

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10890

STEVEN DWAYNE JONES,

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 Northern District of Texas
USDC No. 3:97-CV-1042-X
- - - - -

May 28, 1999

Before POLITZ, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Steven Dwayne Jones, Texas prisoner #568611, seeks a certificate of appealability (COA) to appeal from the dismissal of his habeas corpus application as time-barred. We previously remanded Jones's case to the district court for the limited purpose of determining when Jones tendered his habeas application to prison officials for mailing. The district court has made the requisite finding and has returned the case to us. Jones's COA motion is GRANTED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Jones's habeas application was filed on April 11, 1997, the date that he tendered the application to prison officials for mailing, *Spotville v. Cain*, 149 F.3d 374, 378 (5th Cir. 1998), within the one-year period from April 24, 1996, in which Jones could file the application. See *Flanagan v. Johnson*, 154 F.3d 196, 201 (5th Cir. 1998); 28 U.S.C. § 2244(d)(1). Jones's habeas application therefore was not time-barred. Accordingly, the judgment dismissing Jones's application is vacated and his case is remanded for further proceedings. See *Whitehead v. Johnson*, 157 F.3d 384, 388 (5th Cir. 1998).

VACATED AND REMANDED.