

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

United States Court of Appeals
Fifth Circuit

FILED

April 24, 2009

No. 06-51492
Summary Calendar

Charles R. Fulbruge III
Clerk

PAUL JAMES KOUMJIAN

Petitioner-Appellant

v.

NATHANIEL QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:05-CV-221

Before JOLLY, BENAVIDES, and, HAYNES, Circuit Judges.

PER CURIAM:*

Paul James Koumjian, Texas prisoner # 1039181, appeals from the district court's dismissal of his 28 U.S.C. § 2254 petition as time barred. *See* 28 U.S.C. § 2244. The district court found that Koumjian filed no state habeas applications before the expiration of the limitations period. However, there is a factual dispute regarding whether Koumjian filed a state habeas application in March 2003 in the state trial court, case number 20010D00128-120-2. Because this application is not part of the state court record, a review of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 06-51492

record is not a sufficient means of resolving whether the instant § 2254 petition is untimely or, if it is untimely, whether equitable tolling would be warranted under the circumstances. Accordingly, the judgment of the district court is VACATED and this case is REMANDED for further proceedings consistent with this opinion.

All outstanding motions are DENIED.