

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2830
Conference Calendar

JAMES W. PERKINS,

Plaintiff-Appellant,

versus

BOBBY PURVIS ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA H 92-2588

- - - - -
March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:*

James W. Perkins, a Texas state prisoner, filed a 42 U.S.C. § 1983 complaint alleging that he was unlawfully deprived of his personal property. The district court dismissed Perkins's action as frivolous.

A complaint filed in forma pauperis can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint "is frivolous where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

_____, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). This court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S.Ct. at 1734.

Negligent deprivation of an inmate's property through the action of a state employee does not violate the Fourteenth Amendment and thus does not support a claim brought under § 1983. Daniels v. Williams, 474 U.S. 327, 335-36, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986). Even the intentional deprivation of property does not implicate the Fourteenth Amendment if the state provides an adequate post-deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984); Marshall v. Norwood, 741 F.2d 761, 764 (5th Cir. 1984). Perkins has a right of action under Texas law for any alleged negligent or intentional deprivation of property. See Thompson v. Steele, 709 F.2d 381, 383 (5th Cir.), cert. denied, 464 U.S. 897 (1983); Meyers v. Adams, 728 S.W.2d 771, 772 (Tex. 1987). Because there is an adequate state remedy which Perkins has not alleged is inadequate, see Marshall, 741 F.2d at 764, the district court's dismissal of Perkins's § 1983 claim for this deprivation was not an abuse of discretion.

The judgment is amended to clarify that the dismissal is without prejudice to any state law claims that Perkins may have. See Lewis v. Woods, 848 F.2d 649, 652 (5th Cir. 1988).

AFFIRMED AS MODIFIED.