


IN THE SUPREME COURT OF THE STATE OF NEVADA

PERCY LAVAE BACON,
Appellant,
vs.
GARY A. SAYRE; AND LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT,
Respondents.

No. 47935

FILED

FEB 08 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing with prejudice the underlying false arrest action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

In the district court, appellant Percy Lavae Bacon essentially alleged that his arrest, which ultimately resulted in his conviction and imprisonment, was procured through respondents' purportedly improperly conducted investigation and the resulting allegedly fraudulent affidavit supporting the arrest warrant. Respondents, primarily relying on NRS 41.032(2), which renders respondents immune from suit for discretionary acts, moved the district court to dismiss the action or alternatively for summary judgment. The district court granted respondents' motion, dismissing the action with prejudice. This appeal followed.

Our review of the order dismissing Bacon's action against respondents is rigorous, as this court, in determining whether Bacon has

set forth allegations sufficient to make out a right to relief,¹ accepts all factual allegations in his amended complaint as true and construes all reasonable inferences in his favor.² The dismissal of Bacon's action against respondents was proper only if his allegations, presumed true, would not entitle him to relief.³ Having reviewed the record in light of these principles, we conclude that the district court correctly dismissed the underlying action.

Specifically, discretionary act immunity under NRS 41.032 is available to the state or any of its agencies, political subdivisions, or "public officers who are exercising their discretion in the performance of their public duties 'whether or not the discretion involved is abused.'"⁴ For example, discretionary act immunity has been applied to shield public officers/agencies from liability in situations that involved a warrantless arrest of an individual during a traffic stop,⁵ and an allegedly inadequate

¹Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

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

³Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

⁴Falline v. GNLV Corp., 107 Nev. 1004, 1009 n.3, 823 P.2d 888, 892 n.3 (1991) (quoting NRS 41.032(2)).

⁵See Ortega v. Reyna, 114 Nev. 55, 953 P.2d 18 (1998).

child abuse investigation.⁶ In concluding that the public officers/agencies in those cases were entitled to immunity, this court emphasized that the officials were engaged in “discretionary acts”—i.e., acts requiring the “exercise of personal deliberation, decision[,] and judgment.”⁷ Thus, to the extent that Bacon’s action concerns respondents’ (a state officer’s and agency’s) investigation that led to his arrest, Bacon is not entitled to relief because, under NRS 41.032(2), respondents are shielded from his claims, since the allegedly improper investigation and arrest involved the exercise of personal deliberation, decision, and judgment.

Further, to the extent Bacon’s allegations rest solely on the purportedly fraudulent affidavit submitted to support an arrest warrant for Bacon, we note that, regardless of the nature of this act (i.e., whether it is discretionary or ministerial), because Bacon’s allegations necessarily imply the invalidity of his conviction, he must first demonstrate that he has obtained appellate or post-conviction relief from his conviction or sentence, or otherwise established innocence of the charges.⁸ Here, Bacon has not demonstrated that he has obtained relief from his conviction or

⁶See Foster v. Washoe County, 114 Nev. 936, 964 P.2d 788 (1998).

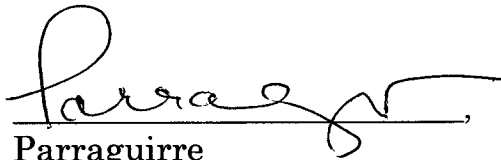
⁷Ortega, 114 Nev. at 62, 953 P.2d at 23 (quoting Travelers Hotel v. City of Reno, 103 Nev. 343, 345-46, 741 P.2d 1353, 1354 (1987)); Foster, 114 Nev. at 942, 964 P.2d at 792.

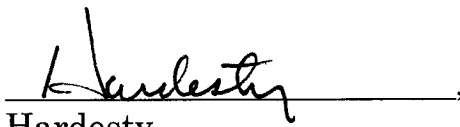
⁸Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).


sentence. Thus, he cannot maintain the underlying action against respondents.

Accordingly, we conclude that the district court did not err in dismissing the underlying action, and we

ORDER the judgment of the district court AFFIRMED.⁹


Parraguirre J.


Hardesty J.


Saitta J.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Percy Lavae Bacon
Marquis & Aurbach
Eighth District Court Clerk

⁹No transcripts were necessary to our resolution of this appeal; we thus deny Bacon's September 12, 2006 transcript request.