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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 DAVID LEE HILL,

No. C 11-4793 YGR (PR)

8 Petitioner,

**ORDER GRANTING, IN PART,
MOTION FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL**

9 v.

10 T. VIRGA and K. HARRIS,

11 Respondents.
12 _____/

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14 This is a closed federal habeas corpus action. The petition was denied and judgment
15 was entered in favor of Respondent on January 28, 2013. Petitioner now moves for an
16 extension of time to file a notice of appeal (NOA). (Docket No. 22). For the reasons stated
17 herein, Petitioner's motion is GRANTED, IN PART.

18 An appeal of right may be taken only by filing a valid NOA in the district court within
19 the time allowed by Federal Rule of Appellate Procedure 4. See Fed. R. App. P. 3(a)(1).
20 The NOA must be filed within thirty days after the date judgment is entered. See Fed. R.
21 App. P. 4(a)(1). Under this rule, Petitioner should have filed his NOA no later than February
22 27, 2013, which is thirty days after judgment was entered. On March 21, 2013, Petitioner
23 mailed this motion for a sixty-day extension of time to file his NOA.¹

24 Relief from the deadline for filing an NOA may be obtained by a motion in the district
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27 ¹The motion was filed by the Court on March 25, 2013. For purposes of this motion, the
28 Court considers that Petitioner put the motion in the prison mail the day he signed it and will use
that as the filing date under the prisoner mailbox rule. See Houston v. Lack, 487 U.S. 266, 276
(1988).

1 court under Federal Rule of Appellate Procedure 4(a)(5) (motion for an extension of time) or
2 4(a)(6) (motion to reopen time to file appeal). Federal Rule of Appellate Procedure 4(a)(5)
3 allows a motion for an extension of time if the party requests it within thirty days of the
4 expiration of the time to file the notice and shows excusable neglect or good cause. "No
5 extension under this rule 4(a)(5) may exceed 30 days after the prescribed time [that is, 30
6 days after the deadline for filing an NOA has passed] or 14 days after the date when the order
7 granting the motion is entered, whichever is later." Fed. R. App. P. 4(a)(5)(C).

8 Petitioner, then, had until March 29, 2013 to file a motion for an extension of time to
9 file his NOA. Therefore, his motion filed on March 21, 2013 is timely. The Court finds that
10 Petitioner has shown good cause for the delay. However, Federal Rule of Appellate
11 Procedure 4(a)(5) does not allow an extension of sixty days, as Petitioner requests. Under
12 the circumstances here, Rule 4(a)(5) allows an extension of fourteen days from the filing date
13 of this order. Therefore, Petitioner is granted leave to file his NOA within fourteen days
14 from the date of this Order.

15 **CONCLUSION**

16 For good cause shown, Petitioner's motion for an extension of time to file a notice of
17 appeal is GRANTED, IN PART. Petitioner has fourteen days from the date of this Order to
18 file his notice of appeal. The Clerk shall send a copy of this Order to the Ninth Circuit Court
19 of Appeals.

20 **IT IS SO ORDERED.**

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22 DATED: April 8, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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