

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-30619  
Summary Calendar

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KENNETH R. ALEXANDER,

Petitioner-Appellant,

versus

WARDEN, ALLEN CORRECTIONAL CENTER,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 98-CV-569  
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December 28, 1999

Before GARWOOD, HIGGINBOTHAM, and WIENER, Circuit Judges.

PER CURIAM:\*

Kenneth R. Alexander, Louisiana prisoner # 122967, appeals the district court's dismissal of his petition for habeas relief as time-barred pursuant to 28 U.S.C. § 2244(d). Alexander contends that because he has raised a claim of actual innocence, the Suspension Clause bars dismissal of his habeas petition on limitations grounds. This challenge is not properly before this court. The district court did not grant a certificate of appealability (COA) on this issue and Alexander did not request

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that this court issue COA. See Lackey v. Johnson, 116 F.3d 149, 151-52 (5th Cir. 1997); cf. United States v. Kimler, 150 F.3d 429, 431 (5th Cir. 1998).

Alexander also maintains that the district court erred in determining that his final state application for postconviction relief, the sixth filed in the trial court, did not toll the running of the limitations period as is stated in § 2244(d)(2). This assertion is correct pursuant to Villegas v. Johnson, 184 F.3d 467, 469-71 (5th Cir. 1999). However, this court can affirm the ruling of the district court on an alternate ground. See Sojourner T v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992). Even if the time during which Alexander's fifth and sixth postconviction filings in the state were tolled, Alexander's federal habeas petition was filed after the one-year limitations period had run. As a result, the decision of the district court is AFFIRMED.