

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-60369
USDC No. 2:99-CV-87-S-B

EDDIE BROCK,

Petitioner-Appellant,

versus

E.L. SPARKMAN; MIKE MOORE,
The Attorney General of the
State of Mississippi,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi

November 24, 1999

Before POLITZ, HIGGINBOTHAM, and WIENER, Circuit Judges.

PER CURIAM:*

Eddie Brock, Mississippi state prisoner #48921, has filed a request for the issuance of a certificate of appealability (COA) to appeal from the district court's dismissal of his 28 U.S.C. § 2254 petition. Brock argues that the district court erred by dismissing his § 2254 petition as time-barred. By alleging that he filed an application for state habeas relief on April 16, 1998, which was denied on September 1, 1998, and which would have acted to toll the applicable one-year statute of limitations,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Brock has made a credible showing that the district court erred by dismissing his habeas petition as time-barred. See Sonnier v. Johnson, 161 F.3d 941, 943 (5th Cir. 1998); see also Villegas v. Johnson, 184 F.3d 467 (5th Cir. 1999) (a "properly filed" application for § 2244(d)(2) purposes is one that conforms with a state's applicable procedural filing requirements). COA is therefore GRANTED with regard to the issue whether Brock's § 2254 petition was time-barred. Accordingly, COA is GRANTED, the judgment of the district court is VACATED, and the case is REMANDED for a determination whether Brock's habeas petition was time-barred.