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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MITCHELL ADAM CHIRCHICK,

Petitioner,

vs.

BRIAN E. WILLIAMS, *et al.*,

Respondents.

2:10-cv-00745-GMN-RJJ

ORDER

This closed habeas matter comes before the Court on petitioner's motion (#17) for an emergency temporary restraining order (TRO) and further following upon the filing of an untimely notice of appeal (#18).

Background

Petitioner Mitchell Chirchick sought to challenge his 2008 Nevada state conviction, pursuant to an *Alford* plea, of three counts of theft by obtaining money in excess of \$2500 by material misrepresentation. The Court found that the petition failed to state a claim for relief and gave petitioner an opportunity to amend. After he failed to respond, the Court dismissed the action without prejudice.

Petitioner thereafter moved for reconsideration on the ground that he did not receive the Court's screening order. He stated that he did not sign for the order in the prison law library mail log. The Court directed respondents to respond with a redacted copy of the relevant portion of the mail log. The mail log reflected that petitioner signed for legal mail from the Clerk of this Court received only six days after the order in question. Petitioner had no then-pending open matters on the docket of this Court in which the Clerk transmitted a filing other than this action.

1 The Court expresses no opinion otherwise as to any issues pertaining to petitioner's
2 challenge to the disciplinary conviction, including as to which particular state or federal
3 proceedings might provide an appropriate vehicle for such a challenge. The Court holds only
4 that the present proceeding is not an appropriate vehicle for such a challenge.

5 ***Consideration of Possible Issuance of a COA***

6 The Court will consider possible issuance of a certificate of appealability (COA) on an
7 *arguendo* assumption that a COA would be required in this particular procedural context.

8 With deference to the final authority of the Court of Appeals with regard to matters
9 concerning its jurisdiction, the notice of appeal (#18) clearly is untimely. The notice seeks to
10 appeal the order (#15) denying petitioner's motion for reconsideration. That order was entered
11 on September 18, 2012. The notice of appeal was not mailed for filing until on or after
12 November 8, 2012. Given that the notice of appeal was not constructively filed until more than
13 thirty days after entry of the order in question, the notice of appeal is untimely.

14 The Court therefore will deny a COA as to the untimely appeal. Jurists of reason in any
15 event would not find the order to be debatable or wrong, given that the prison law library mail
16 log demonstrated that petitioner based the motion for reconsideration on a false statement to
17 the Court.

18 IT THEREFORE IS ORDERED that the motion (#17) for an emergency temporary
19 restraining order is DENIED.

20 IT FURTHER IS ORDERED that a certificate of appealability (COA) is DENIED as to
21 the notice of appeal (#18) filed on November 14, 2012. The Clerk shall clearly note the denial
22 of a COA in the docket entry for this order and shall forward a supplemental e-mail notice
23 (NEF) of this order to the Court of Appeals.

24 This action has been, and remains, closed.

25 DATED this 15th day of November, 2012.

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Gloria M. Navarro
United States District Judge