

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF KENTUCKY
 SOUTHERN DIVISION
 at LONDON

CASE NO. 6:06-CV-101-KKC

EDSEL EUGENE HALE,

PETITIONER

v.

OPINION AND ORDER

LARRY CHANDLER,
 WARDEN,

RESPONDENT

* * * * *

This matter is before the Court on the Motion of Petitioner, Edsel E. Hale [R. 38] for Order/Judgment Nunc Pro Tunc. On September 28, 2009, the Court issued an Opinion and Order and Judgment dismissing Petitioner's Habeas Corpus petition [R. 33, 34]. Petitioner failed to timely file a notice of appeal. However, Petitioner now seeks relief from this Court claiming that he did not receive a copy of the Court's Judgment and was thus unable to timely file a notice of appeal.

While the Court finds it odd that Petitioner receives some legal mail but claims not to receive other mail that is associated with filing deadlines [R. 19], the Court has insufficient information at this time to rule on Petitioner's motion. In order to give Petitioner's motion proper consideration, the Court **HEREBY ORDERS** as follows:

- (1) Respondent is **ORDERED** to respond to Petitioner's motion by **September 23, 2010** and address whether the time for Petitioner to file an appeal should be reopened in light of Federal Rule of Appellate Procedure 4(a)(6).¹ Respondent

¹ Federal Rule of Appellate Procedure 4(a)(6) provides that:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied: (A) the court finds that the moving

should specifically address the exhibits attached to Petitioner's motion including the document signed by Marc Ablove. Further, Respondent should explain the prison's system for recording the receipt of inmate mail and identify whether Mr. Ablove is a prison inmate or state employee.

- (2) Any reply submitted by Petitioner should explain why he is entitled to relief in light of Federal Rule of Appellate Procedure 4(a)(6).

This 26th day of August, 2010.



Signed By:

Karen K. Caldwell *KKC*

United States District Judge

party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry; (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and (C) the court finds that no party would be prejudiced.