

July 8, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-21098
Summary Calendar

DERRICK GRAHAM,

Petitioner-Appellant,

versus

DOUG DRETKE, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-03-CV-1563

Before KING, Chief Judge, and BARKSDALE and PICKERING, Circuit
Judges.

PER CURIAM:*

Derrick Graham, Texas prisoner # 813442, was convicted of
capital murder and was sentenced to life imprisonment. He
requests a certificate of appealability to appeal the district
court's dismissal of his 28 U.S.C. § 2254 petition as time-
barred. We previously remanded this case to the district court
to determine when Graham submitted his notice of appeal to prison
authorities for mailing. The district court determined that

* 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this opinion should not be published and is not precedent except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.

Graham's notice of appeal was submitted for mailing on October 29, 2003. Graham does not challenge this finding. The last day for filing a timely notice of appeal was October 27, 2003. See FED. R. APP. P. 4(a); FED. R. APP. P. 26(a)(3). Because the notice of appeal is untimely, we dismiss Graham's appeal for lack of jurisdiction and deny his motion for a COA as moot. See United States v. Garcia-Machado, 845 F.2d 492, 493 (5th Cir. 1988).

APPEAL DISMISSED; COA DENIED AS MOOT.