

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH M. CARPINO,
Appellant,
vs.
KENNY GUINN, GOVERNOR,
CHAIRMAN, NEVADA BOARD OF
PARDONS; NEVADA BOARD OF
PARDONS COMMISSIONERS;
MONICA J. HOWK, EXECUTIVE
SECRETARY; DORLA M. SALLING,
CHAIRMAN; AND DAVID M. SMITH,
MANAGEMENT ANALYST III,
Respondents.

No. 45917

FILED

JAN 31 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a civil rights complaint for failure to state a claim upon which relief can be granted. First Judicial District Court, Carson City; William A. Maddox, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Having reviewed the record and appellant Joseph M. Carpino's proper person appeal statement, we conclude that the district court did not err in dismissing Carpino's civil rights complaint.¹

¹See 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, 227, 699 P.2d 110, 111 (1985) (stating that, in reviewing an order granting a motion to dismiss, *continued on next page . . .*

As “[a] pardon is the exercise of the sovereign’s prerogative of giving mercy,”² a prisoner in Nevada has no “protectible expectation” of release before he completes his sentence.³ As a result, we conclude that the respondents on appeal did not violate Carpino’s due process rights under the Nevada Constitution and United States Constitution because Carpino was not deprived of any liberty interest.⁴ Consequently, even if the Board misplaced Carpino’s applications for commutation and then subsequently required him to fill out another application, as the prior applications were supposedly obsolete, we conclude that Carpino’s due process rights were not violated.⁵

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this court’s task is to determine whether the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief).

²Pinana v. State, 76 Nev. 274, 282, 352 P.2d 824, 829 (1960).

³See Severance v. Armstrong, 96 Nev. 836, 839, 620 P.2d 369, 370 (1980).

⁴See Kelch v. Director, 107 Nev. 827, 829, 822 P.2d 1094, 1095 (1991) (holding that the Due Process Clause applies only if a claimant, who is challenging the revocation of an order of sentence commutation, has been deprived or is in jeopardy of being deprived of some type of liberty interest) (citing Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).

⁵See Niergarth v. Warden, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989) (“Because a prisoner has no due process right to clemency, a change in the method of determining how a statutory grant of clemency will be administered does not implicate a constitutionally protected interest.”).

Further, we conclude that the district court did not err in dismissing Carpino's civil rights complaint because Carpino was not entitled to the relief sought in his civil rights complaint,⁶ as there is nothing in Nevada's pardons statutes⁷ that provide for the right to be placed on an agenda, the right to receive a positive decision from the Board, or the right to receive notice of why a prisoner is not being placed on an agenda.⁸

Finally, we conclude that the district court did not err in dismissing Carpino's civil rights complaint because Carpino failed to establish his equal protection claim. As prisoners are not a suspect class,⁹ we conclude that Carpino failed to sufficiently allege that the Board intentionally treated him differently than others similarly situated to him and that there was no rational basis for that treatment.¹⁰ Consequently,

⁶In his civil rights complaint, Carpino had sought relief in the form of declaratory judgment, injunctive relief, and costs relating to litigation.

⁷See NRS 213.005-213.100.

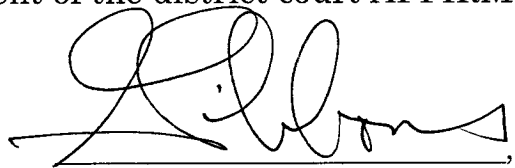
⁸We note that Carpino did not allege in his civil rights complaint that the Board prohibited him from applying for commutation. On the contrary, Carpino admitted in his civil rights complaint that he had submitted another application to the Board after receiving it on July 28, 2004.

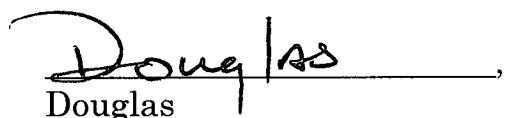
⁹See Glauner v. Miller, 184 F.3d 1053, 1054 (9th Cir. 1999).

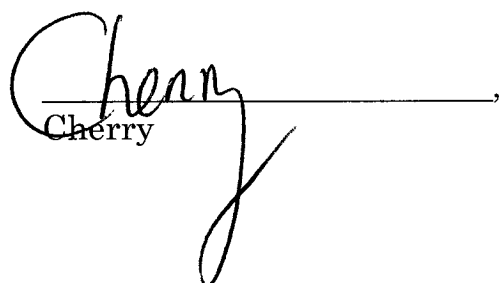
¹⁰See Rico v. Rodriguez, 121 Nev. 695, 703, 120 P.3d 812, 817 (2005) (holding that the threshold question in equal protection analysis is whether there is dissimilar treatment of similarly situated persons; where a case presents no judicially recognized suspect class or fundamental right that would warrant intervention under a standard of strict scrutiny or where it presents no quasi-suspect class, the court analyzes under the *continued on next page . . .*

we conclude that dismissal was proper because Carpino did not sufficiently allege his equal protection claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. William A. Maddox, District Judge
Joseph M. Carpino
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk

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rational basis test). See also Snowden v. Hughes, 321 U.S. 1, 8 (1944) (“The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination.”).