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

BOBBY T. MCHENRY,

Petitioner,

vs.

TOM FELKER, Warden,

Respondent.

No. C 07-2334 JSW (PR)

**ORDER DENYING MOTIONS  
FOR RELIEF FROM  
JUDGMENT AND FOR  
APPOINTMENT OF  
COUNSEL**

(Docket Nos. 30, 35, 36)

This is a habeas corpus case filed pro se by a state prisoner pursuant to 28 U.S.C. § 2254. On June 29, 2010, the petition was denied, a certificate of appealability was denied, and judgment was entered. On August 13, 2010, Petitioner filed a notice of appeal that he had signed on August 9, 2010. On October 4, 2010, the United States Court of Appeals for the Ninth Circuit dismissed the appeal because the notice of appeal was not timely.

Thereafter, Petitioner filed two motions for relief from judgment in this Court. In these motions, Petitioner seeks relief from the Ninth Circuit's order dismissing the appeal, not from the judgment of this Court. Specifically, he argues that the notice of appeal should be deemed timely because he had earlier filed in the Ninth Circuit a motion for an extension of time to file the notice of appeal. Even if this Court could ascertain the timeliness of the motion for an extension of time, which it cannot because the motion was not filed here, this Court cannot provide relief from an order and

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mandate of the Ninth Circuit. Petitioner must seek such relief in the Ninth Circuit, not here, as it was the Ninth Circuit that found his appeal to be untimely. Petitioner's motions for relief from judgment (docket numbers 35, 36) are DENIED. His motion for appointment of counsel (docket number 30) is also DENIED.

IT IS SO ORDERED.

DATED: February 25, 2011

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE