

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN EUGENE LEPLEY,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 44742

FILED

OCT 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Riband*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint under 42 U.S.C. § 1983 for failure to state a claim. Sixth Judicial District Court, Pershing County; Richard Wagner and John M. Iroz, Judges.

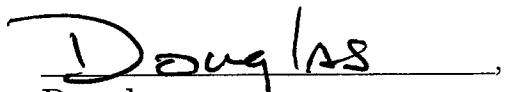
Having reviewed the record and the documents submitted by appellant,¹ we conclude that the district court did not err in dismissing appellant's complaint.² Segregation of HIV-positive inmates is rationally related to the legitimate government purpose of limiting the virus'


¹Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him.

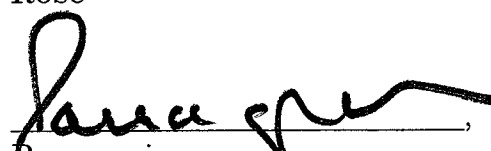
²See NRCP 12(b)(5); Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993) (noting that in determining whether a claim has been stated, all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true); Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985) (stating that in reviewing an order granting a motion to dismiss, this court's task is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief).

spread.³ Thus, appellant's complaint did not state a claim for deprivation of any right guaranteed by the constitution or other law. Accordingly, we affirm the district court's order.

It is so ORDERED.

 J.
Douglas

 J.
Rose

 J.
Parraguirre

cc: Hon. John M. Iroz, District Judge
Hon. Richard Wagner, District Judge
Brian Eugene Lepley
Attorney General Brian Sandoval/Carson City
Pershing County District Attorney
Pershing County Clerk

³Moore v. Mabus, 976 F.2d 268, 271 (5th Cir. 1992); see DeRosa v. Dist. Ct., 115 Nev. 225, 236, 985 P.2d 157, 164 (1999) (stating that, absent suspect classification concerns, a classification is constitutional if it is rationally related to a legitimate government purpose); see also Mofield v. Bell, 3 Fed. Appx. 441, 443 (6th Cir. 2001) (noting that "HIV-infected inmates do not constitute a suspect class" under the Equal Protection Clause); Powell v. Dep't of Corrections, 647 F. Supp. 968 (N.D. Okla. 1986) (holding that a prisoner does not have a constitutional right to be placed in the general prison population).