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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re RAMIRO HURTARTE

on Habeas Corpus.

G051311

(Super. Ct. No. 13NF0502)

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.

Appellate Defenders Inc., Leslie A. Rose for Petitioner.

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

THE COURT:*

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

Petitioner is currently confined to the County Jail in Irvine.

After a jury trial, petitioner was found guilty of Vehicle Code sections 23152, subdivision (a) (count one) and 23152, subdivision (b) (count two). On September 12, 2014, he was sentenced to the midterm of two years on count one and the sentence on count two was stayed pursuant to Penal Code section 654. Petitioner contends that he does not recall being advised by the court or by his retained attorney, Mr. Glen I. Sandler, about his right to appeal.

On September 12, 2014, petitioner was transferred from the Santa Ana main jail in Orange County to the jail in Irvine. While in the Irvine jail, petitioner found out about his right to appeal from his fellow inmates. He then asked his fiancé to contact Sandler about filing a notice of appeal on his behalf. Petitioner's fiancé attempted to contact Sandler on several occasions for the purpose of requesting that he file a notice of appeal on petitioner's behalf, but Sandler never returned her calls.

In a letter to Appellate Defenders, Inc., Sandler responded that he did not recall discussing any issues involving the filing of an appeal with petitioner, and that he did not recall whether or not the trial court advised petitioner regarding his rights to appeal. He further advised that petitioner's fiancé called his office and inquired about "withdrawing his [petitioner's] plea." Sandler responded that he called back and left a voice message.

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*

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

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 to advise the client how to file it. Here, petitioner through his fiancé made several attempts requesting that trial counsel file a timely notice of appeal on his behalf. However, counsel declined to respond to the request of petitioner's fiancé to file a notice of appeal on his behalf.

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 Leslie Ann Rose is directed to prepare and file a notice of appeal in Orange County Superior Court case No. 13NF0502 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 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.