

April 20, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41604
Conference Calendar

DAVID GENE MORRIS,

Plaintiff-Appellant,

versus

MISTY D. WARREN, Mailroom Supervisor;
JANE DOE, Unknown Mailroom Employee;
BENNIE COLEMAN, Grievance Officer;
ETHAN A. WASTFALL, Assistant Warden;
ROSEMARY HEINSOHN, Program Administrator;
DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:03-CV-411

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

David Gene Morris, Texas prisoner # 285845, appeals the district court's 28 U.S.C. § 1915A(b)(1) dismissal as frivolous and for failure to state a claim of his civil rights lawsuit, asserting that he had been denied access to the courts when his legal mail was not properly processed. The district court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismissal is reviewed de novo. See Ruiz v. United States, 160 F.3d 273, 274-75 (5th Cir. 1998).

To establish that he has been denied access to court, a prisoner must show actual prejudice in his ability to pursue a legal claim. See Walker v. Navarro County Jail, 4 F.3d 410, 413 (5th Cir. 1993). Morris has not shown that his position as a litigant has been prejudiced in any way, and, as the district court determined, his claim fails. See id. The appeal is without arguable merit and is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2.

Both the district court's dismissal and this court's dismissal of the instant appeal count as strikes for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Morris is CAUTIONED that if he accumulates three strikes, he will not be able to proceed in forma pauperis 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; THREE-STRIKES WARNING ISSUED.