

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-30203  
Summary Calendar

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ANTHONY JUNAK,

Petitioner-Appellant,

versus

BURL CAIN, Warden,  
Louisiana State Penitentiary,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 99-CV-1954-M  
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August 4, 2000

Before HIGGINBOTHAM, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Anthony Junak, Louisiana prisoner # 99298, seeks a certificate of appealability (COA) to appeal the dismissal of his habeas corpus application as time-barred by the one-year statute of limitations in 28 U.S.C. § 2244(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996. The district court determined that Junak's state application for postconviction relief, which was filed in 1995 and dismissed, on July 2, 1998, as untimely pursuant to Louisiana Code of Criminal Procedure article 930.8, was not "properly filed" as that term is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

used in § 2244(d)(2), and thus, failed to toll the limitations period.

Subsequent to the district court's dismissal of Junak's § 2254 application, this court held that a state postconviction application, dismissed as untimely under article 930.8, was nevertheless "properly filed" for purposes of the tolling provision of § 2244(d)(2). Smith v. Ward, 209 F.3d 383, 385 (5th Cir. 2000). In light of Smith, Junak has established that jurists of reason would find it debatable whether the district court was correct in its procedural ruling and whether Junak has stated a facially valid constitutional claim. See Slack v. McDaniel, \_\_\_ U.S. \_\_\_, 120 S. Ct. 1595, 1604 (2000); Hall v. Cain, \_\_\_ F.3d \_\_\_ (5th Cir. July 12, 2000), 2000 WL 815463.

A COA is GRANTED, the district court's judgment of dismissal is VACATED, and the case is REMANDED to the district court for appropriate proceedings.

COA GRANTED; VACATED AND REMANDED.