

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

JAMES EDWARD GRANT,

Petitioner,

v.

TRENTON SCHAEFER, CRAIG VANDERMOLLEN,
GREG SHONDRELL, MR. TUESCHER,
MARK TWOMBLY and GERALD HUNDT,

Respondent.

ORDER

13-cv-374-bbc

Judgment was entered in favor of respondents on July 18, 2013, dismissing this case. Two months later, on September 18, 2013, petitioner filed a notice of appeal with the Court of Appeals for the Seventh Circuit. On February 11, 2014, the Seventh Circuit mandate issued dismissing petitioner's appeal for lack of jurisdiction because petitioner had not sought an extension of time to file a late appeal under Fed. R. App. P. 4(a)(5). Ten months later, petitioner filed a "motion to show cause and good cause, to reconsider and oral argument," which I denied on December 29, 2014. Now, petitioner has filed a "motion to seek an extension of time," in which he states that he believes prison officials purposely withheld his mail from being sent to the court causing his notice of appeal to be untimely. Petitioner's motion will be denied.

I may grant a motion for extension of time to file an appeal if the motion is filed within 30 days of the expiration of the original time to file the appeal (in these cases, 30

days after the July 18, 2013 judgment) and the party seeking the extension shows excusable neglect or good cause, Fed. R. App. P. 4(a)(5)(A), but petitioner's motion does not meet either of these requirements.

First, petitioner's notice of appeal was received by the court on September 18, 2013, 32 days after the 30-day time to appeal the court's July 18, 2013 judgment closing this case. Petitioner does not explain why his notice of appeal was received more than a month after the time for filing his appeal expired, except to state that "he can not control prison officials and or controlling authorities." If petitioner had shown that he placed the appeal in the prison mail stream before his deadline, the appeal would be considered timely under the prison "mailbox rule," Houston v. Lack, 487 U.S. 266, 275 (1988) and he would not even need to show excusable neglect. However, petitioner has not made a showing that he presented the appeal for mailing before his deadline ran out and does not describe with any specificity what delays he encountered. His vague statement is not sufficient to show excusable neglect or good cause. In any event, even if I assume that plaintiff had good cause for filing a late appeal, he does not explain why he waited more than ten months to seek an extension of time.

ORDER

IT IS ORDERED that petitioner James Edward Grant's motion for an extension of time, dkt. #18 to file his appeal is DENIED.

Entered this 20th day of January, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

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