

October 19, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-10011  
Summary Calendar

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NOLAN WAYNE SCALES,

Petitioner-Appellant,

versus

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

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:03-CV-1237-R  
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Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Petitioner-Appellant, Nolan Wayne Scales, Texas prisoner # 798414, appeals the district court's dismissal of his 28 U.S.C. § 2254 petition challenging his murder conviction as barred by the one-year statute of limitations in 28 U.S.C. § 2244(d). The district court granted a certificate of appealability (COA) on the issue whether the filing of Scales's federal habeas petition is subject to equitable tolling. Scales's conviction became final on

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

July 31, 2000, the last date for seeking direct review from the Texas Court of Criminal Appeals. See 28 U.S.C. § 2244(d)(1)(A); Salinas v. Dretke, 354 F.3d 425, 430 (5th Cir), cert. denied, 124 S. Ct. 2099 (2004). Scales had one year, or until July 31, 2001, in which to file a federal habeas petition. The limitations period was tolled from February 21, 2001, the date on which he filed his state habeas application, until May 9, 2001, the date on which it was denied. At that time, Scales had 160 days remaining, or until October 16, 2001, to file a timely federal habeas petition. His second state habeas application did not toll the limitations period because it was filed on November 7, 2001, after the expiration of the limitations period. See Scott v. Johnson, 227 F.3d 260, 263 (5th Cir. 2000).

Scales argues that the limitations period should have been equitably tolled from May 5, 2003, the date on which his second state habeas application was denied, until May 27, 2003, the date on which he received notice of the decision. The limitations period expired on October 16, 2001, however, before Scales filed his second state habeas application on November 7, 2001, so the limitations period was not tolled during the pendency of Scales's second state habeas application. See Scott, 227 F.3d at 263.

AFFIRMED.