

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY ALAN O'GUINN,  
Appellant,  
vs.  
DOUGLAS HERNDON,  
Respondent.

No. 45691

**FILED**

MAY 19 2006

ORDER OF AFFIRMANCE

JANET L. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

This is a proper person appeal from a district court summary judgment. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant Roy O'Guinn filed a district court "complaint for damages," alleging that, because he had been "certified . . . mentally ill and incompetent," respondent, former District Attorney Douglas Herndon, had exceeded his prosecutorial authority by initiating a criminal case against O'Guinn, causing him to be adjudged, sentenced, and imprisoned. O'Guinn relied on NRS 178.400, which provides that a person may not be tried or punished for an offense while he is incompetent.<sup>1</sup>

Herndon filed a motion to dismiss, arguing that O'Guinn's complaint was an improper attempt to collaterally attack his conviction and that regardless, Herndon was entitled to prosecutorial immunity.

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<sup>1</sup>O'Guinn also relied on the Americans with Disabilities Act (ADA), but, because malicious prosecution claims are not actionable under the ADA, his reliance is misplaced. See 42 U.S.C. § 12112 (Title I, prohibiting discrimination by employers); 42 U.S.C. § 12132 (Title II, prohibiting discrimination by public entities with regard to public services); 42 U.S.C. § 12182 (Title III, applying to public accommodations operated by private entities); 42 U.S.C. § 12203 (Title IV, prohibiting retaliation and coercion); Douris v. Dougherty, 192 F.Supp.2d 358, 368 (E.D.Pa. 2002). Accordingly, this order does not address O'Guinn's ADA-related arguments.

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O'Guinn opposed the motion, arguing that, because Herndon lacked jurisdiction to prosecute him, he could bring his civil action without first having his conviction overturned, and that Herndon was not entitled to immunity because he exceeded his authority by prosecuting an incompetent person. O'Guinn also moved for summary judgment.

Based on the pleadings and filed documents, the district court granted the motion to dismiss and denied O'Guinn's summary judgment motion. Because the district court considered matters outside of the pleadings, we treat the motion to dismiss as one for summary judgment.<sup>2</sup> Summary judgment is appropriate when the pleadings and other evidence demonstrate that no genuine material factual issues remain and that the moving party is entitled to a judgment as a matter of law.<sup>3</sup> Orders granting summary judgment are subject to de novo review on appeal.<sup>4</sup>

Here, O'Guinn attempted to challenge his conviction's validity through a civil damages action against the prosecuting attorney. This claim fails as a matter of law for two reasons. First, O'Guinn must prove that his conviction or sentence has been reversed, expunged, declared invalid, or called into question through a writ of habeas corpus.<sup>5</sup> Second, O'Guinn's theories for recovery in this case also undermine the public policy underlying the prosecutorial immunity doctrine. Prosecutors

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<sup>2</sup>NRCP 12(c).


<sup>3</sup>Wood v. Safeway, Inc., 121 Nev. \_\_\_, \_\_\_, 121 P.3d 1026, 1029 (2005).

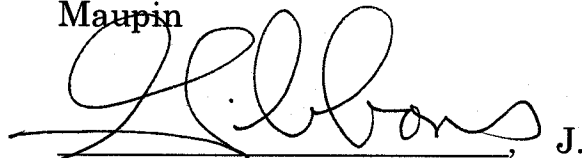
<sup>4</sup>Id.

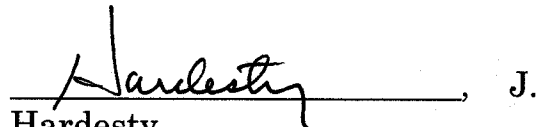
<sup>5</sup>See Heck v. Humphrey, 512 U.S. 477, 486 (1994); cf. Morgano v. Smith, 110 Nev. 1025, 1029, 879 P.2d 735, 737 (1994) (noting, in a legal malpractice action context, that in order to overcome a motion to dismiss, the plaintiff must plead that he has obtained appellate or post conviction relief).

generally are entitled to immunity because "harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust."<sup>6</sup> Accordingly, Herndon is immune from liability for his actions and conduct arising from the performance of his former criminal prosecutorial duties,<sup>7</sup> and thus, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
Maupin J.

  
Gibbons J.

  
Hardesty J.

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<sup>6</sup>Imbler v. Pachtman, 424 U.S. 409, 423 (1976).

<sup>7</sup>Id.; County of Washoe v. District Court, 98 Nev. 456, 652 P.2d 1175 (1982). O'Guinn's argument that Herndon is not entitled to immunity is baseless, especially since O'Guinn was deemed competent at the time when his guilty plea was entered and accepted.

<sup>8</sup>This court received O'Guinn's "notice" and "evidence" documents, but, because these documents were not part of the record below, they were not considered in our disposition of this appeal. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981). Additionally, we have considered O'Guinn's response to Herndon's notice of failure to comply with NRAP 25(1)(b), and note that O'Guinn has indicated that he has "served all papers . . . as required by the rules."

cc: Hon. Mark R. Denton, District Judge  
Roy Alan O'Guinn  
Clark County District Attorney David J. Roger/Civil Division  
Clark County Clerk