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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MAURO VENTURA

on Habeas Corpus.

G051128

(Super. Ct. No. 13NF0162)

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.

Frank Ospino, Public Defender, Sharon Petrosino, Chief Deputy Public Defender, Mark S. Brown and Jacob Degrave, Deputy Public Defenders for Petitioner.

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

* * *

THE COURT: *

* Before Rylaarsdam, Acting P. J., Aronson, J., and Thompson, J.

Petitioner, Mauro Ventura, seeks relief from the failure to file a timely notice of appeal from his criminal conviction. The petition is granted.

Mauro Ventura was convicted following a jury trial and sentenced to an indeterminate term of 30 years to life plus 14 years. In his declaration, trial counsel states that after Ventura was sentenced on July 18, 2014, he advised Ventura that he would file a notice of appeal on his behalf. According to counsel's declaration, when he realized that he inadvertently failed to file a timely notice of appeal, he attempted to file a notice of appeal on his client's behalf, but the Orange County Superior Court marked the notice of appeal "Received 11/21/2014, but not filed," and transmitted a letter to Ventura explaining the last day to file a timely notice of appeal was September 16, 2014.

The Attorney General does not oppose granting the petition without the issuance of an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 728.)

The principle of constructive filing of the notice of appeal should be applied in situations where 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. (Pen. Code § 1240.1, subd. (b).) Ventura's reasonable reliance on the promise of trial counsel to file a timely notice of appeal entitles him to the relief requested.

The petition is granted. On Ventura's behalf, Attorney Jacob Degrave is directed to prepare and file a notice of appeal in Orange County Superior Court case No. 13NF0162, and the clerk of the superior court is directed to accept the notice for filing if presented within 20 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, the opinion in this matter is deemed final forthwith.