

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-20250  
Summary Calendar

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JOHN IKE WADE,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
INSTITUTIONAL DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CV-1740  
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November 23, 1999

Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

John Ike Wade, Texas prisoner No. 646142, moves for release pending appeal. The motion is DENIED. We VACATE the dismissal as time-barred of a federal habeas petition filed by Wade. The 28 U.S.C. § 2244(d) limitations period was tolled by the pendency of Wade's second and third state habeas petitions. See Villegas v. Johnson, 184 F.3d 467, 469 (5th Cir. 1999). Accordingly, the judgment of dismissal is VACATED and the case is remanded to the district court for further proceedings in light of Villegas.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 98-20250

-2-

VACATED AND REMANDED; RELEASE PENDING APPEAL DENIED.