

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

HERBERT E. MORTON, JR.,

Petitioner,

v.

CASE NO. 06-3031-SAC

RAY ROBERTS, et al.,

Respondents.

O R D E R

This matter is before the court upon petitioner's Motion to Reconsider and Certificate of Appealability (Doc. 10). Having examined this motion, the court finds as follows.

On April 13, 2006, this court entered an Order granting petitioner an extension of time of thirty days to show cause why this action should not be dismissed as untimely and for failure to state a claim (Doc. 7). The court then dismissed the action on May 25, 2006, after the thirty days passed with no response from petitioner (Doc. 8). On July 3, 2006, petitioner filed the instant Motion for Reconsideration in which he states that he did not receive the court's order granting a thirty-day extension of time, and only discovered the extension had been granted when he received the court's order of May 25, 2006, dismissing the action. Petitioner also alleges he did not receive the order of dismissal until June 7, 2006.

The court finds that good cause exists for reopening this case and allowing petitioner an extension of time to respond to the court's order to show cause why this action should not be dismissed for the reasons stated in that order dated February 15, 2006. If petitioner fails to submit a timely response to this Order, this

case will be dismissed without further notice.

Petitioner's "Motion . . . Certificate of Appealability" (Doc. 10) is denied, without prejudice, and petitioner is advised that if he wishes to appeal, he must file a timely Notice of Appeal from an appealable order.

IT IS THEREFORE ORDERED that petitioner's Motion to Reconsider (Doc. 10) is granted and this case is reopened, and petitioner is granted twenty (20) days in which to respond to the court's prior order to show cause why this action should not be dismissed.

IT IS FURTHER ORDERED that petitioner's "Motion . . . Certificate of Appealability" (Doc. 10) is denied.

The Clerk is directed to transmit a copy of Doc. 3 to plaintiff with this Order.

IT IS SO ORDERED.

Dated this 18th day of July, 2006, at Topeka, Kansas.

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