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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re CARLOS DOMINGUEZ

on Habeas Corpus.

G049448

(Super. Ct. Nos. M10302,
M11011)

O P I N I O N

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

Rudy Kraft for Petitioner.

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

THE COURT:*

Petitioner Carlos Dominguez seeks relief from the failure to timely file a notice of appeal. The petition is granted.

Petitioner is currently confined to Coalinga State Hospital in Coalinga, California as a sexually violent predator.

After a jury trial he was found to be a sexually violent predator (SVP) on August 21, 2013. Trial counsel filed a notice of appeal on September 9, 2013, in case No. M12143. However, the trial in this case involved a consolidated trial on three separate SVP petitions, which also included case Nos. M10302 and M11011. Trial counsel however, failed to include case Nos. M10302 and M11011 in the notice of appeal that he filed on September 9, 2013.

In trial counsel's declaration, he acknowledged he told petitioner he would file a notice of appeal on his behalf, and he did so. However, when counsel filed the notice of appeal he mistakenly believed that the notice of appeal he was filing under case No. M12143, was sufficient to appeal petitioner's SVP commitment in its entirety, or would also include case Nos. M10302 and M11011. Counsel further acknowledged he did not realize he had made a mistake by listing only the most recent of petitioner's three superior court SVP cases on the notice of appeal. Had he realized that he needed to list all three case numbers on the notice of appeal he would have done so.

The principle of constructive filing of the notice of appeal should be applied in situations where a criminal defendant has asked counsel to file a notice of appeal on his or her behalf and counsel fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) A trial attorney who has been asked to file a notice of appeal on behalf of a client has a duty either to timely file a proper notice of appeal, or advise the client how to file it. Here, petitioner asked trial counsel to file a notice of

* Before O'Leary, P. J., Moore, J., and Ikola, J.

appeal. While counsel agreed to prepare and file it, he did so incorrectly by failing to include the other two case numbers. Petitioner's reliance on trial counsel's promise to timely file a correct notice of appeal was reasonable and thus entitles him to the relief requested.

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 is granted. On petitioner's behalf, attorney Rudy Kraft is directed to prepare and file notices of appeal in Orange County Superior Court case numbers M10302 and M11011, and the Clerk of the Superior Court is directed to accept the notices for filing if presented within 30 days of this opinion becoming final. Further proceedings, including the preparation of the record on appeal, are to be conducted according to the applicable rules of court. In the interest of justice, this opinion is deemed final as to this court forthwith.