

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20639
USDC No. H-97-CV-1549

HERIBERTO DEL RIO,

Petitioner-Appellant,

versus

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

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas

December 8, 1998

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Heriberto Del Rio, Texas prisoner #558956, seeks a certificate of appealability (COA) from the denial of his petition filed pursuant to 28 U.S.C. § 2254 as untimely. He also requests that he be allowed to proceed in forma pauperis (IFP) on appeal. Del Rio's request to proceed IFP is GRANTED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Del Rio argues that the district court erred in dismissing his claims as barred by the one-year statute of limitations set forth in § 2244(d)(1). Because Del Rio filed his § 2254 petition on April 24, 1997, within one year of the effective date of the Antiterrorism and Effective Death Penalty Act, his petition was timely. See United States v. Flores, 135 F.3d 1000, 1005-06 (5th Cir. 1998); Flanagan v. Johnson, 154 F.3d 196, 199-200 (5th Cir. 1998). COA is GRANTED, the district court's judgment dismissing Del Rio's § 2254 petition as time-barred is VACATED, and the case is REMANDED for further proceedings.

COA GRANTED; MOTION TO PROCEED IFP GRANTED; VACATED AND REMANDED.