

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**

JESSE RAYMOND VOSS,

Petitioner,

2:12-cv-00854-KJD-GWF

vs.

ORDER

D.W. NEVEN, *et al.*,

Respondents.

_____ /

This action is a *pro se* petition for a writ of habeas corpus by Jesse Raymond Voss. On May 28, 2015, the court ruled on the merits of the habeas petition, denied Voss habeas corpus relief, and denied Voss a certificate of appealability (ECF No. 35). Judgment was entered that same day, in favor of respondents and against Voss (ECF No. 36).

The time for Voss to file a notice of appeal expired on June 29, 2015, without Voss filing a notice of appeal, and without any other filing by either party. *See* Fed. R. App. P. 4(a)(1).

On July 21, 2015, Voss filed, in the Ninth Circuit Court of Appeals, a document entitled “Motion to Approve Certificate of Appealability and Accept Appeal in 9th Circuit After 30 Days Period Due to Extreme Communication Difficulties” (ECF No. 37). The court of appeals forwarded Voss’ motion to this court, and it was filed in the electronic file for this case on July 30, 2015. Respondents filed an opposition to Voss’ motion on August 17, 2015 (ECF No. 38).

1 Voss' motion seeks an extension of time to file his notice of appeal, and expresses his
2 intention to appeal; the court, therefore, treats the motion as a motion for an extension of time
3 pursuant to Federal Rule of Appellate Procedure 4(a)(5), and as a notice of appeal.

4 A notice of appeal normally must be filed within thirty days after the entry of judgment. *See*
5 Fed. R. App. P. 4(a)(1). Federal Rule of Appellate Procedure 4(a) is the exclusive avenue for relief
6 from the expiration of the period to file a timely notice of appeal. *See In re Stein*, 197 F.3d 421, 426-
7 27 (9th Cir.2000). Rule 4(a)(5) allows for an extension of time to appeal if the party requests it
8 within thirty days of the expiration of the time to file the notice, and shows excusable neglect or
9 good cause. *See* Fed. R. App. P. 4(a)(5).

10 Voss filed his motion in the court of appeals within thirty days after the entry of judgment
11 against him. The court treats the motion for extension of time as timely filed for purposes of Federal
12 Rule of Appellate Procedure 4(a)(5).

13 In his motion, Voss states that he was arrested on May 17, 2015, and “whereas he was
14 release[d] on O.R. was kept in custody to parole violation.” Motion for Extension of Time (ECF
15 No. 37), p. 2. He continues: “June 11, 2015, petitioner was transferred from Clark County Detention
16 Center to High Desert State Prison intake unit and to the date of this writing has been under 24 hour
17 per day lockdown permitted a 10 minute shower every 72 hours.” *Id.* at 3. He states that, in custody,
18 after his May 17 arrest, he has had limited access to mail and telephone facilities. *Id.* at 2-4. Voss
19 states that because of his arrest and custody it was impossible for him to file his notice of appeal
20 earlier. *Id.* at 4.

21 The court finds that Voss has made a showing of excusable neglect regarding the late filing
22 of his notice of appeal, and good cause to extend the time to file his notice of appeal. The court will
23 grant Voss' motion, in part, and treats his motion as a timely notice of appeal.

24 This court does not rule on Voss' motion for a certificate of appealability, as the court has
25 already denied Voss a certificate of appealability. *See* Order entered May 28, 2015 (ECF No. 35);
26 *see also* Judgment entered May 28, 2015 (ECF No. 36).

