

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN STEVEN OLAUSEN,  
Appellant,  
vs.  
KENNY GUINN,  
GOVERNOR/CHAIRMAN OF NEVADA  
BOARD OF PARDONS; JACKIE  
CRAWFORD, DIRECTOR OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
AND RICHARD GAMMICK, WASHOE  
COUNTY DISTRICT ATTORNEY,  
Respondents.

No. 50025

**FILED**

MAY 08 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a civil rights action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Proper person appellant John Steven Olausen filed a civil rights complaint in the district court, alleging that the circumstances of his hearing before the Nevada Board of Pardons deprived him of various constitutional rights and resulted in the Pardons Board improperly denying his petition to commute his prison sentence. Olausen essentially asserted that respondents either offered or considered inaccurate evidence when the Pardons Board was addressing Olausen's petition, and he

apparently sought another hearing before the Pardons Board on a corrected record.

Respondent Richard Gammick, Washoe County District Attorney, moved the district court to dismiss the complaint under NRCP 12(b)(5), for Olausen's failure to assert a claim on which the district court could grant relief. The district court granted the motion as to Gammick.

Thereafter, respondents Kenny Guinn, former Nevada Governor, and Jackie Crawford, former Director of the Nevada Department of Corrections, likewise moved the district court to dismiss Olausen's complaint. The district court granted the motion. This appeal followed.

The district court's orders granting respondents' motions to dismiss under NRCP 12(b)(5) are "subject to a rigorous standard of review on appeal."<sup>1</sup> Accordingly, this court will treat all factual allegations in Olausen's complaint as true and draw all inferences in his favor.<sup>2</sup> Olausen's complaint was properly dismissed only if it appears beyond a doubt that he could prove no set of facts, which, if true, would entitle him to relief.<sup>3</sup> We review the district court's legal conclusions de novo.<sup>4</sup>

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<sup>1</sup>See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. \_\_, \_\_, \_\_ P.3d \_\_, \_\_ (Adv. Op. No. 21, April 14, 2008) (quoting Seput v. Lacayo, 122 Nev. 499, 501, 134 P.3d 733, 734 (2006)).

<sup>2</sup>See id.

<sup>3</sup>See id.

<sup>4</sup>See id.

Having considered the record, Olausen's appeal statement, Gammick's response,<sup>5</sup> and Olausen's reply in light of those principles, we conclude that the district court did not err when it granted respondents' motions to dismiss. First, Olausen has no constitutional right to a commuted sentence;<sup>6</sup> thus, his petition did not trigger the constitutional rights that he claims were violated at the Pardons Board's hearing.<sup>7</sup> Second, and correspondingly, a Pardons Board's determination with respect to commuting an inmate's sentence—a discretionary decision<sup>8</sup>—is generally not subject to judicial review.<sup>9</sup> Thus, based on Olausen's

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<sup>5</sup>Guinn and Crawford have filed a joinder to Gammick's response.

<sup>6</sup>Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 464 (1981) (noting that "an inmate has 'no constitutional or inherent right' to commutation of his sentence" (quoting Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 7 (1979))).

<sup>7</sup>Id. ("[G]iven a valid conviction, the criminal defendant has been constitutionally deprived of his liberty." (quoting Greenholtz, 442 U.S. at 7)).

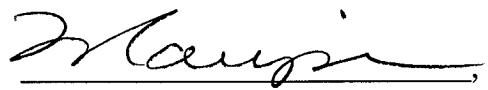
<sup>8</sup>See Nev. Const. art. 5, § 14(1) (providing that the Pardons Board "may, upon such conditions and with such limitations and restrictions as they may think proper . . . commute punishments"); see also Dumschat, 452 U.S. at 464 (providing that "a decision whether to commute a long-term sentence generally depends . . . on purely subjective evaluations and on predictions of future behavior by those entrusted with the decision").

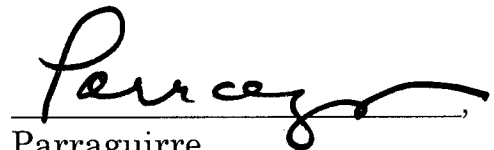
<sup>9</sup>Dumschat, 452 U.S. at 464 (recognizing that "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review").

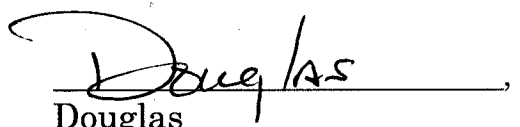
complaint, he could prove no set of facts entitling him to the relief that he sought.<sup>10</sup>

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>11</sup>

  
Maupin, J.

  
Parraguirre, J.

  
Douglas, J.

cc: Hon. James Todd Russell, District Judge  
John Steven Olausen  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick /Civil  
Division  
Carson City Clerk

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<sup>10</sup>To the extent that Olausen challenges the district court's order denying his motion for an extension of time to oppose Gammick's motion to dismiss or any refusal by the district court to extend the time for Olausen to respond to Guinn and Crawford's motion to dismiss, Olausen's arguments are unpersuasive. The decision to grant an extension of time is generally within the district court's discretion. See NRCP 6(b).

<sup>11</sup>Having considered all of the issues raised by Olausen, we conclude that his other contentions lack merit and thus do not warrant reversal of the district court's judgment.