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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ALAN NAVASCA SERINO

on Habeas Corpus.

G053075

(Super. Ct. No. 12NF0194)

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 Anita P. Jog for Petitioner.

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

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THE COURT: *

Petitioner, Alan Navasca Serino, seeks relief from the failure to file a timely notice of appeal. The petition is granted.

Alan Navasca Serino was convicted after a jury trial of two counts of driving under the influence and sentenced to two years in state prison. In his declaration, trial counsel states he knew Serino wanted to appeal his conviction and he intended to file a notice of appeal on his behalf. According to counsel, he inadvertently miscalendared the last day to file the notice of appeal, and after he attempted to file the notice of appeal, he received a letter from superior court stating Serino's notice of appeal had been marked "Received October 7, 2015, but not filed" because the last day to file a timely notice of appeal was October 6, 2015.

The Attorney General has advised this court that she did not oppose granting the petition without the issuance of an order to show. (*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 that counsel 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 an 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).) Serino'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 Serino's behalf, Attorney Anita P. Jog is directed to prepare and file a notice of appeal in Orange County Superior Court case No. 12NF0194, 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

* Before Rylaarsdam, Acting P. J., Fybel, J., and Ikola, J.

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.