

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

DAKAR MANUEL ORTIZ,

On Habeas Corpus.

F073094

(Fresno Super. Ct. No. F14902196)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for writ of habeas corpus.

Dakar Manuel Ortiz, in pro. per., for Petitioner.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Brian G. Smiley and Max Feinstat, Deputy Attorneys General, for Respondent.

-ooOoo-

Petitioner seeks leave to file a belated notice of appeal from his May 20, 2015, conviction for assault with a semiautomatic firearm, use of a firearm and infliction of great bodily injury, pursuant to a plea of no contest.

On January 26, 2016, petitioner filed the instant petition for writ of habeas corpus seeking leave to file a belated notice of appeal and claiming trial counsel was ineffective for failing to file an appeal on his behalf as requested. On February 11, 2016, this court sent a letter to trial counsel affording counsel the opportunity to respond to the petition.

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

Counsel did not file a response. On March 17, 2016, this court issued an order granting the Attorney General leave to file a response to the petition. On April 6, 2016, the Attorney General filed a response stating that “Defendant’s allegations appear to be sufficient to make a prima facie showing for relief from default under the Sixth Amendment right to counsel.”

A notice of appeal 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 notice of appeal and a certificate of probable cause, if appropriate, on or before 30 days from the date of this opinion, in Fresno County Superior Court case No. F14902196.

Let a writ of habeas corpus issue directing the Clerk of the Fresno County Superior Court, if the court receives the notice of appeal and the certificate for probable cause on or before 30 days from the date of this opinion, to treat the notice of appeal and the certificate as being timely filed, and to process the appeal in accordance with the applicable rules of the California Rules of Court.