

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 98-50034  
Summary Calendar

---

VICTOR CARR,

Petitioner-Appellant,

versus

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

Respondent-Appellee.

-----  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-97-CV-498  
-----

November 17, 1999

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Victor Carr, Texas prisoner Number 625996, seeks a certificate of appealability (COA) to appeal from the district court's dismissal of his 28 U.S.C. § 2254 petition as time-barred. We GRANT COA with regard to the issue whether Carr's petition was time-barred under 28 U.S.C. § 2244(d). Although Carr's second state habeas application was dismissed by the Texas courts as an abuse of the writ, it was nevertheless properly filed and thus tolled the applicable limitation period.

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Villegas v. Johnson, 184 F.3d 467, 469 (5th Cir. 1999). With the benefit of the resulting toll, Carr's federal habeas petition was filed within the limitations period established by the AEDPA.

See id. Accordingly, COA is GRANTED, the judgment of the district court is VACATED, and the case is REMANDED for further proceedings.