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

In re

ANDY FINDLAY,

On Habeas Corpus.

F072842

(Kings Super Ct. No. 14CM2583)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for writ of habeas corpus.

Andy Findlay, in pro. per., for Petitioner.

Kamala D. Harris, Attorney General, Gerald A. Engler and Michael P. Farrell, Assistant Attorneys General, Kathleen A. McKenna and Gregory B. Wagner, Deputy Attorneys General, for Respondent.

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Petitioner, Andy Findlay, seeks permission to file a belated notice of appeal by way of a petition for writ of habeas corpus. This court grants petitioner's request.

On June 1, 2015, petitioner was sentenced to a prison term of six years four months for arson and burglary.

* Before Hill, P.J., Kane, J., and Smith, J.

To perfect an appeal, a notice of appeal must be filed within 60 days of the judgment or order being appealed from. (Cal. Rules of Court, rule 8.308.) An appealable judgment in a criminal case is generally rendered at the time of sentencing. Based on petitioner's sentence, imposed on June 1, 2015, a notice of appeal was required to be filed no later than July 31, 2015.

On November 16, 2015, petitioner filed a petition for writ of habeas corpus in this court. The request was denied without prejudice for failure to provide appropriate court records supporting the petition.

Petitioner filed the instant petition on December 11, 2015. In this petition, petitioner provides a declaration stating that he verbally asked his trial counsel to file a notice of appeal on the date he was sentenced, that counsel told petitioner he would visit him in the county jail, that petitioner made repeated attempts to contact counsel but received no further communication from him, that petitioner sent a notice of appeal to the Kings County Superior Court on October 15, 2015, and that the clerk returned it to him because the 60-day period for filing it had lapsed. The declaration is declared to be true under penalty of perjury.

On December 17, 2015, this court issued an order granting the Attorney General leave to file an informal response. The Attorney General filed an informal response on December 31, 2015.

DISCUSSION

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. The doctrine protects defendants who have been "lulled into a false sense of security" by defense counsel's conduct. (*In re Benoit* (1973) 10 Cal.3d 72, 86-89.)

The Attorney General concedes that:

“Reasonable doubt as to the veracity of a petitioner’s allegations in these matters is to be resolved in favor of the petitioner to protect the right of appeal rather than forfeit it on technical grounds.”

In this case, petitioner’s declaration is sufficient to establish that he made a constructive filing within the 60-day limit of filing a notice of appeal and made reasonable efforts thereafter to perfect an appeal.

The Attorney General forthrightly states that she would not oppose granting petitioner a belated appeal.

DISPOSITION

The Clerk/Administrator of this court is authorized to send a copy of the notice of appeal attached to the petition in the above entitled action to the Clerk of the Kings County Superior Court.

Let a writ of habeas corpus issue directing the Clerk of the Kings County Superior Court to file said notice of appeal in Kings County Superior Court case No. 14CM2583, to deem said notice to be timely filed, and to proceed with the preparation of and filing in this court the record on appeal in accordance with the applicable rules of the California Rules of Court.

Petitioner’s additional habeas claims are denied without prejudice for consideration in the appeal.