

IN THE UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF ARKANSAS  
 PINE BLUFF DIVISION

TERESA POLITE,

Plaintiff,

vs.

ARKANSAS DEPARTMENT OF  
 CORRECTION,

Defendant.

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No. 5:10cv00239 SWW

ORDER

Plaintiff Teresa Polite, proceeding *pro se*, brought this employment dispute pursuant to Title VII of the Civil Rights Act of 1964 against the Arkansas Department of Correction (ADC). By Order entered August 17, 2010 [doc.#4], the Court *sua sponte* dismissed this action with prejudice as a refiling of a previous action that was dismissed with prejudice, *Polite v. Arkansas Department of Correction*, No. 5:10cv00083 (E.D.Ark.). Judgment was entered that same day [doc.#5].

Now before the Court is plaintiff’s “Motion to File” [doc.#7]. In her motion, which consists of one sentence, plaintiff “request[s] to file a Notice of Appeal Out of Time to the 8<sup>th</sup> Circuit US Court of Appeals on Order given and signed [by this Court] August 17, 2010.” Plaintiff’s motion is denied as her motion to extend the time to file a notice of appeal was required to be filed within 30 days after expiration of the period for filing a timely notice of appeal. *See* Fed.R.App.P. 4(a)(5)(A)(i). Here, plaintiff’s motion was filed on September 30, 2010, more than 30 days after expiration of the period for filing a timely notice of appeal. Fed.R.App.P. 4(a)(1). Moreover, even had her motion been timely, plaintiff has not in any way established excusable neglect or good cause for her failure to file a timely notice of appeal. *See*

Fed.R.App.P. 4(a)(A)(5)(ii). *See also Gibbons v. United States*, 317 F.3d at 852, 854 (8<sup>th</sup> Cir. 2003) (factors the Court may consider in determining whether a party's neglect of a deadline is excusable include the danger of prejudice to the nonmovant, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith).

IT IS THEREFORE ORDERED that plaintiff's motion [doc.#7] for an extension of time to file a notice of appeal be and it hereby is denied.

Dated this 5<sup>th</sup> day of October 2010.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE