

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MATTHEW D. KRALLMAN,

Petitioner,

v.

CASE NO. 06-3075-SAC

SHAWNEE COUNTY DISTRICT COURT, et al.,
Respondents.

O R D E R

This petition for writ of habeas corpus was dismissed and all relief denied by Memorandum and Order entered April 6, 2006. The matter is before the court upon plaintiff's "Motion to Amend Complaint/Petition" (Doc. 10), and Motion for Extension of Time to File Notice of Appeal (Doc. 10). Having considered these motions, the court finds as follows.

Plaintiff's Motion to Amend Complaint/Petition (Doc. 10) does not include the proposed amendment and is not timely. The motion is denied as untimely.

Plaintiff's Motion for Extension of Time to File Notice of Appeal (Doc. 10) is granted. Under Appellate Procedure Rule 4, 28 U.S.C., a notice of appeal must be filed¹ with the district clerk within 30 days after the order appealed from is entered. Plaintiff's Motion for Extension was timely in that it was deposited in the prison legal mail system on the last day for

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Under subsection (b) of Rule 4: If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

filing a timely notice of appeal. The court finds good cause in that plaintiff was transferred out of the jail to another institution and back at the time the court issued its Order. Accordingly, plaintiff is granted an extension of time² until June 8, 2006, in which to file a notice of appeal in this case.

IT IS THEREFORE ORDERED that plaintiff's Motion to Amend Complaint/Petition (Doc. 10) is denied.

IT IS FURTHER ORDERED that plaintiff's Motion for Extension of Time to File a Notice of Appeal (Doc. 10) is granted and plaintiff is granted until June 8, 2006, to file a notice of appeal.

IT IS SO ORDERED.

Dated this 17th day of May, 2006, at Topeka, Kansas.

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

Rule 4(a)(5) provides that upon a Motion for extension of time:

(A) The district court may extend the time to file a notice of appeal if:
(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.
Rule 4 further provides:

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.