

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

ARTHUR MCCALL,

Petitioner,

vs.

DAVID BAUGHMAN, Acting Warden,
California State Prison-Sacramento,

Respondent.

No. 2:15-cv-0329-JKS

ORDER

[Re: Motion at Docket No. 31]

This Court denied Arthur McCall, a state prisoner proceeding *pro se*, habeas relief and a certificate of appealability on January 13, 2017. At Docket No. 31, McCall requests an extension of time to file a motion for a certificate of appealability. The record, however, indicates that McCall has not yet filed in this Court a notice of appeal, which is the first step required for appealing from this Court's denial of his habeas petition. *See* FED. R. APP. P. 4(a)(1)(A). A notice of appeal from a judgment rendered under 28 U.S.C. § 2254 must be filed within 30 days after entry of the judgment. *Id.* The notice must include "the party or parties taking the appeal by naming each one in the caption or body of the notice," "the judgment, order, or part thereof being appealed," and "the court to which the appeal is taken." FED. R. APP. P. 3(c)(1).

McCall's submission at Docket No. 31 contains the information required under Rule 3(c)(1) and is timely filed under Rule 4(a)(1)(A). The Court will therefore construe the filing as a timely-filed notice of appeal. However, because this Court has already denied McCall a certificate of appealability, any further request for a certificate of appealability should be considered by the Court of Appeals rather than this Court. Consequently, any relief sought with

respect to that request, including an extension of time, must be considered by the appellate court as well.

IT IS THEREFORE ORDERED THAT McCall's filing at Docket No. 31 will be construed as a timely-filed notice of appeal.

IS IT FURTHER ORDERED THAT the Clerk of Court is directed to transfer McCall's Request for an Extension of Time to File a Certificate of Appealability at Docket No. 31 to the Ninth Circuit Court of Appeals.

Dated: January 25, 2017.

/s/James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
Senior United States District Judge