

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50478

JIMMY ROY DAVIDSON,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-97-CV-687
- - - - -

December 23, 1998

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Jimmy Roy Davidson, Texas prisoner # 612588, has applied to this court for a certificate of appealability (COA). The district court dismissed Davidson's habeas corpus petition as time-barred under 28 U.S.C. § 2244(d), without reaching the merits of his habeas claims.

The district court held that § 2244(d)'s one-year statute of limitations was not tolled by the pendency of Davidson's state

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

habeas petition during the period after April 24, 1996. This ruling was incorrect. See Fields v. Johnson, ___ F.3d ___ (5th Cir. Oct. 28, 1998), No. 98-10012, 1998 WL 754901. Furthermore, Davidson's habeas petition was timely filed pursuant to the "mailbox rule" applicable to prisoners. See Cooper v. Brookshire, 70 F.3d 377, 378 (5th Cir. 1995).

Accordingly, we GRANT a COA on the limitations issue, VACATE the district court's judgment, and REMAND the cause for further proceedings.

COA GRANTED; VACATED AND REMANDED.