

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 98-50497  
Summary Calendar

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RAY LOPEZ REYES,

Petitioner-Appellee,

versus

D.D. SANDERS, Warden, Texas Department  
of Criminal Justice, Institutional Division, ET AL.,

Respondents,

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

Respondent-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
(MO-97-CA-079-F)

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November 17, 1999

Before POLITZ, WIENER, and DENNIS, Circuit Judges.

PER CURIAM:\*

In this interlocutory appeal, respondents contend that the district court erred in concluding that the second state post-conviction application filed by Ray Lopez Reyes, which was dismissed under Tex. Code Crim. Proc. Ann. art. 11.07 § 4, was “properly filed” as that term is used in 28 U.S.C. § 2244(d)(2). The trial court ruled that the

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\*Pursuant to 5<sup>TH</sup> 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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

challenged filing tolled the limitations under section 2244(d)(1). We affirm.

We recently ruled that a state post-conviction application, although dismissed as successive or an abuse of the writ under art. 11.07 § 4, which was filed in compliance with the state's procedural requirements, is "properly filed" under section 2244(d)(2).<sup>1</sup>

Accordingly, the trial court did not err and the order appealed is AFFIRMED.

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<sup>1</sup> **Villegas v. Johnson**, 184 F.3d 467 (5<sup>th</sup> Cir. 1999).