

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

United States Court of Appeals
Fifth Circuit

FILED

November 6, 2009

No. 07-30019

Charles R. Fulbruge III
Clerk

EUGENE HENRY MOORE

Petitioner - Appellant

v.

TERRY TERRELL, Warden, Allen Correctional Center

Respondent - Appellee

Appeal from the United States District Court for the
Western District of Louisiana
(2:06-CV-1353)

Before GARWOOD, DAVIS, and DENNIS, Circuit Judges.

PER CURIAM:*

We treat Moore's brief as requesting a rehearing of the denial of the petition for rehearing of the reconsideration of the partial denial of a certificate of appealability (COA) in light of new case law. For the reasons below, Moore's request 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

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In the underlying state court proceedings, the state appellate courts granted Moore an out-of-time appeal. Moore sought the habeas relief from the federal courts. The district court below dismissed the habeas petition on procedural grounds, believing the defendant filed his petition beyond the one year limitations period set by 28 U.S.C. § 2244(d)(1). Moore then sought a COA from this court. A circuit judge partially denied and partially granted a COA. Moore sought a rehearing from a panel this court, which denied his petition as to the COA issue. All of this occurred before the Supreme Court granted certiorari in *Jimenez v. Quarterman*, 128 S. Ct. 1646 (2008).

We now grant COA as to the question of whether the district court erred in dismissing the underlying petition for habeas relief as time-barred, and we further vacate and remand the entire case for further proceedings consistent with *Jimenez v. Quarterman*, 129 S. Ct. 681 (2009).