

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
WILLIAM DONAT; HOWARD
SKOLNICK; AND THE STATE OF
NEVADA,
Respondents.

No. 66306

FILED

MAR 23 2015

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

ORDER OF AFFIRMANCE

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

Appellant initiated the underlying case in 2007 in an effort to challenge the Nevada Department of Corrections' decision to prohibit inmates from possessing typewriters before that policy took effect. In so doing, appellant argued that the taking of his typewriter would violate his due process rights, as he had not received adequate notice or an opportunity to challenge this decision. Appellant's complaint was later stayed while a case raising similar issues worked its way through the federal court system.

Following the United States Court of Appeals for the Ninth Circuit's determination that this new policy did not violate inmates' due process rights, *see Nev. Dep't of Corrs. v. Greene*, 648 F.3d 1014 (9th Cir. 2011), respondents moved to lift the stay and dismiss the underlying case. Appellant opposed the motion and sought leave to amend his complaint to add claims that the prohibition on inmates possessing typewriters denied

him access to the courts and constituted cruel and unusual punishment. Respondents opposed the request for leave to amend. The district court ultimately granted the motion to dismiss and denied appellant leave to amend his complaint as futile, and this appeal followed.

The dismissal of a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the non-moving party. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Dismissal is appropriate “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Id.* at 228, 181 P.3d at 672. An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Id.* at 227-28, 181 P.3d at 672. A district court’s denial of leave to amend a complaint on the grounds that the amendment would be futile, on the other hand, is reviewed for an abuse of discretion. *Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993).

Here, appellant presents no arguments regarding the dismissal of his initial due process claim or the denial of access to the courts claim he sought to add through the amendment of his complaint. Indeed, appellant concedes that “he can find no legal authority” giving him the right to possess a typewriter. Instead, appellant argues only that handwriting his legal filings causes him to experience significant pain and that forcing him to handwrite these materials constitutes cruel and unusual punishment, an issue he sought to add to his complaint through his motion for leave to amend. Building on his cruel and unusual punishment argument, appellant further contends that he should be

provided with some alternative form of word processing for use in drafting his legal filings.

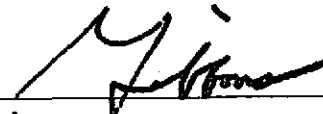
The Eighth Amendment to the United States Constitution's bar on cruel and unusual punishment requires that prison officials "ensure that inmates receive adequate food, clothing, shelter, and medical care" and take "reasonable measures to guarantee the safety of the inmates." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotations omitted). And when a correctional facility ensures that prisoners are provided with these necessities, it has no further obligations under the Eighth Amendment.¹ *Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir. 1981).

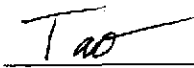
In light of the forgoing, we agree with the district court's conclusion that the Nevada Department of Corrections' policy prohibiting inmates from possessing typewriters does not rise to the level of cruel and unusual punishment and that amendment of appellant's complaint to add such a claim would therefore be futile. *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 302 P.3d 1148, 1152 (2013) (providing that a proposed amendment may be futile when it seeks to add an impermissible claim). As a result, the district court did not abuse its discretion in denying leave to amend to add a cruel and unusual punishment claim on futility grounds, *Allum*, 109 Nev. at 287, 849 P.2d at 302, and because appellant presents no arguments regarding the dismissal of his original due process complaint or the denial of leave to amend to add a denial of access to the courts claim, we conclude that the


¹Although not at issue here, the *Wright* court also listed adequate sanitation amongst the necessary requirements that a prison must provide to an incarcerated individual. *Wright*, 642 F.2d at 1132-33.

district court did not err in granting respondents' motion to dismiss. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James Todd Russell, District Judge
Frank Milford Peck
Attorney General/Carson City
Carson City Clerk