

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2007

No. 06-60668
Conference Calendar

Charles R. Fulbruge III
Clerk

LESTER L JONES

Plaintiff-Appellant

v.

GABRIEL WALKER; JASON ELLIS; DOLAN WALLER; CHRISTOPHER EPPS

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:04-CV-183

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Lester L. Jones, Mississippi prisoner # 49366, appeals from the dismissal of his 42 U.S.C. § 1983 action. Jones contends on appeal that he was deprived of access to a law library for a period beginning during his direct appeal process and ending after the expiration of the three-year period to seek state postconviction relief. He further argues that he was deprived again of the opportunity to seek postconviction relief when his legal materials at issue in his district court action were taken from him in 2003.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Jones did not raise in the district court his claim that he was deprived of access to a law library during the three-year period in which he could seek postconviction relief. As this claim was not raised below, it cannot be considered on appeal. See *Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999). As to the legal materials taken from him in 2003, Jones has shown no relevant actual injury and has failed to state a nonfrivolous claim of a violation of his right of access to the courts. See *Lewis v. Casey*, 518 U.S. 343, 351 (1996).

As this appeal lacks arguable merit, it 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 and the dismissal of Jones's appeal count as two strikes for the purposes of 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996). Jones is warned that if he accumulates three strikes pursuant to § 1915(g), he may not 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 § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.