

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

DONALD MINNIFIELD,)	
)	
Petitioner,)	
)	CIVIL ACTION NO.
v.)	2:05cv1066-MHT
)	(WO)
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

OPINION AND ORDER

On May 25, 2006 (Doc. no. 2), the magistrate judge entered a recommendation that the 28 U.S.C. § 2255 habeas petition filed by petitioner Donald Minnifield should be denied because Minnifield failed to obtain the requisite order from the Eleventh Circuit Court of Appeals authorizing this court to consider a successive § 2255 petition. There being no objections filed to the recommendation, the court entered an order adopting the recommendation on June 16, 2006 (Doc. no. 3), and entered a final judgment on the same day (Doc. no. 4).

On June 19, 2006 (Doc. no. 6), Minnifield filed a motion for extension of time to file objections to the May 25 recommendation.¹ In this motion, Minnifield states that he never received a copy of the magistrate judge's recommendation and that, consequently, he was denied the opportunity to file timely objections to the recommendation. Accordingly, he requests an extension of time to file objections to the recommendation.

In light of the foregoing, and for good cause, it is ORDERED, pursuant to Fed.R.Civ.P. 59(e), as follows:²

- (1) Petitioner Donald Minnifield's motion for extension of time (Doc. no. 6) is granted.

1. Although Minnifield's extension motion was date-stamped "received" in this court on June 23, 2006, the court under the "mailbox rule," deems his motion filed on the date he delivered it to prison authorities for mailing, presumptively, June 19, 2006, the day that he signed it. See Houston v. Lack, 487 U.S. 266, 271-72 (1988); Washington v. United States, 243 F.3d 1299, 1301 (11th Cir. 2001).

2. Rule 59(e) provides that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment."

- (2) The order and final judgment entered on June 16, 2006 (Doc. nos. 3 & 4) are vacated.
- (3) Petitioner Minnifield is allowed until July 27, 2006, to file his objections to the recommendation entered on May 25, 2006 (Doc. no. 2).
- (4) This case is referred back to the magistrate judge for further proceedings.

DONE, this the 6th day of June, 2006.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE