

November 3, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40557
Summary Calendar

HERBERT WILLIAM HUDLER, III,

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 Eastern District of Texas
USDC No. G-01-CV-418

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

PER CURIAM:*

Herbert William Hudler III, Texas prisoner # 803947, appeals the district court's dismissal of his 28 U.S.C. § 2254 petition as time-barred. The district court granted Hudler a certificate of appealability ("COA") on the issue whether Hudler is entitled to the benefit of the doctrine of equitable tolling.

Hudler argues that the district court's order denying his motion to stay the one-year limitations period of the Anti-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Terrorism and Effective Death Penalty Act ("AEDPA") led him to believe that he would be permitted to file an out-of-time 28 U.S.C. § 2254 petition. Hudler has not demonstrated that the district court abused its discretion in concluding that the order did not provide grounds for equitable tolling. See Molo v. Johnson, 207 F.3d 773, 775 (5th Cir. 2000); see also Patterson, 211 F.3d at 932. Accordingly, the district court's judgment is AFFIRMED.

The remaining issues raised by Hudler in his appellate brief exceed the scope of the COA. As Hudler has not requested an expansion of the COA grant, this court will not consider those issues. See Lackey v. Johnson, 116 F.3d 149, 151 (5th Cir. 1997).

AFFIRMED.