T]he failure to file an informal response will be deemed agreement that petitioner should be granted a belated appeal." No informal response was filed.

DISCUSSION

"(b) It shall be the duty of every attorney representing an indigent defendant in any criminal, juvenile court, or civil commitment case to execute and file on his or her client's behalf a timely notice of appeal ... when directed to do so by a defendant having a right to appeal." (Pen. Code, § 1240.1, subd. (b).)

Pursuant to said declaration, this court's order of May 14, 2015, and the failure of the Attorney General to file a response, this court concludes that petitioner constructively filed a notice of appeal within the 60-day time limit. (Pen. Code, § 1240.1, subd. (b); 6 Witkin, Cal. Criminal Law (4th ed. 2012) Criminal Appeal, § 99.)

DISPOSITION

The Clerk/Administrator of this court is authorized to send a copy of the “Notice of Appeal,” which is attached to the petition, to the Clerk of the Fresno County Superior Court.

Let a writ of habeas corpus issue directing the Clerk of the Fresno County Superior Court, within 45 days of this order, to file said notice of appeal in Fresno County Superior Court action No. F13904091, to deem said notice of appeal to be timely filed, and to proceed to prepare the normal record on appeal in accordance with this opinion and the applicable rules of the California Rules of Court.

Insofar as the petition requests relief in addition to that granted above, said petition is denied.