

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FRED JAMES RYDER,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 98-5725
THOMAS COSTELLO, ET AL.	:	
Defendants.	:	

**MEMORANDUM AND ORDER**

YOHN, J. May , 2000

The pro se plaintiff, Fred James Ryder, an inmate at the State Correctional Institute at Houtzdale (“SCI-Houtzdale”), filed a complaint against the defendants in this court alleging civil rights violations. On July 19, 1999, I dismissed all of the defendants from the action with the exception of Karen Pugh, and set the case for trial. Following a two-day bench trial, I entered judgment in favor of the defendant and against the plaintiff. This ruling was embodied in an order, which was entered on the docket on August 26, 1999.

Pursuant to Federal Rule of Appellate Procedure 4(a)(1), Ryder had 30 days, or until September 27, 1999, to appeal this court’s decision.<sup>1</sup> Ryder did not mail his notice of appeal, however, until October 10, 1999, which was 13 days past the deadline.<sup>2</sup> Ryder never filed a formal motion for an extension of time to appeal under Federal Rule of Appellate Procedure 4(a)(5).

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<sup>1</sup>Thirty days from the court’s decision was September 25, 1999, which was a Saturday. Therefore, the notice of appeal was not due until the following Monday, September 27, 1999.

<sup>2</sup>Ryder’s notice of appeal was dated October 10, 1999, and mailed that same day according to the certificate of service. The notice of appeal was filed with the court on October 15, 1999.

The Third Circuit Office of Staff Attorneys then informed the parties about the possibility of dismissal on jurisdictional grounds due to the untimely filing of the notice of appeal. At this time, the parties were permitted to submit written argument in support of or in opposition to the dismissal of the case for lack of appellate jurisdiction. In his pro se jurisdictional response,<sup>3</sup> Ryder argues that his notice of appeal was untimely filed because he was housed at the State Correctional Institute at Graterford (“SCI-Graterford”) for his civil trial, and he was not returned to SCI-Houtzdale (his permanent institution) until approximately one month after the end of his civil trial. See Ryder’s Jurisdictional Response of Nov. 10, 1999. According to Ryder, while in temporary housing at SCI-Graterford, he was denied the legal resources necessary to file a notice of appeal.<sup>4</sup> Once he was returned to SCI-Houtzdale, however, Ryder asserts that he immediately filed his notice of appeal.

The Third Circuit found that Ryder’s jurisdictional arguments were in the “nature of good cause and would have been appropriate to include either in a separate formal motion in the district court under Federal Rule of Appellate Procedure 4(a)(5) or as part of Ryder’s nunc pro tunc notice of appeal.” See Order of United States Court of Appeals for the Third Circuit of April 10, 2000 (Doc. No. 43), at 2. The appellate court then transferred the matter to this court to decide whether there was good cause to extend the time for filing a notice of appeal pursuant to Rule 4(a)(5). See id. Specifically, the Third Circuit requested that I “consider whether Ryder’s

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<sup>3</sup>Because Ryder is proceeding pro se in this action, I am obligated to construe his claims liberally. See United States v. Miller, 197 F.3d 644, 646 (3d Cir. 1999).

<sup>4</sup>In his jurisdictional response, Ryder stated that he “was unable to gain the assistance of any legal help as this [was] not his facility.” See Ryder’s Jurisdictional Response of Nov. 10, 1999. The court construes this statement as meaning that Ryder did not have access to the necessary legal resources to effect the filing of his notice of appeal.

nunc pro tunc notice of appeal, as supplemented by the jurisdictional response that he filed in [the appellate court], constitute good cause to extend the time to appeal.” See id. I then ordered the defendants to file a response to the plaintiff’s jurisdictional arguments. The defendants did so in the form of a letter brief filed with the court on May 5, 2000.

Having examined the submissions of the parties on this jurisdictional issue, I conclude that Ryder has sufficiently demonstrated that the tardy filing of his notice of appeal was the result of excusable neglect. Therefore, I will extend the appeal period and permit the late filing of his notice of appeal.

### **DISCUSSION**

Federal Rule of Appellate Procedure 4(a)(1) provides that an appellant has 30 days in which to file a notice of appeal. See Fed. R. App. P. 4(a)(1). Therefore, Ryder had until September 27, 1999, to appeal in a timely fashion this court’s decision of August 26, 1999. Ryder failed to do so, however, and did not file his notice of appeal until October 10, 1999, which was 13 days beyond the deadline of September 27, 1999. The issue, therefore, is whether the court may consider this a timely appeal.

