

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OWEN SYLVESTER MCCOY,

Petitioner, No. CIV S-08-1104 EFB P

VS.

D.K. SISTO,

Respondent. ORDER

On February 3, 2010, the undersigned ordered that respondent's motion to dismiss be denied, that final judgment be entered in this matter, and that a certificate of appealability issue. Judgment was entered accordingly.

Notwithstanding that judgment has been entered and this case is closed, on May 19, 2010, petitioner filed requests to appoint counsel and for an extension of time to file any argumentative brief. Petitioner states that “the federal district court granted a [COA] . . . to proceed in the federal district court.” Petitioner appears not to understand that the certificate of appealability allows him to file an appeal here and proceed in the U.S. Court of Appeals for the Ninth Circuit, not in this court.

In an abundance of caution, the court has also reviewed petitioner's filings as a request for an extension of time to file a notice of appeal under Rule 4 of the Federal Rules of Appellate

1 Procedure. Rule 4(a)(1)(A) provides that a notice of appeal must be filed with the district clerk
2 within 30 days after the judgment was entered. Under Rule 4(a)(5)(A)-(C), the court may extend
3 the time to file a notice of appeal if a party so moves no later than 30 days after the prescribed
4 time expires; but no extension shall exceed the later of 30 days after the prescribed time or 14
5 days after the date when the order granting the motion is entered.

6 Judgment was entered in this case on February 3, 2010. Petitioner therefore had until
7 March 5, 2010 to file his notice of appeal, and until April 4, 2010 to file a motion to extend his
8 time to file a notice of appeal. As petitioner did not file the instant motions until May 19, 2010,
9 his request for an extension of time to file a notice of appeal is denied as untimely.

10 The court notes that it will issue no response to future filings by petitioner in this action
11 not authorized by the Federal Rules of Civil Procedure or Federal Rules of Appellate Procedure.

12 So ordered.

13 Dated: June 21, 2010.



14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE

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