

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1862
Summary Calendar

WILLIAM BRYAN FROUST,

Plaintiff-Appellant,

versus

SHERIFF OF SCURRY COUNTY, TEXAS,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas
(5:93-CV-228-C)

(January 18, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

William Bryan Froust filed this pro se and in forma pauperis 42 U.S.C. § 1983 suit against Scurry County, Texas Sheriff Keith Collier, Deputy Sheriff Kenny Fritz, and the Scurry County Commissioner's Court. He alleged that he had been denied access to the courts while confined in the Scurry County jail because he did

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

not have access to a law library and because the defendants had refused to provide him with most of the specific legal materials that he had requested. He alleged that the lack of access to legal materials had "severely hampered" his ability to file motions and pleadings in a pending civil rights suit, with the result that several defendants had been dismissed from the suit.

Eight days after Froust's complaint was filed, the district court dismissed the complaint as frivolous.¹

I

A complaint filed in forma pauperis may be dismissed as frivolous if it lacks an arguable basis in fact and law. A § 1915(d) dismissal is reviewed for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). Here, we conclude, however, that the district court should not have dismissed this suit because it is neither legally nor factually frivolous. Id.

Jails and prisons are required to supply inmates with "adequate law libraries or adequate assistance from persons trained in the law in order to comply with the prisoner's constitutional right to meaningful access to the courts." Pembroke v. Wood County, Tex., 981 F.2d 225, 229 (5th Cir.), cert. denied, 113 S.Ct. 2965 (internal quotations and citations omitted). The extremely limited access to legal research materials as alleged by Froust

¹No Spears hearing was held in this case. See Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

would, if true, fall short of this Court's standard for adequate legal research facilities. See Morrow v. Harwell, 768 F.2d 619, 623 (5th Cir. 1985).

The district court determined that the suit was frivolous because Froust had not demonstrated prejudice from the lack of access to a law library during his stay in the Scurry County jail. The court noted that Froust had filed a response to the defendants' motion to dismiss in No. 1:93CV058, that the motion had been denied in part, and that the case was set for trial. The court also noted that Froust was represented by counsel in an unrelated criminal case.

An allegation of denial of access to the courts will not support a claim under § 1983 if the litigant does not demonstrate that he was prejudiced by the alleged violation. Henthorn v. Swinson, 955 F.2d 351, 354 (5th Cir.), cert. denied, 112 S.Ct. 2974 (1992). Froust has alleged that his ability to proceed with No. 1:93CV058 was prejudiced by his inability to research legal issues while he was a Scurry County jail inmate. See R. 22; white brief, 4, 8-10; see also Brewer v. Wilkinson, 3 F.3d 816, 825-26 (5th Cir. 1993). The facts that Froust was able to file a response and that not all defendants were dismissed from the pending lawsuit do not automatically foreclose the possibility that Froust may have been prejudiced by his lack of access to legal materials. The fact that Froust was represented by counsel in an unrelated criminal case is--certainly without further development--not determinative of

whether Froust had access to the courts in his civil matters. See Mann v. Smith, 796 F.2d 79, 83-84 (5th Cir. 1986).

As we cannot find that Froust's claims are either legally or factually frivolous, we must hold that the district court abused its discretion when it dismissed the suit. Ancar, 964 F.2d at 468.

Froust has filed a motion to obtain additional copies of several documents that he wishes to file with the record on appeal. Because of the disposition of the appeal, that motion is DENIED as unnecessary. Another Scurry inmate, Rosario Carreon, has filed a motion to be added as a party to the appeal. That motion is also DENIED.

R E M A N D E D.