

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERCY LAVAE BACON,
Appellant,
vs.
RANDY LASWELL; JOHN DOE PARESI;
AND JOHN DOE GILLENWATER,
Respondents.

No. 51628

FILED

DEC 03 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is a proper person appeal from a district court order dismissing appellant's complaint for damages in a civil action stemming from his arrest. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

After proper person appellant Percy Lavae Bacon's complaint was filed, the district court entered an order directing the district court clerk to defer issuing any summonses pending the court's determination of the complaint's merits and a corresponding order directing Bacon to show cause why his complaint should not be dismissed.¹ The district court's show cause order noted that Bacon's claims were against various employees of the North Las Vegas Police Department (NLVPD) and that his complaint involved a civil action stemming from Bacon's arrest. The

¹See Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 57-58, 110 P.3d 30, 40-41 (2005) (noting that the district court, pending its determination of the merits of an in forma pauperis complaint, may direct the court clerk to defer issuing any summonses) overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, 181 P.3d 670 (2008).

court further noted that Bacon had filed six previous complaints “against targets of his own criminal conduct, against the public defenders office, against immune parties, and/or against members of the [NLVPD],” and that Bacon did not pursue any of these actions until after being incarcerated. The court also ordered Bacon to show cause why he should not be held to be a vexatious litigant. Thereafter, the court entered an order declaring Bacon a vexatious litigant and entered a separate order dismissing Bacon’s complaint, concluding that he failed to demonstrate that he had obtained “post-conviction relief due to his conviction or sentence being based upon something other than his own conduct.” Bacon has appealed the dismissal of his complaint and further challenges the interlocutory order declaring him to be a vexatious litigant.

Having reviewed the record and Bacon’s civil proper person appeal statement, we conclude that the district court did not err in dismissing his complaint.² In particular, because the allegations in Bacon’s complaint 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

²See NRCP 12(b)(5); Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993) (noting that in determining whether a claim has been stated, all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true); Edgar v. Wagner, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985) (stating that in reviewing an order granting a motion to dismiss, this court’s task “is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief”).

of the charges.³ Here, Bacon has failed to demonstrate that he has obtained such relief from his conviction or sentence.

With respect to the vexatious litigant order, we conclude that the district court did not abuse its discretion in declaring Bacon to be a vexatious litigant. As required under our decision in Jordan v. State, Department of Motor Vehicles,⁴ the district court conducted the four-factor analysis set forth in that case in determining that Bacon's court access should be restricted. First, the district court provided Bacon with reasonable notice of and an opportunity to respond regarding why he should not be declared a vexatious litigant. Second, the district court created an adequate record for review, as its order explained in detail its reasons why Bacon's court access should be restricted. Third, the district court made substantive findings as to the frivolous and harassing nature

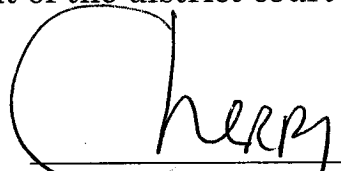
³See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (holding that a state prisoner's claim for damages under § 1983 for an unconstitutional conviction is not cognizable if judgment in favor of the prisoner would necessarily imply the invalidity of his conviction, unless the prisoner can demonstrate that the conviction was already invalidated); Morgano v. Smith, 110 Nev. 1025, 1028-29, 879 P.2d 735, 737-38 (1994) (holding that a legal malpractice action against a criminal defense attorney cannot be maintained unless the plaintiff has obtained appellate or post-conviction relief from conviction or sentence, or otherwise established innocence of charges); see also Levine v. Kling, 123 F.3d 580, 583 (7th Cir. 1997) (recognizing that "by operation of the doctrine of collateral estoppel, a valid criminal conviction acts as a bar to overturning that conviction in a civil damages suit"); Truong v. Orange County Sheriff's Dept., 129 Cal. App. 4th 1423, 1427 (2005) (providing that in a case involving an excessive force claim against a law enforcement officer, "the plaintiff must prove the conviction had been reversed or otherwise expunged").

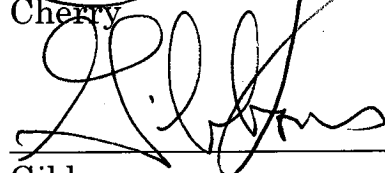
⁴121 Nev. 44, 60-62, 110 P.3d 30, 42-44 (2005).


of Bacon's actions, specifically naming the numerous complaints that were without merit or substance and were designed to mislead and misuse the legal system. Fourth, the district court's order was narrowly tailored to address the specific problem encountered, enjoining Bacon from filing any new litigation in the Eighth Judicial District Court without first notifying the presiding judge of that district and obtaining leave to file a new complaint. But the district court did not preclude Bacon from filing any document necessary to perfect or prosecute his appeal to this court.

Accordingly, we conclude that the district court did not err in dismissing the underlying action and concluding that Bacon is a vexatious litigant, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Saitta

cc: Hon. Kathy A. Hardcastle, District Judge
Percy Lavae Bacon
Eighth District Court Clerk