Filed 8/8/13 In re Bowman CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re WENDY BOWMAN on Habeas Corpus.	G048610 (Super. Ct. Nos. 11NF0920 & 10NF3346) O P I N I O N

Original proceedings; petition for a writ of habeas corpus to file a late notice of appeal. Petition granted.

Appellate Defenders, Inc., and Patricia Ihara for petitioner.

Kamala D. Harris, Attorney General, and Julie L. Garland, Assistant Attorney General, for Respondent.

* * *

THE COURT:*

Petitioner, Wendy Bowman seeks relief from the failure to file a timely notice of appeal in case No. 11NF0920. The petition is granted.

Following a jury trial, petitioner was found guilty of receiving stolen property. In a bifurcated proceeding, the court found true a prior strike and an on bail enhancement. On July 20, 2012, petitioner was sentenced on case No. 11NF0920, and case No. 10NF3346 [a guilty plea] to 6 years in state prison.

Petitioner was represented at trial in case No. 11NF0920 by public defender Catherine Learned. After the jury returned its verdict, petitioner told Learned that she wanted to appeal the verdict in this case, and believed that Learned would do whatever was needed to "start" her appeal. However, prior to petitioner's sentencing hearing, her family retained Attorney George Vincent Vargas to represent her. Petitioner believed that Vargas was standing-in for Learned. However, Vargas believed that the scope of his representation was limited to sentencing hearing matters only. After petitioner was sentenced, Vargas never discussed with her about filing an appeal.

Learned never communicated to Vargas that petitioner desired to file an appeal in her case. After petitioner went to state prison, she tried to reach Learned by mail and by phone to find out the status of her appeal, but Learned failed to respond to her queries.

The principle of constructive filing of a notice of appeal should be applied in situations in which a criminal defendant requests trial counsel to file a notice of appeal on his behalf, and counsel fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) This is because a trial attorney who has been asked to file a notice of appeal on behalf of a client has a duty to file a proper notice of appeal, or tell the client how to file it himself. In this case, both of petitioner's attorneys either individually, or in

---

* Before Moore Acting P.J., Aronson, J., and Ikola, J.

conjunction with one another failed her. Learned failed to advise Vargas about petitioner's desire to file an appeal, and then failed to respond to petitioner's requests regarding the status of her appeal. Vargas failed to consult with petitioner about an appeal, failed to advise her regarding the filing of a proper notice of appeal in accordance with the law, and failed to properly advise her how to do so.

The Attorney General does not oppose petitioner's request for relief to file a late notice of appeal without the issuance of an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 728.)

The petition for relief is granted. On petitioner's behalf, Appellate Defenders, Inc. is directed to prepare and file a notice of appeal in Orange County case No. 11NF0920, and the Clerk of the Superior Court is directed to accept the notice for filing if presented within 30 days of this opinion becoming final. Further proceedings, including the preparation of the records on appeal, are to be conducted according to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith.