

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

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GEORGE W LUSTER, JR., )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 DIRECTOR, NEVADA DEPT. )  
 OF CORRECTIONS, *et al.*, )  
 )  
 Respondents. )  
 /

2:04-cv-00334-APG-NJK

**ORDER**

On February 14, 2017, petitioner filed a motion under Fed. R. App. P. 4(a)(6), asking this court to reopen the time to file an appeal of this court’s order of November 18, 2016 (ECF No. 189), which denied three post-judgment motions (ECF Nos. 183/184/185). ECF No. 192.

In support of the motion, petitioner alleges that he did not receive timely notice of the November 18, 2016, order because it was served upon his former attorney, Robert W. Story, who is retired and had been allowed to withdraw from the case by the Ninth Circuit Court of Appeals fourteen months earlier. He further alleges that he only learned of the order when this court served him with its minute order of February 3, 2017 (ECF No. 191), which denied as moot his motion asking the court to render a decision on the post-judgment motions.

Petitioner’s allegations are supported by this court’s record, which still lists Mr. Story as petitioner’s counsel of record. On November 16, 2015, Mr. Story filed in this court a copy of his

1 motion to withdraw that he filed in the Ninth Circuit Court of Appeals that same day. ECF No. 180;  
2 USCA Case No. 15-15163 (dkt. no. 14). On December 7, 2015, the Ninth Circuit entered an order  
3 denying petitioner a certificate of appealability and granting Mr. Story's motion to withdraw. ECF  
4 No. 181. Due to an oversight, Mr. Story was not terminated as petitioner's counsel of record on this  
5 court's docket.

6 In summary, petitioner has satisfied the conditions for reopening the time to file an appeal of  
7 this court's order of November 18, 2016 (ECF No. 189). *See* Fed. R. App. P. 4(a)(6). Thus, the time  
8 to file an appeal will be reopened for a period of 14 days after the date this order is entered. *Id.*

9 **IT IS THEREFORE ORDERED** that petitioner's motion to reopen time to file an appeal  
10 (ECF No. 192) is GRANTED. The time to file an appeal of the court's order of November 18, 2016  
11 (ECF No. 189) is reopened for a period of **14 (fourteen) days** after the date this order is entered.

12 **IT IS FURTHER ORDERED** that the Clerk of the Court shall terminate Robert W. Story as  
13 the attorney of record for the petitioner and serve this order on the petitioner at the address listed on  
14 the docket (i.e., #57587; Southern Desert Correctional Center; P.O. Box 208; Indian Springs, NV  
15 89070).

16 Dated: August 16, 2017.

17  
18  
19   
20 \_\_\_\_\_  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26