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E-FILED - 3/24/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRELL WILLIAMS,)	No. C 05-3891 RMW (PR)
)	
Petitioner,)	ORDER GRANTING MOTION FOR
)	EXTENSION OF TIME TO FILE A
vs.)	NOTICE OF APPEAL
)	
WARDEN TOM L. CAREY,)	
)	
Respondent.)	
_____)	

Petitioner, a California prisoner, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 5, 2010, the court denied petitioner’s petition on the merits and entered judgment. In that same order, pursuant to the federal rules, the court denied a certificate of appealability. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254 (effective December 1, 2009).

On February 23, 2010, petitioner filed a Notice of Appeal (“NOA”). Federal Rules of Appellate Procedure requires that a notice of appeal “be filed with the clerk of the district court within 30 days after the entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1). Here, petitioner’s NOA is untimely. However, petitioner’s NOA avers that he did not receive the court’s January 5, 2010 judgment until February 16, 2010. Federal Rule of Appellate Procedure 4(a)(5) allows a party to move for an extension of time if the party so moves within thirty days of the expiration of the time to file the notice and shows excusable neglect or good

1 cause. Good cause being shown, the court construes petitioner's NOA as a motion for extension
2 of time to file an NOA. So construed, petitioner's motion is GRANTED. Petitioner's NOA is
3 deemed timely filed.

4 IT IS SO ORDERED.

5 DATED: 3/23/10


RONALD M. WHYTE
United States District Judge

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