

**FILED**

November 26, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-60717  
Summary Calendar

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KEVIN TERRENCE DAVIS,

Petitioner-Appellant,

versus

RONALD KING,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 1:03-CV-891-RRo  
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Before GARZA, DeMOSS, and CLEMENT, Circuit Judges

PER CURIAM:\*

Kevin Terrence Davis, Mississippi prisoner no. R8777, seeks a certificate of appealability ("COA") following the district court's dismissal of his 28 U.S.C. § 2254 federal habeas application as untimely. Davis is serving four life terms of imprisonment for burglary of a dwelling, rape, robbery, and aggravated assault.

Pursuant to 28 U.S.C. § 2244(d)(1)(A), Davis was required to file his habeas application on or before November 17, 2003. The

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

record supports Davis's contention that he filed a 28 U.S.C. § 2254 petition sometime between November 7, 2003 and November 18, 2003. Because the petition was received in the district court less than two days after the expiration of the limitation period, it is presumed timely filed. See *Sonnier v. Johnson*, 161 F.3d 941, 945 (5th Cir. 1998). Jurists of reason would thus find that the district court was incorrect in its procedural ruling. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Davis's request for a COA is granted, the judgment of the district court is vacated, and the case is remanded to the district court for further proceedings consistent with this opinion.

COA GRANTED; JUDGMENT VACATED; CASE REMANDED.