

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 98-10425  
USDC No. 5:97-CV-414

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERIC ANTHONY THOMAS,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Northern District of Texas

-----  
July 23, 1998

Before JOLLY, WIENER and BARKSDALE, Circuit Judges.

BY THE COURT:

Eric Anthony Thomas requests the issuance of a certificate of appealability (COA) from this court to appeal the district court's denial of his 28 U.S.C. § 2255 motion as time-barred. COA is GRANTED with regard to the issue whether Thomas's § 2255 motion was time-barred. Thomas had until November 15, 1997, to file for relief under § 2255. For limitations purposes, Thomas's motion was filed on the date he forwarded it to prison officials for mailing to the district court. See Cooper v. Brookshire, 70 F.3d 377, 378 (5th Cir. 1995); Fed. R. App. P. 4(c). The

certificate of service attached to Thomas's § 2255 motion, which complies with 28 U.S.C. § 1746, shows that he delivered his motion to prison authorities for mailing on October 31, 1997, within the limitations period. See Fed. R. App. P. 4(c) (timely filing may be shown by a declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid). Accordingly, COA is GRANTED, the judgment of the district court is VACATED, and the case is REMANDED for further proceedings. See Clark v. Williams, 693 F.2d 381, 382 (5th Cir. 1982).