

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOHN PAUL WEBER, III,	:	Case No. 3:10-cv-49
Petitioner,		
vs.	:	District Judge Walter H. Rice Magistrate Judge Michael J. Newman
WARDEN, WARREN CORRECTIONAL FACILITY,	:	
Respondent.	:	

**ORDER CONSTRUING DOCUMENT 14 AS A MOTION FOR AN EXTENSION OF
TIME AND A NOTICE OF APPEAL; GRANTING THE MOTION FOR GOOD CAUSE
SHOWN *NUNC PRO TUNC*; AND FINDING PETITIONER HAS TIMELY FILED HIS
NOTICE OF APPEAL**

This matter is before the Court on remand from the Sixth Circuit pursuant to Judge Martin’s Order “for the limited purpose of determining whether the notice of appeal [filed in this *pro se* 28 U.S.C. § 2254 *habeas corpus* case] should be treated as a Rule 4(a)(5) motion for an extension of time, and if appropriate, for a ruling on the motion.” Doc. 17. On April 11, 2012, this Court dismissed Plaintiff’s petition for a writ of *habeas corpus* and entered judgment in favor of Respondent. *See* docs. 12, 13. In that Order, the Court granted Petitioner a certificate of appealability on his first ground for relief and leave to proceed *in forma pauperis* on appeal. *See* doc. 12. Pursuant to Fed. R. App. P. 4(a)(1)(A), Petitioner’s notice of appeal was due to be filed on or before May 11, 2012.

On June 6, 2012, Petitioner filed a letter (doc. 14) that was construed by this Court as a notice of appeal. In light of Judge Martin’s Order, the Court now finds that Petitioner’s letter (doc. 14) should be treated also as a Rule 4(a)(5) motion for an extension of time to file a notice of appeal. The motion was timely filed within the thirty-day period set forth in Rule 4(a)(5) (*i.e.*,

filed on or before June 10, 2012), and based on the reasons cited in Judge Martin's Order, Petitioner has shown the necessary good cause. *See* Fed. R. App. P. 4(a)(5)(A). Accordingly, the Court **GRANTS** Petitioner a thirty-day extension to file a notice of appeal pursuant to Rule 4(a)(5) *nunc pro tunc*.

The Court further finds that Petitioner's letter (doc. 14) satisfies the requirements for a notice of appeal under Fed. R. App. P. 3(c)(1): it identifies the party taking the appeal; it designates the Order that is being appealed; and it identifies the Sixth Circuit as the court to which the appeal is taken. *Accord* Fed. R. App. P. 3(c)(4) (clarifying that notices of appeal are liberally construed). Accordingly, Petitioner's letter shall constitute a notice of appeal, which the Court deems timely filed.

August 3, 2012

s/Michael J. Newman
United States Magistrate Judge