

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

on Habeas Corpus.

G051865

(Super. Ct. No. 11NF0263)

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., and Anna M. Jauregui-Law for Petitioner.

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

*

*

*

THE COURT: *

Petitioner, Arthur Lee Lucas II, seeks relief from the failure to file a timely notice of appeal. The petition is granted.

Following a jury trial, Arthur Lee Lucas II, was convicted of assault with a deadly weapon and sentenced to 9 years in prison. The judgment was affirmed on appeal, but the matter was remanded to the trial court for resentencing. On November 8, 2013, Lucas was resentenced to a total of nine years.

According to counsel's declaration, she was not Lucas' original trial attorney and only represented Lucas at the resentencing hearing. According to counsel, she does not recall discussing an appeal with Lucas, she does not recall Lucas asking her to file an appeal, she does not recall Lucas ever stating he wanted to appeal his sentence, and she does not recall telling Lucas she would file a notice of appeal on his behalf.

According to Lucas' declaration, at the resentencing hearing the court advised him of his right to appeal. Approximately a month after the hearing, Lucas states he called counsel and advised her that he wanted to file an appeal. According to Lucas, he asked counsel to file a notice of appeal on his behalf and she said that she would. Lucas' declaration states that after waiting for something about his appeal to arrive in the mail, he finally wrote to counsel and called her several times, but he never heard back from her. According to Lucas, he always intended to appeal his resentence and he relied on counsel to file a notice of appeal on his behalf. Lucas states, "Had I known that she was not going to file the notice of appeal I would have filed a notice on time."

The principle of constructive filing of the notice of appeal should be applied in situations where trial counsel advises a criminal defendant that he, or she, will file a notice of appeal on their client's behalf, and then fails to do so in accordance with

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

the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) This is because a trial attorney is under a duty to either file the notice of appeal, or tell the client how to file it him or herself. In this case, Lucas relied on trial counsel to file a timely notice of appeal on his behalf. His reasonable reliance on counsel to file a timely notice of appeal entitles him to the relief requested.

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 petition is granted. On petitioner's behalf, Appellate Defenders, Inc. is directed to prepare and file a notice of appeal in Orange County case No. 11NF0263, 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, the opinion in this matter is deemed final as to this court forthwith.