IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 94-60207
Conference Calendar

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BOBBY STEVENS ET AL.,

Plaintiffs,

BRYCE DALLAS,

Plaintiff-Appellant,

versus

MICHAEL ADAMS ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. CA 4:93-78-S

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(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Bryce Dallas filed a pro se, in forma pauperis (IFP) civil rights complaint alleging that his constitutional rights were violated because prison officials refused to log out his mail on December 24, 1992. The district court dismissed the complaint without prejudice to filing a state court action because Dallas failed to allege a cognizable constitutional violation. Although the district court did not specify in its judgment the basis for

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the dismissal, this Court assumes that a complaint dismissed prior to service of process is dismissed as frivolous under 28 U.S.C. § 1915(d). See Rourke v. Thompson, 11 F.3d 47, 49 (5th Cir. 1993).

A complaint filed IFP can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id.

Dallas argued in the district court that prison officials refused to accept his mail on December 24, 1992, because they erroneously believed that Christmas Eve was a holiday. To the extent that Dallas was arguing that the prison officials were negligent, negligence is not a basis for liability under § 1983. Oliver v. Collins, 914 F.2d 56, 60 (5th Cir. 1990). To the extent that he was arguing that he was denied access to the courts, a plaintiff cannot state a cognizable denial-of-access-to-the-courts claim if the plaintiff's position was not prejudiced by the alleged deprivation. Henthorn v. Swinson, 955 F.2d 351, 354 (5th Cir.), cert. denied, 112 S.Ct. 2974 (1992). Dallas admitted that his pending litigation was not prejudiced by the delay, and therefore he has not alleged a cognizable § 1983 claim.

For the first time on appeal Dallas appears to be arguing that the refusal to accept the mail on December 24, 1992, was a First Amendment violation. This Court will not address the issue

for the first time on appeal. See First United Financial Corp. v. Specialty Oil Co., Inc. -I, 5 F.3d 944 , 948 (5th Cir. 1993) (issues raised for the first time on appeal will not be addressed unless they involve purely legal issues and failure to consider them will result in manifest injustice).

AFFIRMED.