



1 of appeal with the district clerk within the time allowed by Rule 4.” Fed. R. App. P. 3(a)(1). The  
2 notice of appeal “must be filed with the district clerk within 30 days after entry of the judgment or  
3 order appealed from.” Fed. R. App. P. 4(a)(1)(A). However, the district court may extend the  
4 time to file a notice of appeal if “a party so moves no later than 30 days after the time prescribed  
5 by this Rule 4(a) expires,” and “shows excusable neglect or good cause.” Fed. R. App. P.  
6 4(a)(5)(A).

7 The court will construe plaintiff’s motion for an extension of time in which to file a brief  
8 regarding the certificate of appealability as a motion for an extension of time in which to file a  
9 notice of appeal. The proof of service attached to plaintiff’s motion states that petitioner  
10 deposited the motion for mailing “in a receptacle so provided at Pelican Bay State Prison” on  
11 October 28, 2015. This date was twenty-nine days after the order of dismissal was issued, and  
12 therefore, under the “prison mailbox” rule of Houston v. Lack, 487 U.S. 266 (1988), appears to  
13 meet the deadline set forth in Federal Rule of Appellate Procedure 4(a)(5)(A)(i).

14 The question, then, is whether plaintiff has “show[n] excusable neglect or good cause,”  
15 Fed. R. App. P. 4(a)(5)(A)(ii), for the grant of an extension of time in which to file a notice of  
16 appeal. In his motion, petitioner states that he filed a request for law library access on September  
17 13, 2015 in anticipation of a need to research the issue of the certificate of appealability.  
18 However, as of October 28, 2015, petitioner had not once been permitted to access the law  
19 library. (ECF No. 32 at 2.) Petitioner adds: “Because petitioner did not yet get a chance to go to  
20 the law library to study and research on this matter petitioner do not know what to file.” (sic) (Id.  
21 at 3.) On the basis of these facts, the court finds that petitioner has shown good cause for an  
22 extension of time in which to file a notice of appeal.

23 The Federal Rules of Appellate Procedure dictate the length of time available for  
24 extensions to file a notice of appeal. Specifically, Rule 4(a)(5)(C) provides that “[n]o extension  
25 under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date  
26 when the order granting the motion is entered, whichever is later.” Fed. R. App. P. 4(a)(5)(C).


27 Here, judgment was entered on September 29, 2015. Petitioner’s time to appeal expired  
28 on October 29, 2015. Therefore, the undersigned may extend petitioner’s time to appeal another

1 thirty days, to November 28, 2015. However, petitioner is strongly cautioned that no further  
2 extensions of time for filing may be granted. “The procedures set forth in rule 4 are strictly  
3 construed; there is no exception for prisoners proceeding pro se or for habeas corpus actions.”  
4 Malone v. Avenenti, 850 F.2d 569, 572 (9th Cir. 1988). Petitioner is advised that if he intends to  
5 file a notice of appeal, he must file the notice on or before November 28, 2015.<sup>1</sup> Fed. R. App. P.  
6 4(a)(5)(C). This court lacks the power to grant plaintiff any further extensions of time in which to  
7 file a notice of appeal.

8 In accordance with the above, IT IS HEREBY ORDERED that:

- 9 1. Petitioner’s pro se motion for extension of time to file an appeal (ECF No. 32) is  
10 granted.
- 11 2. Petitioner shall file his notice of appeal on or before November 28, 2015. No further  
12 extensions of time will be granted.
- 13 3. The Clerk of the Court is directed to send a copy of this order to petitioner.

14 Dated: November 9, 2015

15   
16 KENDALL J. NEWMAN  
17 UNITED STATES MAGISTRATE JUDGE

18 /thao1791.app

19  
20  
21  
22  
23  
24  
25 <sup>1</sup> Federal Rule of Appellate Procedure 3(c)(1) sets forth the specific information the notice of  
26 appeal must contain: “The notice of appeal must: (A) specify the party or parties taking the  
27 appeal by naming each one in the caption or body of the notice, but an attorney representing more  
28 than one party may describe those parties with such terms as ‘all plaintiffs,’ ‘the defendants,’ ‘the  
plaintiffs A, B, et al.,’ or ‘all defendants except X’; (B) designate the judgment, order, or part  
thereof being appealed; and (C) name the court to which the appeal is taken.” Fed. R. App. P.  
3(c)(1). Petitioner does not require court transcripts in order to complete the notice of appeal.