

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10182  
(Summary Calendar)

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WAYNE MORRIS REEVES, JR.,

Plaintiff-Appellant,

versus

J.A. COLLINS, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
(2:93-CV-310-J)

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(September 23, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Texas inmate Wayne Morris Reeves, Jr. (Reeves) filed this civil rights suit alleging that prison officials interfered with his legal mail in violation of the constitution. The district court dismissed the suit as frivolous pursuant to 28 U.S.C. section 1915(d). Finding the dismissal proper, we affirm.

I. FACTS AND PROCEDURAL HISTORY

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Reeves filed pro se a civil rights complaint against the Texas Department of Criminal Justice (TDCJ) Director J.A. Collins, Mrs. Hassells, T.L. Roach Unit (Unit) Mailroom Administrator, and unidentified Unit mailroom clerks. Reeves alleged that he and fellow inmate, Michael Vaughn, attempted to mail an envelope to district court that contained two letters requesting 42 U.S.C. § 1983 forms. Vaughn provided the envelope, which listed his return address. The letters were returned to their respective writers in TDCJ envelopes. Vaughn's letter was accompanied by this explanation: the envelope was contraband because it contained an unapproved substance, white shoe polish used instead of liquid paper.

Reeves, accompanied by Vaughn, brought the return to the attention of Hassells, who referred them to an inter-office communication which restricted an inmate's use of liquid paper and which provided for confiscation of such correspondence as contraband. Reeves nonetheless complained that the letters were legal mail and could not be inspected. He then brought the problem to Lt. Brown, who advised Reeves to file a grievance. Subsequently, Vaughn received and signed a notice concerning the fate of his letter and envelope; thus, according to Reeves, Vaughn waived his right to contest the matter.

Reeves sent another letter, which was addressed to the U.S. Attorney, and it came back to him sealed and unopened. The envelope was designated as "contraband" by the Unit's mailroom for containing an unapproved substance, white shoe polish.

Reeves notified the TDCJ Mail System Coordinators' Panel of his complaint. The Panel affirmed the Unit's actions.

Reeves filed suit, and the magistrate judge ordered him to answer two questions: whether he was prevented from filing a necessary legal document or from meeting a filing deadline, and if so, whether he informed that court of the reason for his late filing and requested leniency. Reeves responded that he was not prevented from meeting a deadline or filing a necessary document.

Based on Reeves' response, the magistrate judge determined that Reeves' right to access to the courts had not been implicated. The magistrate judge also concluded that Reeves' right to free speech had not been violated because controlling law did not exempt, completely, legal mail from penological regulation. The magistrate also found that Reeves had failed to argue that the liquid-paper rule was not reasonably related to a legitimate governmental interest. The district court adopted the magistrate judge's report recommending dismissal as frivolous.

## II. STANDARD OF REVIEW

The district court may dismiss an in forma pauperis complaint as frivolous if it lacks an arguable basis in law or fact. 28 U.S.C. section 1915(d). Macias v. Raul A. (Unknown), Badge No. 153, 23 F.3d 94, 97 (5th Cir. 1994). "Section 1915(d) accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly

baseless." Id. (citation and internal quotation marks omitted). We review such a dismissal only for abuse of discretion.

### III. CLAIM OF UNCONSTITUTIONAL INTERFERENCE WITH LEGAL MAIL

Although most of his arguments focus on the alleged violations of the TDCJ correspondence rules, Reeves concludes his argument by contending that the prison's mailroom practices violated his First and Fourteenth Amendment rights. To recover under § 1983, a plaintiff must prove, among other elements, that he was deprived of a federal right. Daniel v. Ferguson, 839 F.2d 1124, 1128 (5th Cir. 1988). "A prison official's interference with a prisoner's legal mail may violate the prisoner's constitutional right of access to the courts . . . . [and/or] the prisoner's First Amendment right to free speech -- i.e., the right to be free from unjustified governmental interference with communication." Brewer v. Wilkinson, 3 F.3d 816, 820 (5th Cir. 1993), cert. denied, 114 S.Ct. 1081 (1994).

Under the alleged facts of the two mailings, Reeves' right to access to the courts has not been implicated because he has not asserted "that his position as a litigant was prejudiced by the [alleged] mail tampering." Walker v. Navarro County Jail, 4 F.3d 410, 413 (5th Cir. 1993). Instead, Reeves admitted in his pleadings that he had not been prevented from meeting a deadline or filing a necessary document by the return of the letters.

"[I]n determining the constitutional validity of prison practices that impinge upon a prisoner's rights [to free speech] with respect to mail, the appropriate inquiry is whether the

practice is reasonably related to a legitimate penological interest." Brewer, 3 F.3d at 824. As the court below found, Reeves did not argue that the regulation in question was not reasonably related to a legitimate penological interest. To the extent that Reeves now attempts to argue that the regulation is unreasonable, we decline to consider it. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).<sup>1</sup>

Reeves also alleges that the interference with his mail constituted censorship. In Reeves' second incident of alleged mail tampering, the letter was returned sealed in its original envelope. Because his envelope was not opened, his letter was not censored. The first alleged incident, however, involved the opening of the envelope and the return of the two letters. By Reeves' own admission, the envelope was the other inmate's and provided that inmate's name and return address. Moreover, Reeves stated in his complaint that the other inmate signed an acknowledgement which effectively waived that inmate's ability to contest the conduct of the mailroom personnel. Under these circumstances, Reeves does not have standing to contest the opening of another prisoner's envelope. See Cramer v. Skinner, 931 F.2d 1020, 1024 (5th Cir.), cert. denied, 112 S.Ct. 298 (1991); Coon v. Ledbetter, 780 F.2d 1158, 1160 (5th Cir. 1986)

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<sup>1</sup> Reeves also raises certain other allegations not presented to the court below. We decline to address issues raised improperly for the first time on appeal. Varnado v. Lynaugh, 920 F.2d at 321.

(noting civil rights litigants are required to prove constitutional violation of personal rights).

The gist of Reeves' arguments on appeal concern the alleged violations of the TDCJ rules on correspondence. Violation of TDCJ rules or regulations, without more, does not give rise to a § 1983 cause of action. See Hernandez v. Estelle, 788 F.2d 1154, 1158 (5th Cir. 1986). Accordingly, the district court properly dismissed Reeves' case as frivolous because it lacks an arguable basis in law and fact.

#### CONCLUSION

For the reasons set forth above, the judgment is AFFIRMED.