

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DAVID MORROW,
Appellant,

vs.

TED D'AMICO, MEDICAL DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS; GLEN WHORTON,
DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS; AND THE STATE
OF NEVADA,
Respondents.

No. 46562

FILED

NOV 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's petition for a writ of mandamus. Sixth Judicial District Court, Pershing County; Richard A. Wagner, Judge.

Appellant claimed in his petition that he was not receiving adequate medical attention at the Lovelock prison where he was imprisoned. Specifically, he states that he suffers from relapse-remitting Multiple Sclerosis and he is not provided with the best drug to relieve his pain and discomfort, that he should be placed in the chronic clinic program and that he is being improperly assessed a fee for receiving medication for a chronic problem. Respondents never answered, and the district court dismissed appellant's petition because, in the court's view, it was clearly a medical malpractice action and a physician's affidavit was not attached supporting the complaint as required by NRS 41A.071. The district court erred in dismissing on this basis.

Specifically, appellant's writ petition clearly stated that he was not receiving adequate medical treatment for his multiple sclerosis, and the district court's analysis should have eventually considered whether the prison officials were displaying "deliberate indifference" to appellant's alleged serious medical condition.¹ Although the district court was wrong in dismissing this action for the reason stated, we affirm this dismissal on other grounds.²

A mandamus petition is generally appropriate when there is no other adequate legal remedy.³ In this case, appellant has an adequate legal remedy by filing a legal action against respondents and alleging the inadequate medical assistance he is receiving as he did in his writ petition. He could request mandatory injunctive relief to compel action to meet his medical needs.⁴ In response to appellant's request for injunctive relief from this court in the first instance, respondents state in their brief that this request is inappropriate because "a trial court needs to conduct an extensive inquiry into allegations and factual matters surrounding the alleged inadequate medical treatment of [appellant]." Appellant could also allege that the prison officials are violating his civil rights in

¹See Estelle v. Gamble, 429 U.S. 825, 836 (1994); Clement v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002).

²See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (indicating that this court may affirm a district court decision on grounds different from those on which the district court relied).

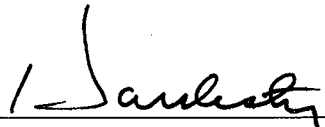
³NRS 34.170.

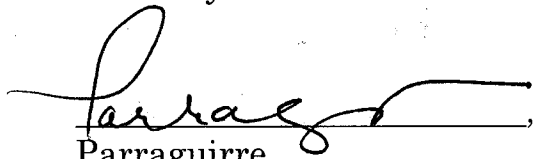
⁴See Zupancic v. Sierra Vista Recreation Inc., 97 Nev. 187, 193, 625 P.2d 1177, 1181 (1981).

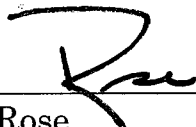
an action in state or federal court.⁵ A new action would also give appellant an opportunity to allege his change in prison confinement and medical treatment, if any.

Accordingly, we affirm the district court's order dismissing the writ petition.⁶

It is so ORDERED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, Sr. J.
Rose

⁵See 42 U.S.C. § 1983 (2000).

⁶Appellant's motion to "Reconsider Motion for Stay or Injunction" is denied.

⁷The Honorable Robert E. Rose, Senior Justice, participated in the decision of this matter under a general order of assignment entered on July 6, 2007.

cc: Hon. Richard Wagner, District Judge
Richard David Morrow
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk