

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-11131
Summary Calendar

CASEY DEAN CORTHRON,

Petitioner-Appellant,

versus

JANIE COCKRELL, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:99-CV-1768

October 4, 2001

Before JOLLY, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Casey Dean Corthron, Texas prisoner # 628843, appeals the district court's denial of his motion to voluntarily dismiss his 28 U.S.C. § 2254 application to exhaust his newly discovered claim. He argues that he would not be able to refile his § 2254 application without it being considered successive if his current § 2254 application were not dismissed without prejudice.

Corthron learned of the factual predicate of his new claim no later than August 31, 2000, the date on which he mailed his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion for voluntary dismissal. Unless Corthron filed an "application for State post-conviction or other collateral review" with respect to this new claim within the past year which could have tolled the statute of limitations, his claim is now time barred per 28 U.S.C. § 2244(d)(1). Corthron did not file anything in state court in the past year of that nature.

Corthron has made no effort to exhaust his new claim so as to be able to raise it in another § 2254 application. Having filed nothing in state court which could have tolled the limitations period, Corthron's new claim is time barred, and the issue regarding the district court's denial of his motion to voluntarily dismiss his first § 2254 application has been rendered moot. The judgment of the district court is thus AFFIRMED.