

June 9, 2006

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-40359
Summary Calendar

ALFREDO GARCIA,

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 Southern District of Texas
USDC No. 3:02-CV-664

Before JONES, Chief Judge, and SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

Alfredo Garcia, Texas prisoner # 668073, appeals the dismissal of his petition for a writ of habeas corpus challenging the revocation of his release on mandatory supervision as time-barred. The district court granted a certificate of appealability (COA) with respect to the question whether Garcia's motion to reopen the revocation proceedings constituted "other collateral review" for purposes of 28 U.S.C. § 2244(d)(2). We need not decide this question in this case. Even if it is assumed that Garcia's motion

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

constituted "other collateral review," the limitation period nevertheless expired prior to the filing of the federal habeas petition. See 28 U.S.C. § 2244(d)(1)(D). Although Garcia contends that he is entitled to equitable tolling, COA was not granted as to that question.

AFFIRMED.