Federal Rule of Appellate Procedure 4(a)(5) provides that “the district court may extend the time to file a notice of appeal if: (i) a party moves no later than 30 days after the time prescribed by this Rule (4)(a) expires; and (ii) that party shows excusable neglect or good cause.” Fed. R. App. P. 4(a)(5). The Advisory Committee Notes to Rule 4(a)(5) make clear that a request for an extension of time that is filed after the original period of time for appeal has expired is governed by the excusable neglect standard. See Fed. R. App. P. 4(a)(5), 1979 Advisory Committee Note; see also Consolidated Freightways Corp. of Delaware v. Larson, 827

F.2d 916, 918 n.3 (3d Cir. 1987) (explaining that the excusable neglect standard was applicable because the extension request was made beyond the original time period for appeals), cert. denied sub nom, Consolidated Freightways Corp. of Delaware v. Secretary of Transp. of Pa., 484 U.S. 1032 (1988); Slavin Prods., Inc. v. Fidelity and Guaranty Ins. Underwriters, Inc., 30 F. Supp. 2d 838, 839 n.2 (E.D. Pa. 1998) (observing that the good cause standard only applies when there is a motion for an extension of time made before the end of the appeal period); Synalloy Corp. v. Gray, 831 F. Supp. 351, 352 n.2 (D. Del. 1993) (same). But see Amatengelo v. Borough of Donora, No. 99-3862, 2000 WL 637403, at \*2 (3d Cir. May 18, 2000) (failing to distinguish between the good cause and excusable neglect standard and explaining that Rule 4(a)(5) permits the district court to extend the time for filing a notice of appeal if the party shows “excusable neglect or good cause”). I will therefore decide whether Ryder’s failure to file his notice of appeal within time period of 30 days provided for under Rule 4(a) was the result of excusable neglect.<sup>5</sup>

Courts in this circuit apply a case-by-case analysis in determining whether an appellant has demonstrated excusable neglect. See Larson, 827 F.2d at 919. In Larson, the court explained that there is a “qualitative distinction between inadvertence which occurs despite [the appellant’s] affirmative efforts to comply and inadvertence which results from [the appellant’s] lack of diligence.” Id. The Larson court interpreted Rule 4(a)(5) “to require a finding of excusable neglect in those instances where the court, after weighing the relevant considerations is satisfied that [the appellant] has exhibited substantial diligence, . . . competence and has acted in

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<sup>5</sup>The court of appeals reviews a district court’s decision to permit or deny the requested extension of time to appeal under an abuse of discretion standard. See Larson, 827 F.2d at 918.

good faith to conform his or her conduct in accordance with the rule . . . .” Id. at 920;Ramseur v. Beyer, 921 F.2d 504, 506 (3d Cir. 1990) (reaffirming the interpretation of Rule 4(a)(5) pronounced by the court in Larson). The court also explained that although courts have a strong interest in promoting finality of judgments, when the delay is minimal and was not the result of any bad faith, “the judicial interest in deciding cases on the merits outweighs the interest in finality.” See Larson, 827 F.2d at 920.

In Larson, the Third Circuit enumerated factors for courts to consider in determining the issue of excusable neglect.<sup>6</sup> Larson, 827 F.2d at 919. These factors include: “(1) whether the inadvertence reflects . . . incompetence such as ignorance of the rules of procedure . . . ; (2) whether the asserted inadvertence reflects an easily manufactured excuse incapable of verification by the court . . . ; (3) whether the tardiness results from [the appellant’s] failure to provide for a readily foreseeable consequence . . . ; (4) whether the inadvertence reflects a complete lack of diligence . . . ; or (5) whether the court is satisfied that the inadvertence resulted despite [the appellant’s] substantial good faith efforts toward compliance.” Id. (citations omitted); see also Slavin Prods., 30 F. Supp. 2d at 839-940 (listing the five factors enunciated in Larson for determining whether excusable neglect exists to justify the late filing of an appeal).

