

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Action No. 14-cv-01827-PAB

JESSE BARAJAS,

Applicant,

v.

FRANCIS FALK, Warden, L.C.F., and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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**ORDER GRANTING MOTION TO FILE APPEAL OUT OF TIME**

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Applicant, Jesse Barajas, has moved this Court for acceptance of his untimely Notice of Appeal [Docket No. 26]. In support of his Motion, he claims that he never received a copy of the Order of July 30, 2015, denying his § 2254 habeas application and only learned of it by searching the law library computer, at which time it was too late to file a timely notice of appeal.

In general, a litigant must file a notice of appeal within thirty days of entry of judgment. Fed. R. App. P. 4(a)(1)(A). Notwithstanding, a district court may, upon a motion filed no later than 30 days after the deadline for filing a notice of appeal, extend the time for filing an appeal if the moving party shows excusable neglect or good cause. Fed. R. App. P. 4(a)(5)(A)(i) & (ii). See *also* Fed. R. App. P. 6 (allowing court to reopen appeal period if a party does not receive a final copy of the judgement within 21 days).

Respondents filed a Response to Applicant's Motion on October 14, 2015, wherein they submitted that they would not be prejudiced by the delay and conceded

that the reason for the delay, *i.e.*, Applicant did not receive a copy of the final judgment, may not have been within his control [Docket No. 33]. Respondents further asserted that Applicant should be required to show his conduct “was in good faith” by producing a copy of the prison mail logs to show that he did not timely receive a copy of either the order denying his habeas application or the final judgment.

On October 22, 2015, Applicant produced the mail log showing that he did not receive any incoming mail during the relevant time period. Accordingly, it is

**ORDERED** that Applicant’s Motion to Supplement Record With Prison Mail Log [Docket No. 35] is **GRANTED**. It is further

**ORDERED** that Applicant’s Motion to File/Accept Notice of Appeal Out-of-Time [Docket No. 30] is **GRANTED**. Applicant’s Notice of Appeal filed on September 8, 2015 [Docket No. 26] is deemed to be timely filed. It is further

**ORDERED** that the Clerk of Court provide the Court of Appeals with a copy of this Order.

DATED November 3, 2015.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge