

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-20576  
Summary Calendar

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THERON BELTON,

Plaintiff-Appellant,

versus

REGINA GROSCHKE; DIANE COBB; LAWRENCE A. STOKER,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-01-CV-1035  
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October 11, 2002

Before JOLLY, PARKER and CLEMENT, Circuit Judges.

PER CURIAM:\*

Theron Belton, Texas prison # 845198, appeals the dismissal of his civil rights complaint under 42 U.S.C. § 1983. Belton moves to file a supplemental brief to raise a new claim of intentional infliction of emotional distress. We may not consider a claim raised for the first time on appeal. Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999). Belton's motion to file a supplemental brief is DENIED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Belton argues that the district court erred in dismissing his claim, that he had been denied access to the courts by a delay in his mail, pursuant to § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted. Prisoners have a constitutionally protected right of access to the courts; however, to prevail on a denial-of-access claim, a plaintiff must show an actual injury. Lewis v. Casey, 518 U.S. 343, 350-52 (1996). Belton alleges that he was thwarted in challenging his current conviction by a delay to his legal mail. The record shows that Belton filed a timely 28 U.S.C. § 2254 application challenging his current conviction. The district court did not err in dismissing Belton's complaint because he has not shown an actual injury. See Black v. Warren, 134 F.3d 732, 733-34 (5th Cir. 1998). Belton's appeal is without arguable merit and is DISMISSED. 5TH CIR. R. 42.2.

Belton has at least two verified strikes against him. Belton v. Henson, No. 01-41324 (5th Cir. Aug. 20, 2002) (unpublished). Belton has acquired another two strikes as a result of the dismissals of his complaint and appeal. Belton may no longer proceed in forma pauperis (IFP) in any civil action or appeal filed while he is in prison unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g); Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996).

APPEAL DISMISSED; MOTION DENIED; BAR IMPOSED.