

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF KENTUCKY  
 SOUTHERN DIVISION  
 LONDON

HAROLD J. THORNTON,	)	
	)	
Petitioner,	)	Civil No. 11-035-GFVT
	)	
V.	)	
	)	<b>MEMORANDUM OPINION</b>
	)	<b>&amp;</b>
RICHARD IVES, Warden,	)	<b>ORDER</b>
	)	
Respondent.	)	

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On January 9, 2012, the Clerk of the Court received a two-page handwritten letter dated December 30, 2011, [R. 17] and a *pro se* Notice of Appeal [R. 18] from Petitioner Thornton. Both concern the Memorandum Opinion and Order and separate Judgment entered on September 30, 2011, in favor of the Respondent, Warden Ives, which dismissed this case *sua sponte*.

In Thornton’s letter, he advises that he did not receive the Court’s Judgment entered on September 30, 2011, until December 23, 2011.<sup>1</sup> After Thornton learned that this case had been dismissed, the Clerk of the Court received a letter from him dated December 30, 2011,

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<sup>1</sup> For reasons unknown to the Court, the Memorandum Opinion and Order and Judgment entered on September 30, 2011, and mailed to Thornton on that same date at his address of record, FCI-Allenwood, P. O. Box 1000, White Deer, PA 17887, were returned to the Clerk of the Court with the stamped notation “Not Deliverable As Addressed, Unable To Forward” [R. 15]. Because Thornton was incarcerated at FCI-Allenwood Correctional Complex at that time, it is unclear why this mailing was returned to the Clerk of the Court as undeliverable.

On December 16, 2011, the Clerk of the Court received a letter from Thornton requesting a copy of the latest docket entry on record [R. 16]. In response to that request, the Clerk provided Thornton with a copy of the docket sheet and re-mailed to him the Memorandum Opinion and Order and Judgment entered on September 30, 2011, which Thornton states he received on December 23, 2011.

requesting that the record reflect that he did not receive the Court's September 30, 2011, Judgment until December 23, 2011, and an explanation as to why he did not receive the September 30, 2011, mailing when he was incarcerated at FCI-Allenwood at that time.<sup>2</sup>

One possible explanation as to why the mailing was returned to the Clerk of Court stems from the fact that the FCI-Allenwood Complex is comprised of three different types of institutions,<sup>3</sup> each with a different mailing address. In Thornton's letters sent to the Clerk of the Court while he was at FCI-Allenwood, he identifies his address as "United States Penitentiary, Allenwood, P. O. Box 3000, White Deer, PA 17887." However, the mailing envelope in which the Clerk of the Court mailed the September 30, 2011, Memorandum Opinion and Order and Judgment to Thornton reflects the following address: "Harold J. Thornton, 21229-018, Allenwood, Federal Prison Camp, P. O. Box 1000, White Deer, PA 17887."

It appears that Thornton was housed in USP-Allenwood, the high security institution, but the mailing in question was sent to him at FCI-Allenwood Low, the low security institution that has a different mailing address than USP-Allenwood. The fact that these two institutions, although a part of the FCI-Allenwood Correctional Complex, have different mailing addresses could very well explain why the September 30, 2011, mailing was returned to the Clerk of the Court. The source of the error could stem from the simple fact that the Clerk erroneously entered Thornton's mailing address at FCI-Allenwood as "Allenwood, Federal Prison Camp, P. O. Box 1000," when it should have been "USP-Allenwood, P. O. Box 3000."

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<sup>2</sup> On or about December 9, 2011, Thornton was transferred to the United States Penitentiary in Lewisburg, Pennsylvania ("USP-Lewisburg"), where he is presently located.

<sup>3</sup> The three institutions are FCI-Allenwood Low(low security institution), FCI-Allenwood Medium (medium security institution), and USP-Allenwood(high security institution). The mailing address for FCI-Allenwood Low is P. O. Box 1000, White Deer, PA 17887; the mailing address for FCI-Allenwood Medium is P. O. Box 2000, White Deer, PA 17887; and the mailing address for USP-Allenwood is P. O. Box 3000, White Deer, PA 17887.

The Court will construe Thornton's letter dated December 30, 2011, and received by the Clerk of the Court on January 9, 2012, as a motion for an extension of time to file a notice of appeal and/or motion to reopen the time to file an appeal. Fed. R. App. P. 4(a)(6) permits the district court to re-open the time to file an appeal for a period of fourteen days after the date its order to re-open is entered if each of the following conditions are met: (1) the court finds that the moving party did not receive notice of the entry of the Judgment or order sought to be appealed within twenty-one days after entry; (2) the motion to re-open is filed within 180 days after the Judgment or order is entered, or within fourteen days after the moving party receives notice under of the entry, whichever is earlier; and (3) the court finds that no party would be prejudiced by re-opening the appeal time.

The court concludes that in this instance it is authorized to reopen the appeal time because: (1) Thornton did not receive the Memorandum Opinion and Order and Judgment entered on September 30, 2011, until December 23, 2011; (2) within seven days after receipt thereof, on December 30, 2011, Thornton filed his construed motion for an extension of time to file a notice of appeal and/or motion to reopen the time to file an appeal, well within the 14-day window provided by Fed. R. App. P. 4(a)(6)(B); and (3) no party will be prejudiced by reopening the appeal time.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Thornton's construed motion for an extension of time to file a notice of appeal and/or motion to reopen the time to file an appeal [R. 17] is **GRANTED**.

2. Pursuant to Fed. R. App. P. 4(a)(6), the Court is authorized to re-open the time to file an appeal.

3. Thornton's *pro se* Notice of Appeal filed on January 9, 2012 [R. 18] is timely.

4. Since Thornton was previously granted leave to proceed *in forma pauperis* herein [R. 12], he may also proceed on appeal *in forma pauperis*.

This, the 30th day of January, 2012.



**Signed By:**

**Gregory F. Van Tatenhove** 

**United States District Judge**