

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-20957  
Summary Calendar

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PAUL ALLAN LARSON,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CV-3440  
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May 5, 2000

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:\*

The district court dismissed a federal habeas petition filed by Paul Allan Larson, Texas prisoner No. 452522, as untimely because it was filed more than one year after the April 24, 1996, effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). We authorized Larson to appeal in forma pauperis and granted him a certificate of appealability on the issue whether the 28 U.S.C. § 2244(d) limitations period had been tolled by the pendency of Larson's second and third state habeas

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

filings. The respondent was directed to supplement the record with any state-court documents relevant to Larson's tolling arguments.

The respondent now concedes that Larson's federal application is timely under Villegas v. Johnson, 184 F.3d 467 (5th Cir. 1999) because the AEDPA limitations was tolled by the pendency of Larson's second state habeas application, even though that application was eventually dismissed as successive under TEX. CODE CRIM. P. art. 11.07. We agree that Larson's application is timely in light of Villegas.

Because the district court never addressed the merits of Larson's federal habeas arguments, the denial of federal habeas relief is VACATED and the case is REMANDED to the district court for consideration on the merits. See Whitehead v. Johnson, 157 F.3d 384, 387-88 (5th Cir. 1998).

VACATED AND REMANDED.