

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50818

JERRY DAVIS,
a/k/a Jerry Brown,

Plaintiff-Appellant,

versus

JAMES COLLINS, Director,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-94-CA-336
- - - - -
(March 15, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that Jerry Davis's motion for leave to proceed in forma pauperis is DENIED, because his appeal lacks arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). In ruling on the motion, this court has examined it and Davis's brief in the light most favorable to him and has reviewed the record for any basis to support granting him relief on appeal. Because we have concluded on this review

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that the appeal is frivolous, IT IS FURTHER ORDERED that the appeal is DISMISSED. See 5th Cir. R. 42.2.

Davis filed this civil rights action to complain of a delay in filing a response to his federal habeas corpus petition. The district court dismissed the complaint as frivolous and imposed sanctions.

The district court's ruling is correct. "A denial-of-access-to-the-courts claim is not [actionable under 42 U.S.C. § 1983] if a litigant's position is not prejudiced by the alleged violation." Henthorn v. Swinson, 955 F.2d 351, 354 (5th Cir.), cert. denied, 112 S. Ct. 2974 (1992). To show that prejudice resulted from the delay in filing the response to his habeas petition, Davis would need to show that he is entitled to habeas relief. Thus, as the district court explained, he has no § 1983 cause of action because his criminal conviction remains in force. See Heck v. Humphrey, 114 S. Ct. 2364, 2373 (1994).

Davis has not presented argument in his brief concerning whether he should be allowed to appeal IFP from the district court's sanction order. Therefore this Court will not consider the issue. See Weaver v. Puckett, 896 F.2d 126, 128 (5th Cir.), cert. denied, 498 U.S. 966 (1990).

On August 30, 1994, the court dismissed Davis's appeal relative to his habeas petition, for lack of a final judgment. Davis did not move to dismiss his appeal after the magistrate judge informed him that there was no final judgment. Therefore, this court admonished him "that further prosecution of frivolous

appeals in this Court will result in the imposition of sanctions pursuant to Fed. R. App. P. 38." Davis v. Scott, No. 94-50475 (5th Cir. Aug. 30, 1994)(unpublished).

Even though he was admonished, Davis has attempted to take this frivolous appeal. Therefore, the court will impose a sanction in the amount of \$100, providing further that Davis may not take any appeals in forma pauperis in this court until the \$100 is paid, unless he is expressly permitted to do so by a judge of this court.

APPEAL DISMISSED; SANCTIONS IMPOSED.