

August 25, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-20531
Summary Calendar

LARRY WAYNE DAVENPORT,

Petitioner-Appellant,

versus

DOUG DRETKE, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CV-3145

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Larry Wayne Davenport, Texas state prisoner # 868719, is appealing the district court's denial of his 28 U.S.C. § 2254 habeas petition as time-barred. Davenport was convicted following a jury trial of felony theft and was sentenced as a habitual offender to 60 years' imprisonment.

Davenport argues that the limitation period should have been equitably tolled because the state habeas trial court delayed filing his state application for postconviction relief.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Davenport has failed to demonstrate that he diligently pursued his rights. Nor has Davenport shown that he was actively misled by state officials or was prevented in some extraordinary way from exercising his rights. Thus, the district court did not abuse its discretion in refusing to apply the doctrine of equitable tolling to the limitations period. Coleman v. Johnson, 184 F.3d 398, 402-03 (5th Cir. 1999). The dismissal of the petition as time-barred is AFFIRMED.