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

In re

ROBERT BELFIELD,

On Habeas Corpus.

F071405

(Stanislaus Super Ct. No. 1434688)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for writ of habeas corpus.

Robert Belfield, in pro. per., for Petitioner.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Respondent.

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Robert Belfield (petitioner) seeks permission to file a belated notice of appeal by way of a petition for writ of habeas corpus, to challenge his convictions for two counts of first degree robbery, first degree burglary, and two counts of assault with a firearm. (Resp. p. 2.)

* Before Gomes, A.P.J., Kane, J., and Smith, J.

STATEMENT OF THE FACTS

Larry T. Cole represented petitioner at trial. In his petition, petitioner stated that after being sentenced on December 15, 2014, he spoke with Mr. Cole on the phone, sometime in December 2014 or January 2015. When petitioner asked Mr. Cole if he had filed an appeal, Mr. Cole indicated that he did file an appeal.

On March 27, 2015, petitioner contacted the Central California Appellate Program to check the status of his appeal and learned his appeal had not been filed. Petitioner filed the instant petition for writ of habeas corpus seeking leave to file a belated notice of appeal on April 21, 2015. Mr. Cole declined this court's request to respond to the instant petition.

On July 15, 2015, this court issued an order granting the Attorney General leave to file a response. The Attorney General filed an informal response indicating it would not oppose petitioner's request to file a belated notice of appeal.

DISCUSSION

A notice of appeal must be filed within 60 days after the judgment or order being appealed to confer appellate jurisdiction on this court. (Cal. Rules of Court, rule 8.308(a).) An appealable judgment in a criminal case is generally rendered at the time of sentencing. (Pen. Code, § 1237, subd. (a).) Based on petitioner's December 15, 2014, sentencing, a timely notice of appeal must have been filed by February 13, 2015.

A criminal defendant has the burden of timely filing a notice of appeal, but that burden may be delegated to counsel. (*In re Fountain* (1977) 74 Cal.App.3d 715, 719.) When applicable, the doctrine of constructive filing allows an untimely filed notice of appeal to be deemed timely if the defendant relied upon the promise of trial counsel to timely file the notice on the defendant's behalf, and displayed diligence in seeing that his attorney has discharged this responsibility. (*In re Benoit* (1973) 10 Cal.3d 72.) The

doctrine protects defendants who have been “lulled into a false sense of security” by counsel’s promise. (*Id.* at p. 87.) Reasonable doubts as to the veracity of a petitioner’s allegations in these matters are to be resolved in favor of the petitioner to protect the right of appeal rather than forfeit it on technical grounds. (Cf. *People v. Rodriguez* (1971) 4 Cal.3d 73, 79; see *In re Benoit, supra*, 10 Cal.3d at p. 89.)

In petitioning this court, petitioner declares under penalty of perjury that he asked his trial attorney whether an appeal was filed sometime in December 2014, or January 2015, within the 60-day filing window. His attorney assured him an appeal had been filed. Petitioner states that he only discovered an appeal was not filed on March 27, 2015, after contacting the Central California Appellate Program. Petitioner’s attorney declined to respond to the allegation. In its informal response and based on a review of the petition, the Attorney General does not oppose petitioner’s request to file a belated appeal.

Based on petitioner’s statement that he was assured by his attorney that an appeal had been filed within the 60-day filing period, and the absence of contradicting statements from petitioner’s attorney or opposition from the Attorney General, we find petitioner relied on his counsel’s promise to file an appeal, and diligently pursued the appeal by promptly filing a petition for writ of habeas corpus once he discovered no appeal had been filed. Therefore, we grant petitioner’s request to file a belated notice of appeal.

DISPOSITION

Petitioner is granted leave to file a notice of appeal on or before 30 days from the date of this opinion, in Stanislaus County Superior Court Case No. 1434688.

Let a writ of habeas corpus issue directing the Clerk of the Stanislaus County Superior Court, if the court receives the notice of appeal on or before 30 days from the

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