

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 97-3598

Mufid Al-Din, also known as  
Charles A. Parker,  
Petitioner-Appellee,

v.

Michael Bowersox, et al.,  
Respondents-Appellants.

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Appeal from the United  
States  
District Court for the  
Western  
District of Missouri

Submitted: March 9, 1998

Filed: April 3, 1998

Before MCMILLIAN and FAGG, Circuit Judges, and BENNETT,\* District Judge.

BENNETT, District Judge.

\*  
The HONORABLE MARK W. BENNETT, United States District Judge for the Northern District of Iowa, sitting by designation.

Respondents appeals from the district court's order denying their motion to dismiss Mufid Al-Din's petition for writ of habeas corpus as untimely under the one-year time limitation set forth in 28 U.S.C. § 2244(d)(1). This appeal presents the same issue decided today by our opinion in *Nichols v. Bowersox*, No. 97-3639 (8th Cir. 1998). For the reasons set forth in *Nichols*, we affirm the district court's determination that the petition for writ of habeas corpus was timely filed. We express no opinion on the issue of equitable tolling.

FAGG, Circuit Judge, dissenting.

For the reasons stated in my dissent in *Nichols v. Bowersox*, No. 97-3639 (8th Cir. Apr. 3, 1998), I decline to join the panel's opinion in this case. I would apply the court's decision in *Allen v. Dowd*, 964 F.2d 745 (8th Cir.), cert. denied, 506 U.S. 902 (1992), reject Al-Din's habeas petition, and request en banc review.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT