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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|                       |   |                                 |
|-----------------------|---|---------------------------------|
| WILLIE E. LATIMORE,   | ) | No. C 11-0538 CW (PR)           |
|                       | ) |                                 |
| Petitioner,           | ) | ORDER GRANTING MOTION TO EXTEND |
|                       | ) | TIME TO FILE A NOTICE OF        |
| v.                    | ) | APPEAL;                         |
|                       | ) |                                 |
| VINCE CULLEN, Warden, | ) | ORDER CONSTRUING NOTICE OF      |
|                       | ) | APPEAL AS TIMELY-FILED          |
| Respondent.           | ) |                                 |
| _____                 | ) |                                 |

This is a closed federal habeas corpus action. The petition was denied and judgment was entered in favor of Respondent on September 30, 2012. Petitioner now moves for an extension of time to file a notice of appeal (NOA). (Docket No. 14.) For the reasons stated herein, Petitioner's motion is GRANTED.

An appeal of right may be taken only by filing a valid NOA in the district court within the time allowed by Federal Rule of Appellate Procedure 4. See Fed. R. App. P. 3(a)(1). The NOA must be filed within thirty days after judgment is entered. See Fed. R. App. P. 4(a)(1). Under this rule, Petitioner should have filed his

1 NOA no later than October 30, 2012, which is thirty days after  
2 judgment was entered. His notice was filed about a week later, on  
3 November 7, 2012.

4 Relief from the deadline for filing an NOA may be obtained by  
5 a motion in the district court under Federal Rule of Appellate  
6 Procedure 4(a)(5) (motion for an extension of time) or 4(a)(6)  
7 (motion to reopen time to file appeal). Federal Rule of Appellate  
8 Procedure 4(a)(5) allows a motion for an extension of time if the  
9 party requests it within thirty days of the expiration of the time  
10 to file the notice and shows excusable neglect or good cause. "No  
11 extension under this rule 4(a)(5) may exceed 30 days after the  
12 prescribed time [that is, within 30 days after the deadline for  
13 filing an NOA has passed] or 14 days after the date when the order  
14 granting the motion is entered, whichever is later." Fed. R. App.  
15 P. 4(a)(5)(C).  
16

17 In the instant matter, the deadline to file a motion for an  
18 extension under Federal Rule of Appellate Procedure 4(a)(5) was  
19 November 29, 2012, which is thirty days after the final day to file  
20 an NOA, here October 30, 2012. Petitioner's motion was signed on  
21 November 4, 2012, which is before November 29th, and therefore is  
22 timely filed within the meaning of Federal Rule of Appellate  
23 Procedure 4(a)(5). (Though stamped as received by this Court on  
24 November 7th, for purposes of the present motion the Court assumes  
25 that Petitioner put the motion in the prison mail the day he signed  
26 it and will use that as the filing date under the prisoner mailbox  
27 rule. See generally Houston v. Lack, 487 U.S. 266, 276 (1988).)  
28

1 Petitioner, then, had until November 29, 2012 to file an NOA.  
2 Therefore, his NOA filed on November 7, 2012 is timely. The Court  
3 also finds that Petitioner has shown good cause. The Clerk of the  
4 Court shall process Petitioner's appeal. The Clerk shall also send  
5 a copy of this order to the Ninth Circuit Court of Appeals  
6 forthwith.

7 IT IS SO ORDERED.

8 DATED: 3/18/2013

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10 CLAUDIA WILKEN  
11 United States District Judge  
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