

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JAMES FARMER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 1:15-cv-00397-TWP-DML
	)	
SUPERINTENDENT, New Castle	)	
Correctional Facility,	)	
	)	
Respondent.	)	

**E N T R Y**

James Farmer is a state prisoner who filed this action seeking a writ of habeas corpus. His petition was denied and the action dismissed with prejudice because the Court concluded from the pleadings and the expanded record that Farmer had not filed his habeas petition within the statute of limitations prescribed by the federal habeas statute. Final judgment was issued on October 13, 2015. Farmer’s notice of appeal was filed with the clerk on November 20, 2015. His notice of appeal reveals that it was placed in the prison mailing system on November 16, 2015. His notice of appeal has been followed by his *motion to file late appeal*, filed with the clerk on December 9, 2015.

In a civil suit in which the United States or its officer or agency is not a party, a notice of appeal must be filed within thirty days from the entry of judgment. 28 U.S.C. § 2107(a); Fed. R.App.P. 4(a)(1)(A). Under Federal Rule of Appellate Procedure 4(a)(5), the district court may extend the time to file notice of appeal if a party so moves no later than thirty days after the original deadline for the filing of notice of appeal and that party shows “excusable neglect or good cause.” The advisory committee notes to the 2002 amendments state that Rule 4(a)(5)(A)(ii) was amended

to correct the misunderstanding of the Rule that separate standards applied based on when the motion was filed. They do not. The advisory committee note explains that “[t]he good cause and excusable neglect standards have ‘different domains.’” *Id.* (quoting *Lorenzen v. Emp. Ret. Plan*, 896 F.2d 228, 232 (7th Cir. 1990)). The relevant question is one of fault, as “[t]he excusable neglect standard applies in situations in which there is fault; in such situations, the need for extension is usually occasioned by something within the control of the movant.” *Id.* On the other hand, the good cause standard “applies in situations in which there is no fault—excusable or otherwise.” *Id.*

Farmer’s *motion to file late appeal* was filed with the clerk within the grace period described above and sets forth circumstances establishing good cause for the requested extension.

Accordingly, the *motion to file late appeal* [dkt 20] is therefore **granted**. The notice of appeal filed with the clerk on November 20, 2015 was timely.

IT IS SO ORDERED.

Date: 12/28/2015



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TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

JAMES FARMER  
854529  
NEW CASTLE CORRECTIONAL FACILITY  
Inmate Mail/Parcels  
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