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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
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8 JOSE L. VARGAS,

No. C 06-6671 SI (pr)

9 Petitioner,

**ORDER DENYING REQUEST TO  
EXTEND OR REOPEN TIME TO  
APPEAL**

10 v.

11 K. PROSPER, warden,

12 Respondent.  
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15 The court issued an order denying petition for writ of habeas corpus and entered judgment  
16 on October 16, 2009. The clerk mailed a copy of the order and judgment to petitioner on  
17 October 21, 2009.

18 Petitioner sent to the court a letter dated July 8, 2010, in which he informed the court of  
19 his change of address. In that letter, he stated that, during the last nine months, he was unable  
20 to attend the law library at High Desert State Prison because that prison was on lockdown. He  
21 further stated that he intended to file a notice of appeal in the coming week, and that he learned  
22 from another inmate that he "should have filed said appeal at the end of last year." Letter filed  
23 July 13, 2010. (Docket # 27.)


24 The court construes the letter to be a request for an extension of time to file a notice of  
25 appeal or, alternatively, to reopen the time to file a notice of appeal. The request is DENIED  
26 because it is simply too late.

27 Normally, an appeal must be taking within 30 days after the entry of judgment. Federal  
28 Rule of Appellate Procedure 4(a) is the exclusive avenue for relief from the expiration of the  
period to file a timely notice of appeal. See In re Stein, 197 F.3d 421, 426-27 (9th Cir. 2000).

1 Rule 4(a) is enforced without distinction between counseled and uncounseled cases. See Clark  
2 v. Lavallie, 204 F.3d 1038, 1041 (10th Cir. 2000) (rejecting pro se prisoner's motion filed more  
3 than 180 days after entry of judgment). Rule 4(a)(5) allows for an extension of time to appeal  
4 if the party requests it within thirty days of the expiration of the time to file the notice and shows  
5 excusable neglect or good cause. See Fed. R. App. P. 4(a)(5). Petitioner cannot obtain an  
6 extension under Rule 4(a)(5) because his motion was not filed until approximately 260 days  
7 after the entry of judgment. Rule 4(a)(6) allows the district court to reopen the time to file an  
8 appeal for a period of 14 days, but only if three conditions are satisfied – one of which is that the  
9 motion is filed within 180 days after the judgment or order is entered or within 7 days after the  
10 moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry,  
11 whichever is earlier. Petitioner cannot have the time to file an appeal reopened because his  
12 motion was not filed until about 260 days after the entry of judgment. Petitioner is not entitled  
13 to relief under the rule that is the exclusive means for relief from the expiration of the time to  
14 file a notice of appeal. For the foregoing reasons, the request is DENIED. (Docket # 27.)

15 IT IS SO ORDERED.

16 DATED: July 15, 2010

  
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17 SUSAN ILLSTON  
18 United States District Judge  
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