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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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8 TIMOTHY HOBSON,
9 Petitioner,

No. C 07-5832 SI (pr)

ORDER RE. APPEAL

10 v.

11 ROSANNE CAMPBELL, warden,
12 Respondent.
13 _____/

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15 The court issued an order denying petition for writ of habeas corpus and entered judgment
16 on October 11, 2008. The clerk mailed a copy of the order and judgment to petitioner on that
17 date.

18 Petitioner has filed a "motion for clarification of court record; request for extension of
19 time to file nunc pro tunc certificate of appealability." In his motion, petitioner states that he
20 never received a copy of the court's order denying petition for writ of habeas corpus and
21 judgment. He requests that the court do three things. First, he asks the court to clarify that it
22 "did not serve petitioner notice of dismissal/denial." Motion, p. 2. That request is denied
23 because the court did send the order and judgment to him on October 11, 2008, regardless of
24 whether he received them.¹ Second, petitioner requests a 30-day extension of time to file a
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26 ¹That the order and judgment were sent to petitioner is evidenced by (1) the entry in the court's
27 record that they were mailed to petitioner using his CDC # and his prison address, and (2) the absence
28 of any docket entry reflecting the return of undelivered mail. Because the motion is rejected on other
grounds, the court will accept as true petitioner's statement that he did not receive the order and
judgment in 2008. If the motion turned on whether petitioner received the order and judgment in
October 2008, the court would require further development of the record because the mail log from
October 2008 has no indication that it is the entire mail log for that month, as opposed to just the part
that covers the first few days of the month.

1 notice of appeal and request for certificate of appealability. That request is denied because it is
2 simply too late. Normally, an appeal must be taken within thirty days after the entry of
3 judgment. Federal Rule of Appellate Procedure 4(a) is the exclusive avenue for relief from the
4 expiration of the period to file a timely notice of appeal. See In re Stein, 197 F.3d 421, 426-27
5 (9th Cir. 2000). Rule 4(a) is enforced without distinction between counseled and uncounseled
6 cases. See Clark v. Lavallie, 204 F.3d 1038, 1041 (10th Cir. 2000) (rejecting pro se prisoner's
7 motion filed more than 180 days after entry of judgment). Rule 4(a)(5) allows for an extension
8 of time if the party requests it within thirty days of the expiration of the time to file the notice
9 and shows excusable neglect or good cause. See Fed. R. App. P. 4(a)(5). Petitioner cannot
10 obtain an extension under Rule 4(a)(5) because his motion was not filed until more than twelve
11 months after the entry of judgment. Rule 4(a)(6) allows the district court to reopen the time to
12 file an appeal for a period of 14 days, but only if three conditions are satisfied – one of which
13 is that the motion is filed within 180 days after the judgment or order is entered or within 7 days
14 after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry,
15 whichever is earlier. Petitioner cannot have the time to file an appeal reopened because his
16 motion was not filed until more than twelve months after the entry of judgment. Petitioner is not
17 entitled to relief under the rule that is the exclusive means for relief from the expiration of the
18 time to file a notice of appeal. Third, petitioner requests that the court file his present "motion
19 nunc pro tunc to October 11, 2008, due to non-service upon petitioner of Notice of dismissal of
20 this action until October 21, 2009." Motion, p. 3. This request is denied. As mentioned above,
21 Rule 4(a) is the exclusive means to deal with a failure to timely file a notice of appeal. Petitioner
22 cannot avoid Rule 4(a) by having his motion deemed filed a year before it was actually filed.
23 For the foregoing reasons, the motion is DENIED. (Docket # 14.)

24 Notwithstanding the fact that it is too late to obtain any relief from the deadline to file a
25 notice of appeal, this is not the right court to decide that the appeal is untimely. It is the
26 responsibility of the court of appeals rather than the district court to determine the existence or
27 scope of appellate jurisdiction over an appeal and to dispose of deficient appeals. This court will
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1 liberally construe the motion (docket # 14) to also be a notice of appeal and a request for a
2 certificate of appealability, see 28 U.S.C. § 2253(c); Fed. R. App. P. 3(c), 22(b). The application
3 for a certificate of appealability is DENIED because petitioner has not demonstrated that
4 "reasonable jurists would find the district court's assessment of the constitutional claims
5 debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

6 The clerk shall forward to the court of appeals the case file with this order. See United
7 States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

8 IT IS SO ORDERED.

9 DATED: November 5, 2009



SUSAN ILLSTON
United States District Judge

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