

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-61615-CIV-COHN/WHITE

LINDSLEY CHAMBERS,

Petitioner,

vs.

WALTER A. McNEIL,

Respondent.  

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**ORDER DENYING MOTION FOR BELATED APPEAL**

**THIS CAUSE** is before the Court on Petitioner's Motion for Belated Appeal [DE 17] ("Motion"). The Court has carefully reviewed the Motion, the Exhibits thereto, the docket in the case, and is otherwise advised in the premises.

On August 16, 2010, Magistrate Judge White issued his Report wherein he recommended that the undersigned dismiss Petitioner's Complaint. See DE 14. Petitioner failed to file objections. On September 14, 2010, the undersigned, after reviewing Judge White's Report and the applicable law, adopted the Report and dismissed Plaintiff's Complaint. See DE 15 ("Order").

On January 7, 2011, Petitioner filed a Notice of Inquiry wherein he sought "to know the disposition of the above pleading and be provided with a docketing sheet in regards to [this] action." DE 16 at 1. On January 13, 2011, Petitioner received a copy fo the civil docket in this case. Motion at 2. Petitioner represents that it was only at that time that he learned of Judge White's Report and the Court's Order adopting the Report. See id. ("Upon reviewing the docket text of the civil docket petitioner discover[ed] that #14 report and recommendation date 8/16/2010, and #15 order adopting report and recommendation dated 9/14/2010; was never received by petitioner

therefore depriving petitioner of a right to file a timely appeal.”). Petitioner filed as an attachment to his Motion a document from the Mailroom Supervisor at Sumter Correctional Institution. Motion at 10. The document shows that Petitioner received no mail from this Court before January 12, 2011. Accordingly, “pursuant to Federal Rule of Appellate Procedure; Rule 4(a)(6), the petitioner respectfully request[s] this Honorable Court to issue an order granting petitioner’s motion for belated appeal.” Motion at 2-3.

Federal Rule of Appellate Procedure 4(a)(6) provides as follows:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6) (emphasis added).

Here, the Court finds that Petitioner did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry. Thus, Petitioner satisfies Federal Rule of Appellate Procedure 4(a)(6)(A). Petitioner, however, has failed to satisfy Rule 4(a)(6)(B).

The docket reflects that the Clerk served notice of the Report and the Order the same day they were entered. Furthermore, Petitioner indicates in his Motion that he received notice of the entry of the Order on January 13, 2011. See Motion at 2-3. Petitioner did not sign his Motion, however, until February 1, 2011, or nineteen days

after he received notice of the entry of the Report and Order. See id. Petitioner, therefore, failed to file his Motion within fourteen days after receiving notice of the entry of the Report and the Order. Although the Court recognizes the harshness of this result, the Court has no authority to reopen the time to file an appeal. Accordingly, it is

**ORDERED AND ADJUDGED** that Petitioner's Motion for Belated Appeal [DE 17] is **DENIED**.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 8th day of February, 2011.

  
JAMES I. COHN  
United States District Judge