

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-FILED - 7/29/11

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

TROY DOMINIC MABON, JR.,)	No. C 09-2817 RMW (PR)
)	
Petitioner,)	ORDER DIRECTING RESPONDENT TO
)	RESPOND
v.)	
)	
JOHN W. HARVEY,)	
)	
Respondent.)	
_____)	

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent filed a motion to dismiss the petition as untimely. Petitioner filed an opposition. On January 27, 2011, the court granted respondent’s motion to dismiss and entered judgment.

On June 26, 2011, petitioner sent a letter to the court inquiring into the status of his case. Based on petitioner’s letter, it is apparent that he never received notice of the judgment. The court construes petitioner’s letter as a motion to reopen the time for appeal. Federal Rule of Appellate Procedure 4(a)(6) explicitly sets time limits for filing a motion in the district court to reopen the time to appeal when a party did not receive notice of entry of judgment. That Rule provides that in order to reopen the time to file an appeal, the petitioner must have failed to receive notice of entry of judgment within 21 days after entry of judgment, and the motion must

1 be filed within 180 days after entry of judgment or within 14 days after the moving party
2 receives notice of entry of judgment, whichever is earlier. Fed. R. App. P. 4(a)(6)(A), (B).
3 Both provisions are satisfied here. The Rule also requires that before the court may grant a
4 motion to reopen the time to file an appeal, it must find that no party would be prejudiced by it.
5 Fed. R. App. P. 4(a)(6)(C).

6 Accordingly, before the court rules on the motion to reopen the time to file an appeal,
7 respondent is directed to file a response **within twenty days** of the filing date of this order
8 demonstrating how, if at all, he would be prejudiced by the reopening of the time to file an
9 appeal. If petitioner wishes to file an opposition to the response, he shall do so **twenty days**
10 thereafter.

11 IT IS SO ORDERED.

12 DATED: 7/28/11


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

TROY D. MABON,
Plaintiff,

Case Number: CV09-02817 RMW

CERTIFICATE OF SERVICE

v.

JOHN W. HARVEY et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 29, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Troy Dominic Mabon V-70737
California State Prison-Solano
Bldg/Bed 12-214L
P.O. Box 4000
Vacaville, CA 95696-4000

Dated: July 29, 2011

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk