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Chambers of Vincent L. Briccetti

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MYKAI DAVIS, :
 :
 Petitioner, :
 :
 v. :
 :
 UNITED STATES OF AMERICA, :
 :
 Respondent. :
-----X

ORDER

18 CV 1308 (VB)
S2 14 CR 768-05 (VB)

On October 21, 2020, the Court received a “Motion for Extension of Time on Appeal,” submitted by petitioner Mykai Davis, who is proceeding pro se. Petitioner’s motion is dated October 12, 2021. (Doc. #65 in 18cv1308).

For the following reasons, the motion is GRANTED.

On July 21, 2020, judgment was entered with respect to petitioner’s motion under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. The Section 2255 motion was granted in part and denied in part. (Doc. #64 in 18cv1308). A copy of the Judgment as well as a copy of the Clerk’s Notice of Right to Appeal, which was attached to the Judgment, was mailed to petitioner.

Rule 4(a)(1) of the Federal Rules of Appellate Procedure provides that a notice of appeal must be filed with the district clerk within 60 days after the entry of judgment if one of the parties is the United States. And Rule 4(a)(5) provides that the “district court may extend the time to file a notice of appeal if . . . a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires.”

Here, because the judgment was entered on July 21, 2020, and because the United States is a party, the deadline for filing a notice of appeal was September 21, 2020,¹ and the deadline for moving to extend the time to file a notice of appeal was October 21, 2020. Therefore, because the motion to extend the time to file a notice of appeal was filed on October 21, 2020, the motion is timely.

Fed. R. App. P. 4(a)(5)(A)(ii) requires that the party seeking an extension of time to file a notice of appeal must show excusable neglect or good cause. Here, liberally construed, petitioner’s motion states that petitioner mistakenly submitted his notice of appeal to the U.S. Court of Appeals for the Second Circuit rather than to the District Court as he was directed to do by the Clerk’s Notice of Right to Appeal, and that the circuit court clerk claims that it did not receive the notice. Although petitioner has submitted no documentary proof to support his

¹ 60 days after July 21 was September 19. However, September 19, 2020, was a Saturday, so by operation of law the sixtieth day was Monday, September 21, 2020.

assertion that he sent the notice of appeal to the court of appeals, given the special solicitude normally afforded pro se litigants, the Court accepts as true petitioner's assertion. That being the case, petitioner has demonstrated good cause for his failure to timely file his notice of appeal with the district court clerk.

Accordingly, the motion for an extension of time to file the notice of appeal is GRANTED.


The Clerk is instructed to accept for filing the Notice of Appeal attached to petitioner's motion as of October 21, 2020, which is the date petitioner's motion was filed in this Court.

Chambers will mail a copy of this Order to petitioner at the following address:

Mykai Davis, Reg. No. 71995-054
MCC New York
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

Dated: October 23, 2020
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge