

August 25, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40444
Summary Calendar

WALTER EARL FRANKLIN,

Petitioner-Appellant,

versus

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS
DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:03-CV-578-WMS-HWM

Before JOLLY, HIGGINBOTHAM, and PICKERING, Circuit Judges.

PER CURIAM:*

Walter Earl Franklin, Texas prisoner #1002429, requests a certificate of appealability ("COA") to appeal the district court's denial of his 28 U.S.C. § 2254 petition as untimely under § 2244(d). See § 2253(c)(1)(A). Because the district court failed to toll the limitations period on December 25, 2003, Christmas Day, and on December 26, 2003, when the clerk's office for the Eastern District of Texas was officially closed, jurists

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of reason would find that the district court should not have dismissed Franklin's habeas petition as time-barred.

See FED. R. CIV. P. 6(a); Slack v. McDaniel, 529 U.S. 473, 484 (2000). A COA is hereby GRANTED. The district court's judgment denying habeas relief on the basis of the time-bar of 28 U.S.C. § 2244(d) is hereby VACATED, and this case is REMANDED to the district court for consideration of the constitutional claims set forth in Franklin's habeas petition.

VACATED and REMANDED.