

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 3:75-CR-26-F
No. 5:06-CV-24-F

UNITED STATES OF AMERICA)	
)	
v.)	GOVERNMENT'S RESPONSE TO
)	MOVANT'S "MOTION TO EXTEND TIME"
JEFFREY R. MacDONALD,)	
Movant)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby submits this response to Movant's "Motion to Extend Time," filed September 15, 2014, [DE-359] and, in opposition to said motion, respectfully shows unto the Court the following:

1. On July 24, 2014, this Court issued an Order [DE-354] denying the movant's motions pursuant to 28 U.S.C. § 2255. In that order, the Court indicated that a ruling on movant's separate motion under the Innocence Protection Act (18 U.S.C § 3600) would be forthcoming. DE-354 at 13 n.7.

2. On August 17, 2014, Government counsel received an email from Mr. Gordon Widenhouse, counsel for movant, asking for the Government's consent to a 20-day extension of the time within which to file a motion to alter/amend the judgment on the § 2255 claims, under Fed. R. Civ. P. 59.

3. On August 18, 2014, the Government replied by email that it would not oppose such an extension, as long as it applied to both parties. In that email, the Government noted that its "research indicates that the order denying the motion under the IPA is, like the [§] 2255 order,

civil in nature, so the same rules and deadlines would apply to it. The 28-day deadline would expire on September 5, 2014. Do you anticipate filing a [Fed. R. Civ. P.] 59(e) motion in that matter?” See United States v. Pugh, 426 Fed.Appx. 876, 2011 WL 1900724, at **1 n.1 (11th Cir. May 20, 2011). Government counsel did not receive an answer to that question.

4. On August 19, 2014, Mr. Widenhouse notified the Government by email that he had determined that the 28-day deadline for the filing of a Rule 59(e) motion could not be extended and that he would try to file such a motion timely on August 19, 2014, which he did. See DE-357. The Government timely responded on September 11, 2014. DE-358.

5. On September 3, 2014, Government counsel received a voicemail message from Ms. Christine Mumma, N.C. Center on Actual Innocence, stating that she was working on asking for an extension “on a reply to the judge’s order on the IPA claim” for approximately 30 days. She also indicated that she was going to be moving to withdraw from the case.

6. Later on September 3, 2014, a counsel for the Government spoke with Ms. Mumma and explained that the Government believed that this was governed by Rules 59(e) and 6(b)(2), Federal Rules of Civil Procedure, and, therefore, the Government could not consent to the extension of a deadline that could not be extended. Ms. Mumma indicated that she would not be filing a motion.

7. Today, movant filed a motion seeking “to extend the time upon which to file an appeal to this Court’s order entered on August 8, 2014. [DE-356].” DE-359 at 1. The U.S. Attorney’s Office has not had any communication with Ms. Mumma or her office on this case since September 3, 2014, and has not discussed with her a proposed motion to extend the time within which to file a notice of appeal from DE-356.

8. The Government submits that motions filed under the IPA are civil in nature and

are governed by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure (FRAP) governing civil cases. Pursuant to FRAP 4(a)(1)(B)(i), the time within which to file a notice of appeal is “within sixty (60) days after entry of the judgment or order appealed from.” Accordingly, the deadline for filing a notice of appeal from DE-356 would be October 7, 2014. The Government respectfully disagrees that “the deadline for filing a Notice of Appeal has passed.” DE-359 at 2.

9. The Government respectfully submits that the movant should be able to decide by October 7, 2014, whether to note an appeal from DE-356, and thus cannot show excusable neglect or good cause why that deadline should be extended under FRAP 4(b)(4).¹

10. In light of Ms. Mumma’s statements to Government counsel on September 3, 2014, and the averments of ¶¶ 1-2 of DE-359, the Government respectfully submits that Ms. Mumma should clarify with the Court her counsel status with respect to this case.

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¹ The undersigned counsel for the Government have no information regarding the assertions in ¶ 4 of the movant’s motion (DE-359 at 1-2).

For the foregoing reasons, the Government respectfully requests that movant's motion to extend time (DE-359) be denied.

Respectfully submitted, this 15th day of September, 2014.

THOMAS G. WALKER
United States Attorney

BY: /s/ John Stuart Bruce
JOHN STUART BRUCE
First Assistant U.S. Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
Ph. (919) 856-4530;
Fax: (919) 856-4487
E-mail: john.bruce@usdoj.gov
North Carolina Bar No. 8200

BY: /s/ Brian M. Murtagh
BRIAN M. MURTAGH
Special Assistant U.S. Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
Ph. (919) 856-4530;
Fax: (919) 856-4487
E-mail: brian.murtagh2@usdoj.gov
D.C. Bar No. 108480

BY: /s/ Leslie K. Cooley
LESLIE K. COOLEY
Assistant U.S. Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
Ph. (919) 856-4530;
Fax: (919) 856-4487
E-mail: leslie.cooley@usdoj.gov
North Carolina Bar No. 33871

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document upon the defendant in this action either electronically or by placing a copy of same in the United States mail, postage prepaid, and addressed to counsel for defendant as follows:

M. Gordon Widenhouse, Jr.
Attorney at Law
312 W. Franklin Street
Chapel Hill, North Carolina 27516
Phone: 919-967-4900

Keith A. Williams
Attorney at Law
P.O. Box 1965
Greenville, N.C. 27835
Phone: (252) 931-9362

Christine C. Mumma
N.C. Center on Actual Innocence
P.O. Box 52446
Durham, NC 27717-2446
Phone: 919-489-3268

This, the 15th day of September, 2012.

THOMAS G. WALKER
United States Attorney

BY: /s/ John Stuart Bruce
JOHN STUART BRUCE
First Assistant U.S. Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
Ph. 919-856-4530; Fax: 919-856-4487
E-mail: john.bruce@usdoj.gov;
N.C. Bar No. 8200

BY: /s/ Brian M. Murtagh
BRIAN M. MURTAGH
Special Assistant U.S. Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
E-mail: brian.murtagh2@usdoj.gov
Ph. 919-856-4530; Fax: 919-856-4487
D.C. Bar No. 108480

BY: /s/ Leslie K. Cooley
LESLIE K. COOLEY
Assistant U.S. Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
Ph. 919-856-4530; Fax: 919-856-4487
E-mail: leslie.cooley@usdoj.gov
N.C. Bar No. 33871