As noted above, in this case, Ryder claims that his notice of appeal was not timely filed because he was unexpectedly incarcerated at SCI-Graterford for approximately one month

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<sup>6</sup>In Larson, the court noted that this list of factors was not an exhaustive list, but rather, was intended to provide a starting point for the court to make a thoughtful analysis of the excusable neglect issue. Larson, 827 F.2d at 919.

following his civil trial. During that time, although it may have been against policy,<sup>7</sup> Ryder claims that he was unable to gain access to legal resources while housed at SCI-Graterford. The issue then is whether Ryder's proffered reason for the tardy filing supports a finding of excusable neglect.

The first Larson factor is whether the inadvertence is the result of incompetence such as ignorance of the rules of procedure. See Larson, 827 F.2d at 919. In this case, Ryder does not claim that he misinterpreted the requirements of the Rules of Appellate Procedure. Rather, he alleges that he was not given access to the legal materials and assistance necessary to permit him to file such an appeal. This allegation is supported by the fact that Ryder filed his notice of appeal soon after his return to SCI-Houtzdale. Thus, I find that Ryder's late filing was not the result of incompetence.

The second factor enunciated in Larson is "whether the asserted inadvertence reflects an easily manufactured excuse incapable of verification by the court." See Larson, 827 F.2d at 919. Here, Ryder's reason for the late filing is because he was detained at SCI-Graterford for "[a]t least a [m]onth's time" following his civil trial. See Ryder's Jurisdictional Response of Nov. 10, 1999. The location of Ryder's housing in the state correctional system is capable of verification and is not an easily manufactured excuse. Therefore, I find that this factor also supports a finding of excusable neglect.

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<sup>7</sup>In their response, the defendants contend that it is the policy of the Department of Corrections (the "DOC") to provide access to legal services to prisoners who in temporary housing. Although that may in fact be the prison policy, Ryder asserts that while detained at SCI-Graterford he was unable to obtain legal assistance.

Third, the court must examine whether “the tardiness results from [the appellant’s] failure to provide for a readily foreseeable consequence . . . .” See Larson, 827 F.2d at 919. In this case, I find that Larson’s prolonged detention at SCI-Graterford and his perceived inability to receive access to legal materials was not a readily foreseeable consequence of any action taken on his part. Thus, I find that this factor also supports a finding of excusable neglect.

Likewise, the fourth factor in Larson, that is, whether the late filing resulted from a “complete lack of diligence,” also favors a finding of excusable neglect. See Larson, 827 F.2d at 919. In this case, Ryder’s inability to gain access to legal resources because of his unexpected detention at SCI-Graterford was a unique and unforeseen circumstance beyond his control. His late filing, therefore, was not because of his personal lack of diligence. Moreover, once Ryder did return to his permanent housing at SCI-Houtzdale, he immediately filed his notice of appeal. This demonstrates that he was diligent in his attempt to file his appeal but was hindered by his temporary housing at SCI-Graterford. Therefore, I find that Ryder acted diligently in his effort to comply with the Rules of Appellate Procedure, which supports a finding of excusable neglect.

For the same reason that I find that Ryder acted diligently, I also find that he made a substantial good faith effort to comply with the Rules of Appellate Procedure and thus, he satisfies the final Larson factor. See Larson, 827 F.2d at 919.<sup>8</sup> Therefore, I find that the Larson factors support a finding that Ryder’s late filing of his notice of appeal was the result of excusable neglect. Accordingly, I conclude that the appeal period in Ryder’s case should be

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<sup>8</sup>I also note that in this case the delay in the filing was minimal. See Ramseur, 921 F.2d at 506 (observing that “[b]ecause the notice of appeal was filed only seven days late, granting [the appellant] an extension does not raise overall fairness concerns”).

extended on the basis of his showing of excusable neglect and his appeal is therefore timely filed.

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THOMAS COSTELLO, ET AL.	:	
Defendants.	:	

**ORDER**

AND NOW, this            day of May, 2000, upon consideration of Ryder's jurisdictional response and the defendant's response thereto, I conclude that Ryder has demonstrated that the time for filing a notice of appeal in his case should be extended because he has shown that his failure to file a timely notice of appeal was the result of excusable neglect, and it is ORDERED that the time for Ryder to file an appeal is extended under Rule 4(a)(5) to allow the filing of his nunc pro tunc appeal.

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William H. Yohn, Jr., J.