

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DAVID OFELDT,
Appellant,
vs.
THE STATE OF NEVADA, IN
RELATION TO THE NEVADA
DEPARTMENT OF CORRECTIONS;
AND TONY JONES, INDIVIDUALLY
AND OFFICIALLY, OFFICER OF ELY
STATE PRISON,
Respondents.

No. 57040

FILED

OCT 06 2011

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

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order dismissing a civil rights action. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.


Appellant filed a civil rights complaint challenging a disciplinary proceeding that resulted in certain property being confiscated from appellant and his being placed in disciplinary segregation for 365 days. Subsequently, appellant moved for entry of a default judgment against respondents. Upon initial review of the complaint, the district court concluded that appellant's claims were not cognizable, also noting that it was not clear from the face of the complaint whether appellant had exhausted his administrative remedies. On appeal, respondents concede that appellant's claims were not barred by Edwards v. Balisok, 520 U.S. 641 (1997); Heck v. Humphrey, 512 U.S. 477 (1994); and Preiser v. Rodriguez, 411 U.S. 475 (1973), and that appellant's failure to plead exhaustion was not a basis for dismissal of this action. Thus, respondents

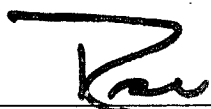
stipulate that a remand of this matter to the district court for further proceedings is appropriate.


Respondents argue, however, that this court should affirm the denial of appellant's motion for the entry of a default judgment. Because the district court did not address the merits of the default judgment motion, but only denied it in connection with the dismissal of the complaint, we do not address this issue, other than to reverse the denial of that motion so as to allow the district court to address the merits of appellant's motion in the first instance on remand.

Accordingly, for the reasons discussed herein, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, J.
Pickering


_____, Sr.J.
Rose


_____, Sr.J.
Shearing

cc: Hon. Steve L. Dobrescu, District Judge
James David Ofeldt
Attorney General/Carson City
Attorney General/Las Vegas
White Pine County Clerk

¹The Honorable Robert E. Rose and the Honorable Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.