

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

EDWARD LEE CLEMMONS,

Petitioner,

v.

CASE NO. 93-3338-SAC

GARY STOTTS, et al.,

Respondents.

O R D E R

The court entered a final order and judgment in this matter on May 17, 1994, denying petitioner's application for a writ of habeas corpus. On June 23, 1995, the Tenth Circuit Court of Appeals affirmed that decision. Almost thirteen years later, petitioner filed a motion for relief from judgment, pursuant to Fed.R.Civ.P. 60(b). The court denied the motion on January 8, 2008, and petitioner filed a notice of appeal on February 15, 2008. The circuit court dismissed the appeal on March 26, 2008, finding it was not timely filed.

Presently before the court is petitioner's motion to reopen the time to appeal pursuant to Fed.R.App.P. 4(a)(6). Petitioner states he did not receive notice of the January 8, 2008, order until January 30, 2008, and claims restrictions on his access to legal resources prevented him from filing either a timely notice of appeal or a motion to extend or reopen the time to appeal.

Relevant to the instant matter, Fed.R.App.P. 4(a)(6) authorizes this court to reopen the time to file an appeal, but only if three

enumerated conditions are satisfied.¹ As already stated by the circuit court when it dismissed petitioner's appeal on March 26, 2008, petitioner does not satisfy the requirements imposed by Rule 4(a)(6) because petitioner failed to take action within seven days of his receipt of the January 8, 2008, order. Petitioner presents nothing in his pending motion that leads this court to a different conclusion.

IT IS THEREFORE ORDERED that petitioner's motion to reopen the time for filing an appeal (Doc. 30) is denied.

IT IS SO ORDERED.

DATED: This 21st day of October 2008 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge

¹Fed.R.App.P. 4(a)(6) reads:

Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

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

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

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