

March 8, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20175
Summary Calendar

ROY JACKSON PIERCE,

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. 4:03-CV-313

Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Roy Jackson Pierce, Texas prisoner # 932636, pleaded guilty to assault and was sentenced to 15 years in prison. He seeks a certificate of appealability (COA) to appeal the district court's dismissal as untimely of his 28 U.S.C. § 2254 petition challenging this conviction. Pierce's motion to compel this court to consider his COA application in an expedient manner is DENIED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

In order to obtain a COA, Pierce must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Pierce has established that reasonable jurists would debate whether the district court correctly dismissed his federal petition as untimely pursuant to 28 U.S.C. § 2244(d)(1). See Foreman v. Dretke, 383 F.3d 336, 340 (5th Cir. 2004); TEX. R. APP. P. 49.1, 49.8, 68.2(a). Pierce's allegations in the district court and in his COA application "demonstrate that reasonable jurists could debate whether [Pierce] has made a valid claim of a constitutional dimension." Houser v. Dretke, 395 F.3d 560, 562 (5th Cir. 2004). Consequently, Pierce's motion for a COA is GRANTED, and the case is REMANDED for further proceedings consistent with this ruling. Pierce's motion for appointment of counsel on appeal is DENIED.

COA GRANTED; MOTION FOR APPOINTMENT OF COUNSEL DENIED;
MOTION TO COMPEL DENIED.