

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZEL NORMAN,

Appellant,

vs.

JULIE REXWINKEL; JAMES BRADY;
JOSHUA CLARK; CARY COONS;
JAMES GAIDA; JEFFREY HOWELL;
JUDITH KERSTEN; WILLIAM
MILLER; DANIEL MORGAN; EUGENE
MURGUIA; JAY SOLETA; AND
CURTIS WILHITE,
Respondents.

No. 66764

FILED

AUG 31 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in a civil rights action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Zel Norman argues the district court erred in granting the respondents' motion to dismiss his complaint. This court reviews a district court's order granting a motion to dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. ___, ___, 267 P.3d 771, 774 (2011). In addressing Norman's arguments, we must accept all of the factual allegations of the complaint as true and draw all inferences in favor of Norman. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (explaining that, on appeal, a court rigorously reviews a dismissal for failure to state a claim, accepting all of

the factual allegations in the complaint as true, and drawing all inferences in favor of the plaintiff).

Norman argues the district court erred in concluding he failed to state a claim for which relief can be granted. Norman asserted the defendants violated his Eighth Amendment right against cruel and unusual punishment by strip searching him in an open area. Norman asserted the search permitted numerous persons to view him nude, including female officers. Norman's argument lacks merit.


To state a meritorious cruel-and-unusual-punishment claim, a prisoner must allege that prison officials acted with a sufficiently culpable state of mind and the alleged wrongdoing was objectively harmful enough to establish a constitutional violation. *Somers v. Thurman*, 109 F.3d 614, 622 (9th Cir. 1997). Here, Norman failed to allege an objectively harmful constitutional violation because prisoners do not have a right to private strip searches. *See Michenfelder v. Sumner*, 860 F.2d 328, 333 (9th Cir. 1988) (explaining prisoners only "retain a limited right to bodily privacy" and "casual observation, or observation at a distance" of nude male inmates by female correctional employees did not violate a male inmate's rights). Therefore, the district court properly granted respondents' motion to dismiss.

Next, Norman argues for the first time on appeal the strip search violates the Prison Rape Elimination Act, 42 U.S.C. §§ 15601-15609. As Norman did not raise this issue before the district court, this issue is waived and we will not consider it on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged

in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

Having concluded Norman is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James Todd Russell, District Judge
Zel Norman
Attorney General/Carson City
Carson City Clerk