

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-20439  
Summary Calendar

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GERALD PIETER ZWARST,

Petitioner-Appellant,

versus

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

Respondant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CV-3536  
- - - - -

March 16, 1999

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Gerald Pieter Zwarst, Texas prisoner # 485451, requests a certificate of appealability (COA) to appeal the district court's dismissal of his petition for habeas relief under 28 U.S.C. § 2254 as time-barred. He argues that his § 2254 petition was timely filed because his second state habeas application, filed on April 24, 1997, served to toll the statute of limitations. Because the second state petition was filed within the grace period by virtue of being filed on April 24, 1997, IT IS ORDERED

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that Zwarst's request for a COA is granted and the case is REMANDED for further consideration. See Flanagan v. Johnson, 154 F.3d 196, 199-200 and n.2 (5th Cir. 1998)(grace period runs through April 24, 1997).

We do not reach either of the other two grounds of dismissal asserted by Johnson as they did not form the basis of the district court's decision.

COA GRANTED; JUDGMENT VACATED; CASE REMANDED.