

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 12-10089-02-JTM

PEDRO C. GARCIA
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on defendant Pedro Garcia's December 14, 2017 Motion for Extension of Time (Dkt. 1276), seeking to expand the time in which he might file a Fed.R.Civ.P. 59(e) motion to alter or amend judgment challenging the court's denial of his motion to vacate under 28 U.S.C. § 2255. (Dkt. 1270). Garcia seeks an extension because the prison in which he was incarcerated was placed on lockdown on December 4, 2017.

The court denied Garcia's § 2255 motion to vacate on November 13, 2017. Any motion under Rule 59(e) must be filed within 28 days of the entry of judgment. The court cannot extend this deadline. *See* Fed.R.Civ.P. 6(b)(2) ("A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b)").

The Tenth Circuit has “consistently held a district court is without authority to extend the time for filing a Rule 59(e) motion.” *Brown v. McKune*, 162 Fed.Appx. 795, 796 (10th Cir. 2006). *See Weitz v. Lovelace Health Sys.*, 214 F.3d 1175, 1179 (10th Cir. 2000) (“Rule 59 provides no exceptions” to the 28-day time requirement, and thus “the district court lack[s] authority to grant [defendant’s] motion for additional time to file her 59(e) motion.”).

Accordingly, the court hereby denies the motion to extend. Garcia requests that in the event the court denies the requested extension, the court should construe his pleading as a Notice of Appeal. The court will so construe the pleading.

IT IS ACCORDINGLY ORDERED, this 18th day of December, 2017, that defendant’s Motion to Extend (Dkt. 1276) is hereby denied.

s/ J. Thomas Marten
J. Thomas Marten, Judge