

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20773
Conference Calendar

CHARLES L. GRABLE,

Plaintiff-Appellant,

versus

HARRIS COUNTY DISTRICT CLERKS OFFICE;
CHARLES BACARISSE, Clerk;
UNKNOWN DEPUTY DISTRICT CLERKS,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CV-2943

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Charles L. Grable, Texas prisoner #839605, appeals from the dismissal of his 42 U.S.C. § 1983 action as frivolous. Grable contends that his right of access to the courts has been violated because the state-court Clerk has refused to serve the attorney representing the State in Grable's state habeas actions.

Grable does not allege that he has been deprived of his ability to prepare and transmit any legal documents to any court.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

He therefore has not alleged a nonfrivolous claim of deprivation of the right of access to the courts. *See Brewer v. Wilkinson*, 3 F.3d 816, 821 (5th Cir. 1993). Moreover, the district court lacked jurisdiction to provide Grable with the equitable relief he sought. *See Moye v. Clerk, DeKalb County Superior Court*, 474 F.2d 1275, 1275-76 (5th Cir. 1973). The district court did not err by dismissing the action as frivolous. *See Harris v. Hegmann*, 198 F.3d 153, 156 (5th Cir. 1999).

Grable's appeal is without arguable merit and is dismissed as frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. The district court's dismissal of the current case and this court's dismissal of the appeal count as two strikes against Grable for purposes of 28 U.S.C. § 1915(g). *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Grable is warned that once he accumulates three strikes, he may not proceed in forma pauperis (IFP) in any civil action or appeal unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

APPEAL DISMISSED. 5TH CIR. R. 42.2.