

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN CHARLES FRITZ,
Appellant,
vs.
CLARK COUNTY PUBLIC
DEFENDER'S OFFICE,
Respondent.

No. 46544

FILED

JUL 05 2006

ORDER OF AFFIRMANCE

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


This is a proper person appeal from a district court order dismissing appellant's complaint for legal malpractice against his public defender. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

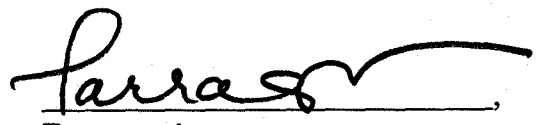
Having reviewed the record and appellant's proper person appeal statement, we conclude that the district court did not err.¹ In particular, appellant did not assert that he has obtained relief from his

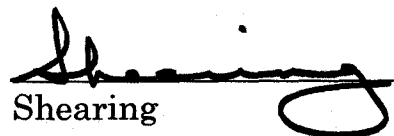
¹See NRCP 12(b)(5); Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993) (noting that, in determining whether a claim has been stated, all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true); Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985) (stating that, in reviewing an order granting a motion to dismiss, 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).

conviction, and thus he cannot maintain a legal malpractice action against his criminal defense attorney.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Becker


_____, J.
Parraguirre


_____, Sr. J.
Shearing

²See Morgano v. Smith, 110 Nev. 1025, 1028-29, 879 P.2d 735, 737-38 (1994) (holding that a legal malpractice action against a criminal defense attorney cannot be maintained unless the plaintiff has obtained appellate or post-conviction relief from the conviction or sentence, or otherwise established innocence of the charges).

³The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered January 6, 2006.

cc: Hon. Kathy A. Hardcastle, District Judge
Kevin Charles Fritz
Clark County District Attorney David J. Roger/Civil Division
Clark County Clerk