

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-30385
USDC No. 97-CV-3435-R

REGINALD J. THOMAS,

Petitioner-Appellant,

versus

STATE OF LOUISIANA;
MICHAEL BENOVA, Warden,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana

August 25, 1998

Before DAVIS, WIENER, and STEWART, Circuit Judges.

BY THE COURT:

Reginald J. Thomas, federal prisoner # 09506-112, seeks a certificate of appealability ("COA") from the district court's denial of his petition for habeas corpus relief, pursuant to 28 U.S.C. § 2254. Because his petition was denied on procedural grounds rather than on the merits, Thomas must first make a credible showing that the district court erred. Murphy v. Johnson, 110 F.3d 10, 11 (5th Cir. 1997). Thomas asserts that the district court erred in determining that it lacked

jurisdiction over the petition as one brought under § 2254; in construing his petition as a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255 and dismissing it as such; and in denying COA.

Thomas has not demonstrated any error on the district court's part. Nevertheless, we grant COA and vacate and remand to the district court for the purposes of allowing it to consider in the first instance whether the case should be transferred sua sponte to the Central District of California as the court of proper venue in light of the Antiterrorism and Effective Death Penalty Act's one-year statute-of-limitations period. See 28 U.S.C. §§ 1406(a) and 2255.

COA GRANTED; VACATED AND REMANDED.