

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDWARD ANDERSON,

Petitioner,

ORDER

v.

DANIEL BENIK, Warden,
Stanley Correctional Institution,

05-C-306-C

Respondent.

On February 24, 2006, this court received petitioner Edward Anderson's request for an extension of time to file objections, which he purportedly signed on February 14, 2006, two days before his three week deadline to object passed. Because this court entered judgment closing this case on February 22, 2006, it is too late for petitioner to file objections. He may, however, move for reconsideration of the judgment order.

Petitioner's excuse for needing more time is fairly predictable: he's a prisoner, he's proceeding pro se, his institution is overcrowded, which limits his access to legal materials in unspecified ways, and he has "other legal issues pending" on which he also is proceeding pro se, which means "he is unable to adequately address the issues in this case by the current designated deadline." Dkt. 24 at 2.

28 U.S.C. § 636(b)(1)(B) only provides ten days for a litigant to file objections after service of the report and recommendation. This court, however, routinely extends this deadline for prisoners because it recognizes that they operate under the constraints noted by petitioner in his motion. Even after "fronting" this additional breathing room to § 2254 petitioners, this

court often will extend an objection deadline if a petitioner can show good cause. In this case, petitioner's grounds for an extension are unpersuasive, but this doesn't matter any more because he filed his request after the court entered judgement, which moots the issue.

Granted, petitioner claims to have signed his request for an extension two days before his deadline passed, and this court does honor the mailbox rule in prisoner litigation. But in none of petitioner's previous submissions did ten days elapse between the date he signed his document and the day the court received it. Previous submissions took three days, eight days, six days and three days to arrive after petitioner signed them. So, it is possible that petitioner back-dated his request to make it appear timely. But because the court doesn't know for sure what happened, it will assume that petitioner is playing by the rules.

The upshot of all this is that petitioner should file his objections by March 6, 2006, but he should entitle his submission "Motion for Reconsideration of the Court's Judgment Order." Petitioner then should set forth in detail all the legal and factual reasons supporting his view that the court erred by ruling against him. For all practical purposes, the court will treat this submission as if it were a timely set of objections to the report and recommendation.

Therefore, so long as petitioner actually places his motion in the prison mail stream by March 6, 2006, he will receive his final opportunity to be heard at the district court level. Although respondent technically has the right to respond to such a motion, the court will assume that the state is waiving this right unless it notifies the court not later than March 6, 2006 that it would like to reserve the right to be heard. If so, then the state may have ten calendar days

after service to respond to petitioner's motion and petitioner may have seven calendar days after service of a response to reply.

ORDER

It is ORDERED that:

(1) Petitioner's motion for an extension of time to file objections is DENIED.

(2) Petitioner may have until March 6, 2006 within which to file a motion for reconsideration of the court's entry of judgment against him.

Entered this 27th day of February, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER

Magistrate Judge