

4(a)(1)(A) and (4)(A)(iv). According to Weber, he did not file an appeal because his counsel never received any notification of the filing of the order from the Clerk.

On September 12, 2005, Weber filed a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure asking this court to vacate its order of November 24, 2004 and to re-enter it so he could file a timely notice of appeal. The docket establishes that a copy of this order was sent to Weber's counsel by both postal and electronic mail. Nonetheless, again according to Weber, it was not until September 9, 2005, almost 10 months after the entry of this order, that his counsel checked the docket and learned of its existence. On September 27, 2005, we denied his September 12, 2005 motion and explained:

While his motion under Rule 60(b) is timely, that rule does not authorize us to provide him with the relief he seeks. "Lack of notice of the entry [of an order] by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure." Fed. R. Civ. P. 77(d). Rule 4(a) provides that: "[t]he District Court may reopen the time to file an appeal ... only if all 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" Fed. R. App. P. 4(a)(6). Since almost 10 months have passed since the filing of our order we can offer the plaintiff no relief.

Weber v. Warden, No. Civ.A. 04-84 (E.D. Pa. Sept. 27, 2005)

(Order).

In yet another attempt to circumvent the deadline of Rule 4(a) of the Federal Rules of Appellate Procedure, Weber filed the current motion on October 11, 2005 under Rule 60(a) and (b) of the Federal Rules of Civil Procedure and Rule 11 of the Rules Governing Section 2254 Cases.³ This motion, which sets forth arguments virtually identical to his September 12, 2005 motion, is essentially an attempt by Weber to obtain another bite at the apple for the purpose of facilitating an appeal.

We have already explained that Rule 77(d) of the Federal Rules of Civil Procedure and Rule 4(a)(6) of the Federal Rules of Appellate Procedure do not authorize us to relieve Weber from his failure timely to appeal under the present circumstances. Weber v. Warden, No. Civ.A. 04-84 (E.D. Pa. Sept. 27, 2005) (Order). As noted above, this court may not reopen the time to file an appeal when more than 180 days have elapsed since the entry of the order from which a party desires to take an appeal. Here the order was entered on November 24, 2004, and the pending motion was not filed until October 11, 2005. That Weber is seeking relief under Rule 60(a) and (b) of the Federal Rules of Civil Procedure and Rule 11 of the Rules Governing Section 2254 Cases does not change the result. "In a

3. On October 24, 2005, Weber filed a notice of appeal to the Court of Appeals. When a movant files a motion under Rule 60(b) while his appeal is pending in the Court of Appeals, a district court only has jurisdiction to entertain and deny the motion. Venen v. Sweet, 758 F.2d 117, 123 (3d Cir. 1985). If the district court is inclined to grant the motion, the movant must file a motion in the Court of Appeals for a remand of the case. Id.

civil case, ... the only way in which a party may obtain relief based on a clerk's failure to serve notice of the entry of a judgment or order is via Appellate Rule 4(a)" Poole v. Family Court of New Castle County, 368 F.3d 263, 266 (3d Cir. 2004); see also Hall v. Cmty. Mental Health Ctr. of Beaver County, 772 F.2d 42, 44 (3d Cir. 1985).

In the alternative, Weber requests this court to treat his motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, timely filed on September 12, 2004, as his notice of appeal. Rule 3 of the Federal Rules of Appellate Procedure governs the content of notices of appeal. At the very least, any document purporting to be a notice of appeal must make the intent to appeal clear. Fed. R. App. P. 3(c)(4). At all times, Weber has been represented by counsel who is held to a more stringent standard than a pro se litigant. United States v. Jasin, 280 F.3d 355, 361 (3d Cir. 2002). Weber's motion under Rule 59(e) of the Federal Rules of Civil Procedure requested this court to alter its judgment. It did not convey any intent to appeal.

Accordingly, the motion of Weber "pursuant to Rule 60(a) F.R.Civ.P, Rule 60(b) F.R.Civ.P and Rule 11 of the rules governing section 2254 cases" will be denied and no certificate of appealability shall issue.

