

United States District Court
For the Northern District of California

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E-Filed 10/4/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOE VERNON HAY,
Plaintiff,

v.

ROBERT SILLEN, et al.,
Defendants.

No. C 09-2373 RS (PR)

**AMENDED ORDER GRANTING
PLAINTIFF'S MOTION TO EXTEND
TIME TO FILE A NOTICE OF
APPEAL**

This is a civil rights action filed by a *pro se* state prisoner pursuant to 42 U.S.C. § 1983. Judgment was entered in favor of defendants on August 23, 2010. Plaintiff now moves for an extension of time to file a notice of appeal (Docket No. 145).

An appeal of right may be taken only by filing a valid notice of appeal in the district court within the time allowed by Fed. R. App. P. ("FRAP") 4. *See* FRAP 3(a)(1). The notice of appeal must be filed within 30 days after judgment is entered. *See* FRAP 4(a)(1). Here, a timely notice of appeal needed to have been filed on or before September 22, 2010. That time has passed and plaintiff has not yet filed a notice of appeal.

No. C 09-2373 RS (PR)
ORDER EXTENDING TIME


1 Relief from the deadline for filing a notice of appeal may be obtained by a motion in
2 the district court under FRAP 4(a)(5) (motion for an extension of time) or 4(a)(6) (motion to
3 reopen time to file appeal). FRAP 4(a)(5) allows a motion for an extension of time if the
4 party requests it within thirty days of the expiration of the time to file the notice and shows
5 an excusable neglect or good cause. Plaintiff's motion was signed on September 15, 2010,
6 and therefore is timely filed within the meaning of FRAP 4(a)(5). (Though stamped as
7 received by this Court on September 23, for purposes of the present motion the Court
8 assumes that plaintiff put the motion in the prison mail the day he signed it and uses that as
9 the filing date under the prisoner mailbox rule. See generally *Houston v. Lack*, 487 U.S. 266,
10 276 (1988).)

11 "No extension under this rule 4(a)(5) may exceed 30 days after the expiration of the
12 prescribed time [the prescribed time being 30 days from the date of entry of judgment] or 14
13 days after the date when the order granting the motion is entered, whichever is later." FRAP
14 4(a)(5)(C). Here, that is 30 days from September 22, 2010. **Accordingly, plaintiff must file**
15 **his notice of appeal on or before October 22, 2010.**

16 This order supersedes the Court's September 28, 2010 order regarding plaintiff's
17 motion (Docket No. 149), an order that is hereby VACATED.

18 **IT IS SO ORDERED.**

19 DATED: October 4, 2010


RICHARD SEEBORG
United States District Judge

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