

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-11841

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT March 7, 2007 THOMAS K. KAHN CLERK
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D. C. Docket No. 01-02323-CV-IJP-TMP

DANIEL SIEBERT,

Petitioner-Appellant,

versus

RICHARD F. ALLEN, Commissioner,
Alabama Department of Corrections,

Respondent-Appellee.

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

(March 7, 2007)

Before TJOFLAT, BARKETT, and WILSON, Circuit Judges.

BARKETT, Circuit Judge:

Daniel Siebert filed a federal habeas petition pursuant to 28 U.S.C. § 2254 on September 14, 2001 challenging the validity of his conviction and sentence for

the murder of Linda Jarman. The district court dismissed it as being untimely filed pursuant to 28 U.S.C. § 2244(d). This court reversed and remanded, finding that his state petition had been properly filed so that his one year federal statute of limitations was tolled, making his federal petition timely. We thus remanded for further proceedings. Siebert v. Campbell, 334 F.3d 1018 (11th Cir. 2003) (“Siebert I”). However, instead of further proceedings, the district court revisited the timeliness issue and again dismissed the petition as untimely, finding that Pace v. DiGuglielmo, 544 U.S. 408 (2005), superseded our decision in Siebert I. We find that the law of the case applies, noting that Pace did not address the question presented in Siebert I, to wit: a statute of limitations that operated as an affirmative defense. However, rather than continuing piecemeal litigation and revisiting our opinion in Siebert I in light of Pace, we again reverse and remand for further proceedings, including questions of procedural bar and the resolution of claims which were exhausted on direct appeal.

REVERSED AND REMANDED.