

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

**WALTER HAYNES  
ADC #111110**

**PLAINTIFF**

**V. NO. 1:04CV00034 JMM/JWC**

**ROBERT MUNSON**

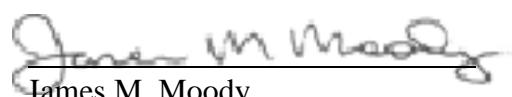
**DEFENDANT**

**ORDER**

Pending is Plaintiff's *pro se* motion to order his court appointed council to perfect and file Plaintiff's appeal. (Docket # 170). Defendant has responded. Following a jury trial on November 12-13, 2008, the jury returned a verdict in favor of Defendant on all claims. Judgment was entered on November 18, 2008.

The Court had no authority to extend the notice of appeal filing deadline absent a motion by Plaintiff. Fed. R. App. P. 4(a)(5) (district court may extend time to file a notice of appeal based on excusable neglect or good cause "upon motion filed" no later than thirty days after the deadline for filing a notice of appeal). Plaintiff's time for filing a notice of appeal ran on December 18, 2008. Plaintiff's motion to file his appeal was filed on February 19, 2009, sixty-three days later. Accordingly, the Court no longer has the authority to extend the time to file a notice of appeal pursuant to Fed. R. App. P. 4(a)(5). *See, Jones v. Clements*, 242 Fed. Appx. 378 (8<sup>th</sup> Cir. 2007) (finding that the district court lacked the authority to grant leave to file an appeal out of time where the request for permission to file the appeal out of time was not filed within thirty days after the time for appealing the judgment had expired.).

IT IS SO ORDERED this 25<sup>th</sup> day of February, 2009.

  
James M. Moody  
United States District Judge

