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E-FILED on 2/24/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT PRESTON,

Petitioner,

v.

ROSANNE CAMPBELL, Warden of Mule
Creek State Prison, Ione,

Respondent.

No. C-05-05154 RMW

ORDER GRANTING IN PART
PETITIONER'S MOTION FOR EXTENSION
OF TIME


On January 6, 2010, the court issued a judgment in this case. Petitioner Robert Preston moves for an extension of time to seek a certificate of appealability from the Ninth Circuit. Petitioner has represented to the court that he is proceeding *pro se* and has had to wait for his former counsel to forward the documentation he needs to proceed in this matter. Finding that petitioner has shown good cause, the court grants the motion for an extension of time.

However, under Federal Rules of Appellate Procedure Rules 4 and 5, the court may not provide an extension of time exceeding 30 days after the prescribed time or 14 days after the date of the order granting the motion. Therefore, the court may not extend the time for seeking a certificate of appealability until March 16, 2010, as requested by petitioner. In addition, under Habeas Corpus Rule 22(b), the notice of appeal itself constitutes a request for a certificate of appealability when a separate request has not been filed. The court has already granted petitioner until March 9, 2010 to

1 file a notice of appeal. Accordingly, petitioner shall also have until March 9, 2010 to seek a
2 certificate of appealability from the Ninth Circuit.

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DATED: 2/24/10



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been sent to:**

2 **Petitioner:**

3 Robert Preston
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9 **Counsel for Respondent:**

10 Ann P. Wathen ann.wathen@doj.ca.gov

11 Counsel are responsible for distributing copies of this document to co-counsel that have not registered
12 for e-filing under the court's CM/ECF program.

13
14 **Dated:** 2/24/10

15 CCL
16 **Chambers of Judge Whyte**

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