

June 9, 2004

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 03-41706  
Summary Calendar

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JEFFERY WARREN SANDERS

Plaintiff - Appellant

v.

DONNA KLINGER, Sergeant; MIKE NELSON,  
Deputy; MARK RIDEAUX; NFN DELACRUZ,  
Deputy Lieutenant; JOHN G. ANDERSON

Defendants - Appellees

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. G-01-CV-141  
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Before KING, Chief Judge, and EMILIO M. GARZA and BENAVIDES,  
Circuit Judges.

PER CURIAM:\*

Jeffery Warren Sanders, Texas prisoner # 680206, appeals the dismissal as frivolous of his *pro se, in forma pauperis* complaint. He asserts that Donna Klinger opened his legal mail outside of his presence, in violation of prison rules and his constitutional rights. Such allegations are insufficient to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

establish a claim of a denial of access to the courts. Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996); Brewer v. Wilkinson, 3 F.3d 816, 826 (5th Cir. 1993).

Sanders also asserts that the Galveston County Jail's law library contained outdated materials and that he lacked the time to research his claims adequately. He has not established a denial of access to the courts because he has not shown that his position as a litigant was prejudiced. Lewis v. Casey, 518 U.S. 343, 350-53 (1996).

Sanders's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, we DISMISS Sanders's appeal as frivolous. See 5TH CIR. R. 42.2. This dismissal of his appeal as frivolous and the district court's dismissal of his complaint as frivolous constitute two "strikes" for the purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). If Sanders obtains three "strikes," he will not be able to proceed *in forma pauperis* in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

Sanders has moved for correction and modification of the record on appeal and for appointment of counsel. These motions are DENIED.

APPEAL DISMISSED; MOTIONS DENIED.