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No. 215 SSM 12
The People &c.,
Respondent,
v.
Richard Perales,
Appellant.

Submitted by appellant pro se.
Submitted by Edward D. Saslaw, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed and defendant's application for a writ of error coram nobis seeking leave to file a late notice of appeal granted and the case remitted to the Appellate Division for further proceedings in accordance with this memorandum.

At his sentencing proceeding, defendant made a challenge to his guilty plea. The court denied the challenge, noting to defense counsel that he could file an appeal on defendant's behalf. Defense counsel failed to do so, despite letters from defendant inquiring as to the status of the appeal. After not hearing from defense counsel on the issue, defendant made an inquiry with the Appellate Division and learned that a notice of appeal was never filed. Defendant, acting pro se, attempted to get permission to file a late notice of appeal but was procedurally barred from doing so because the one-year time period set by CPL 460.30 had passed. He also made a pro se CPL 440 motion, which was denied on the ground that it was procedurally barred due to the fact that the issue was apparent from the record.

Under these circumstances, defendant met his entitlement to the relief sought(see People v Syville, 15 NY3d 391 [2010]).

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, defendant's coram nobis application granted and case remitted to the Appellate Division, Second Department, for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

Decided September 16, 2014