

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30715
USDC No. 98-CV-3724

MELVIN L. BRITTON,

Petitioner-Appellant,

versus

BURL CAIN, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana

June 8, 2000

Before DAVIS, EMILIO M. GARZA and DENNIS, Circuit Judges.

PER CURIAM:*

Melvin L. Britton, Louisiana state prisoner # 125209, requests a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition as untimely under § 2244(d). See § 2253(c)(1)(A). Because Britton has shown that the district court erred by finding that the statute of limitations was not tolled by his state postconviction application, and therefore, "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling," a COA is hereby GRANTED. See

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Slack v. McDaniel, 120 S. Ct. 1595, 2000 WL 478879 (U.S. April 26, 2000) (No. 98-6322); Smith v. Ward, ___ F.3d ___ (5th Cir. Apr. 7, 2000, No. 98-30444), 2000 WL 358294. The district court's judgment denying habeas relief on the basis of the time-bar of § 2244(d) is hereby VACATED, and this case is REMANDED to the district court for consideration of the constitutional claims set forth in Britton's habeas petition.

VACATED and REMANDED.