

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM E. CALDWELL,  
Appellant,  
vs.  
THOMAS M. CARROLL,  
Respondent.

No. 47269

**FILED**

**OCT 18 2006**

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting a motion to dismiss. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant William E. Caldwell filed an "amended complaint for damages," alleging that respondent Thomas M. Carroll had wrongfully prosecuted him for crimes that occurred outside of the applicable limitations period. Caldwell also alleged that his prosecution was wrongful because there was evidence that he was incompetent at the time of his prosecution. Carroll moved to dismiss the complaint for failure to state a claim upon which relief may be granted. Although Caldwell opposed the motion and moved for summary judgment, the district court granted Carroll's motion to dismiss. Caldwell appeals.

In determining whether Caldwell stated a claim for relief sufficient to withstand a motion to dismiss, this court accepts all of his factual allegations as true and construes all reasonable inferences in his

favor.<sup>1</sup> Dismissal was proper only if Caldwell's allegations would not entitle him to relief.<sup>2</sup>

Here, because the complaint directly implicates the validity of Caldwell's conviction, but fails to allege that his conviction has been reversed, expunged, declared invalid, or called into question through issuance of a writ of habeas corpus, his complaint to recover damages for the allegedly invalid conviction is not legally cognizable and, therefore, the district court properly dismissed it.<sup>3</sup> Additionally, because Caldwell's wrongful prosecution allegations arise directly from Carroll's prosecutorial function, Carroll is entitled to immunity.<sup>4</sup> Moreover, Caldwell's theories for recovery are contrary to the policy reasons underlying prosecutorial immunity principles, namely to protect against unfounded litigation that

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<sup>1</sup>Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

<sup>2</sup>Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

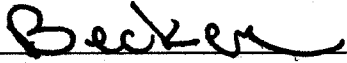
<sup>3</sup>See Heck v. Humphrey, 512 U.S. 477, 486, 489 (1994) (explaining that, where a criminal prosecution has yet to be terminated in the plaintiff's favor, malicious prosecution is not a viable claim); cf. Morgano v. Smith, 110 Nev. 1025, 1029, 879 P.2d 735, 737 (1994) (noting that in order to overcome a motion to dismiss a legal malpractice claim, the plaintiff must plead that he has obtained appellate or post-conviction relief).

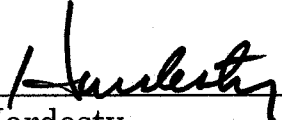
<sup>4</sup>Greene's argument that Carroll's act of prosecuting Greene is not entitled to immunity is unavailing. See, e.g., Botello v. Gammick, 413 F.3d 971, 976 (9th Cir. 2005) (recognizing that "it is well established that a prosecutor has absolute immunity for the decision to prosecute a particular case").

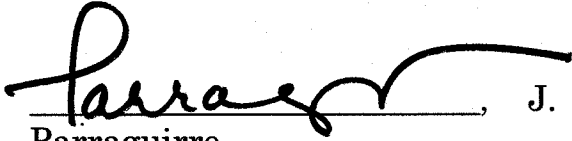
would deflect the prosecutor's energies from his public duties, and to facilitate the prosecutor's exercise of independent judgment.<sup>5</sup>

Accordingly, because Caldwell's complaint fails to state an actionable claim for relief, we affirm the district court's order.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Mark R. Denton, District Judge  
William E. Caldwell  
Clark County District Attorney David J. Roger/Civil Division  
Clark County Clerk

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<sup>5</sup>Imbler v. Pachtman, 424 U.S. 409, 423 (1976); County of Washoe v. District Court, 98 Nev. 456, 652 P.2d 1175 (1982).