

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8331  
(Summary Calendar)

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DAVID MEMPHIS CARTER,

Plaintiff-Appellant,

v.

JAMES A. COLLINS, Director  
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
W 92 CV 142

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June 18, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:\*

Proceeding pro se and in forma pauperis, Texas Department of Criminal Justice inmate David Carter filed this § 1983 civil rights action against prison officials alleging a constitutional violation arising out of the handling of his legal mail. Concluding that Carter had failed to state a claim for a constitutional violation, the district court dismissed the

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\*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

complaint as frivolous pursuant to 28 U.S.C. § 1915(d). We affirm.

I.

On May 9, 1991, Carter filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Texas. The matter was referred to a magistrate, who recommended dismissal of the petition. On August 20, 1991, Carter received notification of the magistrate's recommendation and of his right to file objections within ten days. The Eastern District provided an official business reply envelope addressed to the district court. Carter prepared his objections, sealed them in the envelope provided by the Eastern District, and timely deposited the envelope in the inmate mail box.

On September 23, 1991, the Eastern District adopted the magistrate's report and dismissed Carter's habeas petition with prejudice, noting that "no objections have been forthcoming from the petitioner." Around October 1, 1991, prison officials returned to Carter his objections, explaining that the envelope was not mailed because it did not have his name and return address on it. The officials apparently had opened the envelope to determine that Carter was the sender.

Carter thereafter filed this civil rights action in the district court alleging that the prison officials had unconstitutionally denied him access to the courts by refusing to mail his objections. The district court ordered Carter to supplement his complaint and specifically asked Carter to inform

the court whether he had moved for reconsideration of the dismissal of his habeas petition. In accordance with the district court's request, Carter filed a supplemental complaint, informing the court that he had moved for reconsideration and that the motion was pending in the Eastern District.

Observing that Carter "has suffered no harm because he has been able to file a motion for reconsideration which is pending," the district court concluded that Carter had failed to state a cognizable claim for denial of access to the courts and dismissed his complaint as frivolous pursuant to 28 U.S.C. § 1915(d). Carter timely appealed.

## II.

28 U.S.C. § 1915(d) authorizes a federal court to dismiss a complaint filed in forma pauperis "if satisfied that the action is frivolous or malicious." Under this statute, an action is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). The statute thus accords judges the authority to dismiss a claim based on "an indisputably meritless legal theory" or "whose factual contentions are clearly baseless." Id. at 327. Because the frivolousness determination is discretionary, we review § 1915(d) dismissals for abuse of that discretion. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1734 (1992).

This court has held that an "isolated incident" involving the delay of a prisoner's legal mail does not violate a prisoner's constitutional right of access to the courts if it is

shown that the delay did not prejudice the prisoner legally. See Richardson v. McDonnell, 841 F.2d 120, 122 (5th Cir. 1988). Cf. Henthorn v. Swinson, 955 F.2d 351, 354 (5th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 112 S.Ct. 2974 (1992) (holding that allegations that prison officials had prevented prisoner from exhausting his administrative remedies did not state a cognizable constitutional claim for denial of access to the courts where it was shown that the prisoner ultimately did exhaust his remedies and was permitted to proceed with his civil rights action). In light of this precedent, Carter's complaint regarding the handing of one item of legal mail would have no arguable basis in law--and thus would be subject to dismissal under § 1915(d)--if it were shown that the alleged mishandling, even if intentional, did not prejudice his legal position. Concluding that Carter "had suffered no harm" because he had been able to file a motion for reconsideration, the district court dismissed Carter's complaint.

As we recognized when we granted Carter's motion to proceed on appeal in forma pauperis, the district court's determination that Carter suffered no prejudice as a result of the alleged mishandling of his legal mail was premature. Carter v. Collins, No. 92-8331 (5th Cir. Mar. 12, 1993) (order granting IFP status). The Eastern District might have denied Carter's motion and refused to consider his objections to the magistrate's recommendation. Carter then might have been able to show that, but for the failure of prison officials to forward his objections

to the Eastern District, he would have been granted relief. But that is not what happened.

When we granted Carter's motion to proceed in forma pauperis, we requested an update on the status of his motion for reconsideration. In response to our request, Carter has provided a copy of a Memorandum Opinion and Order in which Judge Parker of the Eastern District granted Carter's motion for reconsideration, reinstated his habeas action, and expressly took into account his objections in ruling on the merits. In light of the fact that the Eastern District clearly considered the objections that were originally delayed by prison officials, we must conclude that Carter in fact was not legally prejudiced by the mishandling of his legal mail. Thus, under Richardson, Carter has failed to state a cognizable constitutional claim for denial of access to the courts. Consequently, the district court's dismissal of Carter's action, while perhaps premature, did not constitute an abuse of discretion.

### III.

For the foregoing reasons, we AFFIRM the judgment of the district court.