

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

GARY SADLER

v.

PRISONER  
Civil Action No. 3:04cv1189 (SRU)

STATE OF CONNECTICUT  
SUPREME COURT, et al.

RULING AND ORDER

Plaintiff, Gary Sadler, seeks leave to file a notice of appeal out of time. Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure requires that a notice of appeal be filed within thirty days from the date of the decision appealed from. Section (a)(5)(A) of that rule, permits the district court to grant an extension of time to file a notice of appeal provided that the motion is filed within thirty days from the expiration of the time set forth above and the movant shows excusable neglect or good cause for failing to timely file the notice.

Sadler's motion for extension of time is dated April 20, 2005, nearly four months after the court's January 6, 2005 ruling on his motion for reconsideration and to reopen this case. Thus, the motion for extension of time is untimely.

Federal Rule of Appellate Procedure 4(a)(6) provides that the period for filing an appeal may be reopened if each of several circumstances exist. That rule provides:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all of the following conditions are satisfied:

- (A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;
- (B) the court finds that the moving party was entitled to notice of the entry of judgment or order sought to be appealed but did not receive the notice from the district court or any party within

21 days after entry; and  
(C) the court finds that no party would be prejudiced.

Sadler states that he did not learn that the court had denied his request to reopen this case until he telephoned the Clerk's Office on April 15, 2005. His motion for extension of time is dated five days later. The court assumes that Sadler gave the motion to correctional officials for mailing on that date. See Dory v. Ryan, 999 F.2d 679, 682 (2d Cir. 1993) (holding that pro se prisoner's papers are deemed filed as of the date the prisoner gives the papers to prison officials to be mailed to the court) (citing Houston v. Lack, 487 U.S. 266, 270 (1988)). Thus, Sadler's motion was filed within the time specified in Rule 4(a)(6)(A).

Sadler states in his affidavit, and the court finds, that he did not receive the ruling from the court and that prison records indicate that the ruling did not reach the facility. Because service has not been ordered on any defendants, the court finds that no party would be prejudiced if the time to appeal were reopened. Thus, subsections B and C also are satisfied.

The court construes Sadler's motion as a request to reopen the time within which to file an appeal. Sadler's motion [**doc. #17**] is **GRANTED**. Because it is unlikely that Sadler would be able to return a separate notice of appeal within the fourteen-day period provided in the rule, the Clerk is directed to also docket this motion as Sadler's notice of appeal.

**SO ORDERED** this 5<sup>th</sup> day of May 2005, at Bridgeport, Connecticut.

/s/ Stefan R. Underhill

Stefan R. Underhill  
United States District Judge