

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 3, 2010

Lyle W. Cayce
Clerk

No. 08-40829

Summary Calendar

KENNETH ALAN THOMAS

Petitioner - Appellant

v.

RICK THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION

Respondent - Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:08-CV-16

Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Kenneth Alan Thomas, Texas prisoner # 407931, seeks a certificate of appealability (COA) to appeal the district court's dismissal as time barred, pursuant to 28 U.S.C. § 2244(d), of his 28 U.S.C. § 2254 petition challenging his conviction for aggravated assault and resulting eight-year sentence.

A COA is granted on the issue of whether Thomas's petition was barred by the statute of limitations in light of *Womack v. Thaler*, 591 F.3d 757 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2009), which was decided after the district court's judgment in the instant case. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We vacate the district court's judgment, and we remand for further proceedings consistent with *Womack*. *See Whitehead v. Johnson*, 157 F.3d 384, 388 (5th Cir. 1998). We express no opinion on the ultimate disposition of Thomas's Section 2254 petition.

COA GRANTED; JUDGMENT VACATED; CASE REMANDED.