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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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RICARDO BELTRAN,

Petitioner,

v.

RENE BAKER, *et al.*,

Respondents.

Case No. 3:13-cv-00048-MMD-WGC

ORDER

This closed counseled habeas matter comes before the Court on Petitioner's motion for leave to file late notice of appeal (ECF No. 35).

On November 13, 2017, the Court issued an order dismissing this action as untimely, and judgment was entered accordingly. (ECF Nos. 32 & 33.) On June 27, 2018, more than seven months after entry of judgment and more than six months after the time for filing a notice of appeal expired, Petitioner filed a motion for leave to file a late notice of appeal.

Under Rule of the Federal Rules of Appellate Procedure 4(a), a district court may extend the time for filing a notice of appeal or reopen the time for filing a notice of appeal under certain circumstances. The court may extend the time for filing a notice of appeal if the party moves for such relief within thirty days after the expiration of the time for appealing. Fed. R. App. P. 4(a)(5). Because Petitioner filed his motion well more than thirty days after the expiration of the time for appealing, the Court cannot grant relief pursuant to Rule 4(a)(5).

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1 Under Rule 4(a)(6), “[t]he district court may reopen the time to file an appeal for a  
2 period of 14 days after the date when its order to reopen is entered, but only if all the  
3 following conditions are satisfied:

4 (A) the court finds that the moving party did not receive notice under Federal  
5 Rule of Civil Procedure 77(d) of the entry of the judgment or order sought  
to be appealed within 21 days after entry;

6 (B) the motion is filed within 180 days after the judgment or order is entered  
7 or within 14 days after the moving party receives notice under Federal Rule  
of Civil Procedure 77(d) of the entry, whichever is earlier; and

8 (C) the court finds that no party would be prejudiced.

9 The Court’s docket reflects that notice of the order and judgment was sent  
10 electronically to Petitioner’s counsel on the date they were entered. In fact, counsel does  
11 not argue that he only just received notice of the order and judgment. Rather, counsel  
12 asserts that his office inadvertently failed to calendar the appeal deadline, implicitly  
13 conceding that he and his office received notice of the Court’s order and judgment at or  
14 around the time they were entered. As such, Petitioner cannot meet the first requirement  
15 of Rule 4(a)(6) – that he did not receive notice within 21 days after entry of judgment. Nor  
16 can Petitioner meet the second requirement of Rule 4(a)(6) – that the motion to reopen  
17 be filed within 180 days after the judgment or order is entered. Petitioner’s motion was  
18 filed more than 220 days after entry of the Court’s order and judgment. The Court is  
19 therefore unable to grant Petitioner relief under Rule 4(a)(6). Petitioner identifies no other  
20 basis for granting his requested relief.

21 It is therefore ordered that Petitioner’s motion for leave to file a late notice of appeal  
22 (ECF No. 35) must be and hereby is denied.

23 DATED THIS 29<sup>th</sup> day of June 2018.

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MIRANDA M. DU  
26 UNITED STATES DISTRICT JUDGE  
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