

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 28, 2007

Charles R. Fulbruge III
Clerk

No. 06-60817
Summary Calendar

JOHN RAY KIDD

Petitioner-Appellant

v.

DOLAN WALLER, Warden

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 3:05-CV-35

Before HIGGINBOTHAM, STEWART and OWEN, Circuit Judges.

PER CURIAM:*

John Ray Kidd, Mississippi prisoner # R9542, appeals the district court's dismissal of his 28 U.S.C. § 2254 habeas petition as time-barred. Kidd is challenging his convictions for sexual battery and two counts of rape. Kidd asserts that the limitation period should be tolled because of the egregious conduct of the State and because of his actual innocence.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court granted a certificate of appealability (COA) on the issue whether Kidd's newly discovered evidence clearly demonstrated a violation of Kidd's constitutional rights and whether it would be a manifest miscarriage of justice to let the conviction and sentence stand. *Id.* at 253. The district court also granted COA on the issue whether egregious errors and misconduct had occurred that warranted the tolling of the limitation period. *Id.* at 253.

Kidd acknowledges that he did not file his federal petition within one year of his discovery of new evidence. Kidd has not demonstrated that he acted with due diligence in filing his petition, and he has not made a showing of actual innocence. See *Felder v. Johnson*, 204 F.3d 168, 170-71 (5th Cir. 2000). The dismissal of the petition is AFFIRMED.