

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10361
Summary Calendar

JOHN KURT LUDWIG,

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. 4:00-CV-416-A

April 15, 2002

Before DAVIS, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

John Kurt Ludwig, Texas prisoner #785494, argues that the district court erred in determining that federal review of his ineffective assistance of counsel claims is procedurally barred by the state procedural ground of laches. Ludwig argues that at the time the state court determined that his claims were barred by laches, that doctrine was not an independent and adequate state ground because its application involved consideration of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

federal law and it had not been strictly or regularly followed by the Texas state courts.

Ludwig has shown that the state ground of laches was not firmly established at the time that the state court determined that his ineffective assistance claims raised in his state postconviction application were barred by that doctrine in April 2000. The unpublished cases on which the respondent relied were decided after the denial of Ludwig's state application and, thus, were not relevant. See Barrientes v. Johnson, 221 F.3d 741, 760 (5th Cir. 2000), cert. denied, 531 U.S. 1134 (2001). Further, these cases did not involve similar issues nor the short delay involved in Ludwig's case. Thus, Ludwig has carried his burden of showing that laches was not an "adequate" state ground precluding federal review of the merits of his claims. See Reed v. Scott, 70 F.3d 844, 846-47 (5th Cir. 1995).

Because the district court has not addressed the merits of the claims, the dismissal of the habeas petition is VACATED and the case is REMANDED for further proceedings.

VACATED AND REMANDED.