

IN THE SUPREME COURT OF THE STATE OF NEVADA

WENDELL EUGENE COYLE,
Coyle,
vs.
DOLPHIS BOUCHER,
Respondent.

No. 47810

FILED

APR 09 2007

ORDER OF AFFIRMANCE

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

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

Coyle filed a civil suit against Detective Dolphis Boucher of the Las Vegas Metropolitan Police Department (LVMPD), alleging that Detective Boucher arrested him even though the detective knew that the "Nevada statute of limitations of three years barred such an arrest." The matter arose in the course of a 2004 investigation when Detective Boucher reviewed reports of a prior 1996 incident which involved the sexual assault of a victim under 14 years of age. Although in the 1996 incident the investigating LVMPD officer had not submitted the case to the district attorney for prosecution, Detective Boucher again interviewed the alleged victim and obtained a warrant for the arrest of Coyle. Coyle was subsequently arrested, tried and convicted on the assault charges.

Having reviewed the record and Coyle's proper person appeal statement, we conclude that the district court did not err in dismissing Coyle's complaint.

A district court may review a complaint filed by a proper person, with forma pauperis status, prior to service.¹ Under NRCP 11(c)(2), a district court may impose sanctions, even against a proper person litigant, “sufficient to deter repetition” of a frivolous or vexatious action or defense.² Given the court’s concern, after giving notice, the court must make substantive findings as to the frivolous or vexatious nature of the claims³ and provide an opportunity for the aggrieved party to respond.⁴ If the court finds the claims to lack “an arguable basis either in law or in fact,”⁵ then the case may be dismissed.⁶

In this case, the district court found that Detective Boucher was within his discretion as to the investigation of Coyle. It is well settled that no action may be brought against a police officer based upon the exercise or performance of a discretionary function or duty.⁷ Although

¹Jordan v. State, Dep’t of Motor Vehicles, 121 Nev. 44, 110 P.3d 30 (2005).

²Id. at 56, 110 P.3d at 40.

³Id. at 61, 110 P.3d at 43.

⁴See id. at 62, 110 P.3d at 44.

⁵Neitzke v. Williams, 490 U.S. 319, 325 (1989).

⁶Jordan, 121 Nev at 58, 110 P.3d at 41.

⁷See NRS 41.032(2); Maturi v. Las Vegas Metro. Police Dep’t, 110 Nev. 307, 308, 871 P.2d 932, 933 (1994) (holding that police decision as to manner in which suspect was handcuffed during detention was “discretionary” and therefore immune from claims under state law); Herrera v. Las Vegas Metropolitan Police Dept., 298 F. Supp. 2d 1043,

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Coyle correctly suggests that there is a statute of limitations for sexual assault,⁸ that limitation is tolled when a written report has been filed with a law enforcement officer within the original period of limitation.⁹ As a written report of the earlier incident was filed, the period of limitations was tolled. In addition, because of the age of the victim at the time of the crime and the time at which the detective interviewed her in 2004, the statute of limitations would also have been tolled under NRS 171.095.¹⁰

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1054 (D. Nev. 2004) (stating that police officers' decisions during arrest discretionary and therefore immune from claims under state law).

⁸NRS 171.085(1) states: "Theft, robbery, burglary, forgery, arson, sexual assault, a violation of NRS 90.570 or a violation punishable pursuant to paragraph (c) of subsection 3 of NRS 598.0999 must be found, or an information or complaint filed, within 4 years after the commission of the offense."

⁹NRS 171.083(1) states:

If, at any time during the period of limitation prescribed in NRS 171.085 and 171.095, a victim of a sexual assault or a person authorized to act on behalf of a victim of a sexual assault files with a law enforcement officer a written report concerning the sexual assault, the period of limitation prescribed in NRS 171.085 and 171.095 is removed and there is no limitation of the time within which a prosecution for the sexual assault must be commenced.

¹⁰NRS 171.095(1) states:

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The district court reviewed Coyle's complaint, stayed service, gave Coyle the opportunity to respond, reviewed his response, found the claims to be frivolous and dismissed the case. Since there is no legal theory under which Coyle might have prevailed, the district court was

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1. Except as otherwise provided in subsection 2 and NRS 171.083 and 171.084:

(a) If a felony, gross misdemeanor or misdemeanor is committed in a secret manner, an indictment for the offense must be found, or an information or complaint filed, within the periods of limitation prescribed in NRS 171.085, 171.090 and 624.800 after the discovery of the offense, unless a longer period is allowed by paragraph (b) or the provisions of NRS 202.885.

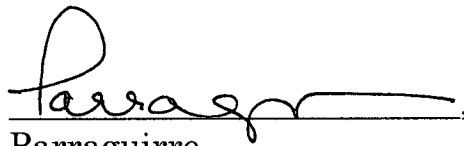
(b) An indictment must be found, or an information or complaint filed, for any offense constituting sexual abuse of a child, as defined in NRS 432B.100, before the victim of the sexual abuse is:

(1) Twenty-one years old if he discovers or reasonably should have discovered that he was a victim of the sexual abuse by the date on which he reaches that age; or


(2) Twenty-eight years old if he does not discover and reasonably should not have discovered that he was a victim of the sexual abuse by the date on which he reaches 21 years of age.

correct in determining that the complaint was frivolous. Accordingly, the order of dismissal was correctly issued, and we

ORDER the judgment of the district court AFFIRMED.¹¹


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Kathy A. Hardcastle, District Judge
Wendell Eugene Coyle
Dolphis Boucher
Eighth District Court Clerk

¹¹Having considered all of the issues raised by Coyle, we conclude that any of his contentions not discussed above lack merit and, therefore, do not warrant reversal of the district court's judgment.