

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60219  
Conference Calendar

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JAMES KOCH,

Plaintiff-Appellant,

versus

BETTY FOSTER ET AL.,

Defendants,

BETTY FOSTER ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 4:93-CV-181-D-D

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(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:\*

James Koch sued several employees of the Mississippi Department of Corrections facility at Parchman, Mississippi, alleging that they interfered with his access to the courts by returning a package of typewriter ribbons that were sent to him by his wife and by signing for and not delivering certified mail sent to him by his wife. The magistrate judge held a Spears\*\*

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

\*\* Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

hearing during which Koch iterated his previous allegations and complained that he never received a letter that was sent to him by his wife. The letter contained their marriage license and her birth certificate. Koch wished to use those documents in a lawsuit. Koch stated that, as a Class A prisoner, he was allowed to receive one package a month and that he had already received another package during the month that the typewriter ribbons were returned. Upon questioning, Koch stated that he had never missed any court deadlines as a result of the alleged interference with his mail.

The magistrate judge recommended that Koch's suit be dismissed with prejudice. The district court adopted the findings and the recommendation of the magistrate judge and dismissed the suit with prejudice.

For the first time on appeal and in a conclusional fashion, Koch alleges that the defendants had a retaliatory motive for interfering with his mail. Because it has not been addressed by the district court, this Court is not obligated to address the retaliation issue. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

The district court did not specify whether the dismissal of Koch's suit was pursuant to 28 U.S.C. § 1915(d) or FED. R. CIV. P. 12(b)(6). Koch filed this suit in forma pauperis (IFP), and it was dismissed prior to service of process on the defendant;

therefore, it is reviewed as a dismissal pursuant to § 1915(d). See Jackson v. City of Beaumont Police Dept., 958 F.2d 616, 618-19 (5th Cir. 1992); Holloway v. Gunnell, 662 F.2d 150, 152 (5th Cir. 1982); Spears, 766 F.2d at 181.

An IFP suit alleging a violation of 42 U.S.C. § 1983 may be dismissed as frivolous under § 1915(d) if it lacks an arguable basis in law or in fact. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). This Court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Id. at 1734. Koch's allegations do not have an arguable basis in law.

"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) (internal quotation and citation omitted). To advance 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); Jackson v. Procunier, 789 F.2d 307, 311-12 (5th Cir. 1986). Jackson declined to decide whether something less than intentional conduct, such as gross negligence or recklessness, would support such a claim. 789 F.2d at 312. 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).

Koch's allegations fall short of this standard. Construing his complaint liberally, Koch alleged that prison employees were grossly negligent in returning his legal mail. Koch has never alleged, however, 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) (allegation that prison officials prevented prisoner's writ of mandamus from arriving at district court stated cognizable access-to-the-courts claim), cert. denied, 114 S. Ct. 1081 (1994); Richardson, 841 F.2d at 122 (delay in processing prisoner's legal mail did not cause prejudice because prisoner was able to re-prepare and timely file petition). Because Koch failed to demonstrate the requisite prejudice, the decision of the district court is AFFIRMED.