

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-11013
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT AUGUST 19, 2010 JOHN LEY CLERK

D. C. Docket No. 08-00330-CV-WS-C

CALVIN LAMAR MIDDLETON,

Petitioner-Appellant,

versus

TONY PATTERSON,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Alabama

(August 19, 2010)

Before EDMONDSON, CARNES and MARTIN, Circuit Judges.

PER CURIAM:

In finding that Calvin Lamar Middleton's 28 U.S.C. § 2254 habeas corpus petition is time-barred, and that he is not entitled to equitable tolling of the applicable deadline, the district court reasoned that even if Middleton did not learn that his direct appeal was denied until December 2000, he still had until January 7, 2001 to file his petition. The district court, however, failed to address Middleton's assertion that he did not receive his case file from his attorney until January 2001. In light of that omission, as well as the Supreme Court's recent decision in Holland v. Florida, 560 U.S. ___, 130 S.Ct. 2549 (2010), we vacate the judgment of the district court and remand for further consideration. We do so without implying any view on how the tolling issue should be decided on remand.

VACATED AND REMANDED.