

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40567
Conference Calendar

BILLY RAY JACOBS,

Plaintiff-Appellant,

versus

LARRY COOK, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 92-CV-2090

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Billy Ray Jacobs, a Louisiana prisoner, commenced this 42 U.S.C. § 1983 action against a number of prison officials and employees at the David Wade Correctional Center (DWCC) alleging that mailroom personnel mishandled his legal mail, thereby denying him access to the courts and due process of law. Jacobs alleged that mail addressed to him from the state court of appeals arrived at DWCC on March 5, 1992, was erroneously returned to the court, and that he received the letter on October 13, 1992. As a result of the error, Jacobs alleged that he had

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to file unnecessary writs with the Louisiana Supreme Court, causing him to be "stressed out mentally."

Pursuant to Fed. R. Civ. P. 12(b)(6), defendants moved to dismiss the complaint for failure to state a claim for relief. The district court adopted the magistrate judge's recommendation to dismiss the complaint over Jacobs's objections. This timely appeal followed.

We review a district court's dismissal for failure to state a claim under Rule 12(b)(6) de novo. Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993). "Meaningful access to the courts is a fundamental constitutional right, grounded in the First Amendment right to petition and the Fifth and Fourteenth Amendment due process clauses." Johnson v. Atkins, 999 F.2d 99, 100 (5th Cir. 1993) (citation omitted). To state a claim for denial of access to the courts, a prisoner must allege an intentional withholding or delay of legal mail and that the withholding or delay damaged the prisoner's legal position. Richardson v. McDonnell, 841 F.2d 120, 121-22 (5th Cir. 1988). The prisoner's position as a litigant must be prejudiced as a result of the mishandling or delay of mail in order to state a cognizable § 1983 claim. Walker v. Navarro County Jail, 4 F.3d 410, 413 (5th Cir. 1993); Henthorn v. Swinson, 955 F.2d 351, 354 (5th Cir.), cert. denied, 112 S. Ct. 2974 (1992).

Jacobs's allegations fall short of this standard. Even construing his complaint liberally, Jacobs failed to allege the type of prejudice necessary to state a claim. Jacobs has never alleged that any legal action was dismissed because of the delay,

that he was unable to file an action, or that he missed any filing deadline due to the mishandling of his mail. See, e.g., Brewer v. Wilkinson, 3 F.3d 816, 825-26 (5th Cir. 1993), cert. denied, 114 S. Ct. 1081 (1994); Richardson, 841 F.2d at 122. Accordingly, because Jacobs failed to allege the requisite prejudice, the district court correctly dismissed his complaint.

AFFIRMED.