

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH HARVEY,

Petitioner,

vs.

D. K. SISTO, Warden,

Respondent.

No. C 07-4229 PJH (PR)

**ORDER DENYING
PETITIONER'S MOTION FOR
PERMISSION "TO FILE A
LATE COA"**

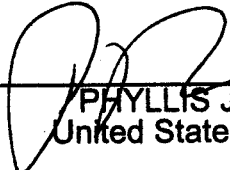
This is a habeas corpus case filed pro se by a state prisoner pursuant to 28 U.S.C. § 2254. The petition was denied on the merits on November 20, 2009. On December 28, 2009, petitioner filed a "Motion Requesting Permission to File a Late COA."

The federal rules provide no deadline for filing a request for a certificate of appealability, so the motion is unnecessary. And it cannot be construed as a notice of appeal, because so construed it would be untimely and because it does not meet the requirements for a notice of appeal. See Fed. R.App.P. 4(a)(1) (30 days), 3(c) (contents of notice of appeal). Nor can it be construed as a motion for an extension of time to appeal, because it does not contain any attempt to show excusable neglect or good cause for delay, see Fed. R.App.P. 4(a)(5). The motion (document number 29 on the docket) is

DENIED.

IT IS SO ORDERED.

Dated: January 19, 2010.



PHYLLIS J. HAMILTON
United States District Judge