

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

United States Court of Appeals  
Fifth Circuit

**FILED**

December 9, 2009

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No. 06-40252  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

CECIL MADLOCK,

Petitioner - Appellant

v.

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

Respondent - Appellee

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Appeal from the United States District Court  
for the East District of Texas  
USDC No. 6:05-CV-142  
\_\_\_\_\_

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:\*

The Supreme Court vacated this court's April 16, 2007, order denying Cecil Madlock a certificate of appealability (COA), and the Court remanded the matter for further consideration in the light of *Jimenez v. Quarterman*, 129 S. Ct. 681 (2009). "Where a state court grants a criminal defendant the right to file an out-of-time direct appeal during state collateral review, but before the defendant

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

has first sought federal habeas relief, his judgment is not yet ‘final’ for purposes of § 2244(d)(1)(A).” *Jimenez*, 129 S. Ct at 686. Under *Jimenez*, Madlock’s 28 U.S.C. § 2254 petition was timely.

We therefore grant a COA, grant Madlock leave to proceed in forma pauperis (IFP), vacate the district court’s judgment of January 10, 2007, that dismissed Madlock’s § 2254 petition as untimely, and remand the matter to the district court for consideration of Madlock’s constitutional claims in the first instance. *See Houser v. Dretke*, 395 F.3d 560, 562 (5th Cir. 2004); *Whitehead v. Johnson*, 157 F.3d 384, 387-88 (5th Cir. 1998).

COA GRANTED; IFP GRANTED; JUDGMENT VACATED; CASE REMANDED.