

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60321
Summary Calendar

JOHN DAVID MILLSAP,

Plaintiff-Appellant,

versus

KENNETH SKIFFER, JOHN BOOTH, WILLIE CATCHING, VERON JORDAN,
MISHEILA JOHNSON, JOHN DOE, Mail Deliverer, JOHN DOE,
Mail Inspector, JOHN DOE, Law Library Director,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Mississippi
USDC No.3:96-CV-675-WS
- - - - -

February 2, 2000

Before JONES, DUHÉ, and STEWART, Circuit Judges.

PER CURIAM:¹

John David Millsap, Mississippi prisoner #31267, appeals the district court's dismissal of his 42 U.S.C. § 1983 action as frivolous pursuant to 28 U.S.C. § 1915(d). Millsap argues that the district court abused its discretion in dismissing his claim that he was unconstitutionally deprived of personal property found in his cell during a prison "shakedown," and of personal mail that he alleges was confiscated from the mail room. Whether these alleged property deprivations were negligent or intentional, they cannot

¹ Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

form the basis of a due process claim in a § 1983 action. See Daniels v. Williams, 474 U.S. 327, 332-35 (1986)(negligent); Hudson v. Palmer, 468 U.S. 517, 533-36 (1984)(intentional). The remainder of Millsap's arguments are unsubstantiated allegations for which he was unable to establish a factual basis during two separate hearings. The district court did not abuse its discretion in dismissing Millsap's complaint as frivolous. Siqlar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997).

Millsap's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. Millsap is hereby informed that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g), in addition to the strike for the district court's dismissal. See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996) ("[D]ismissals as frivolous in the district courts or the court of appeals count [as strikes] for the purposes of [§ 1915(g)]."). We caution Millsap that once he accumulates three strikes, he may not proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS.