

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDD PRYOR,  
Appellant,

vs.

RED ROCK PSYCHOLOGICAL  
SERVICES; MELISSA WEBB,  
MANAGER; N. ROSALES, DPS  
OFFICER; DANIEL JENKINS, DEPUTY  
PUBLIC DEFENDER; AND PHILIP J.  
KOHN, PUBLIC DEFENDER,  
Respondents.

No. 69404

**FILED**

JUN 28 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *J. Hendrick*  
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART,  
AND REMANDING*

This is an appeal from a district court order dismissing a civil rights action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Appellant Edd Pryor, an inmate at the time he filed his civil rights complaint in the district court,<sup>1</sup> alleged that respondents Red Rock Psychological Services and its employee Melissa Webb (collectively, Red

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<sup>1</sup>Respondents note in their answering brief that Pryor may no longer be incarcerated, but Pryor made no such allegations in his filings, and he did not request leave to file a reply brief.

Rock) violated his due process rights.<sup>2</sup> Before filing the complaint, Pryor was on lifetime supervision and one of the terms of that supervision required that he attend counseling on a regular basis. To comply with this requirement, Pryor was attending counseling at Red Rock. In his complaint, Pryor asserted that Red Rock suddenly terminated him from the required counseling, which resulted in him pleading guilty to violating his lifetime supervision and being sent back to prison. Based on these facts, Pryor claimed that Red Rock's decision to terminate him without cause violated his right to due process. Red Rock moved to dismiss the complaint, which the court granted over Pryor's opposition. This appeal followed.

Below, the district court concluded that Pryor's civil rights claims were barred by *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), which provides that if a civil rights claim "would necessarily imply the invalidity" of the underlying conviction, the action must be dismissed unless the plaintiff has already proven that the underlying conviction was overturned or invalidated. On appeal, Pryor argues that he is not challenging his conviction and that his claims are not barred by *Heck* pursuant to precedent from the United States Court of Appeals for the Ninth Circuit.

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<sup>2</sup>Pryor does not argue that the dismissal of respondents N. Rosales, Daniel Jenkins, and Philip J. Kohn was in error. Accordingly, he has waived any arguments as to the dismissal of these parties and we necessarily affirm their dismissal from the underlying case. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that issues not raised on appeal are deemed waived).

Red Rock responds that Pryor's claims are barred by *Heck*.<sup>3</sup> We conclude that Pryor is correct, and his claims against Red Rock should be allowed to proceed.

Here, Pryor pleaded guilty to violating lifetime supervision. Thus, his conviction did not stem from an allegedly illegal termination from counseling, as no evidence to that effect was introduced against him. Rather, the conviction was a direct effect of Pryor's guilty plea. As a result, success on Pryor's claim that his due process rights were violated in the way he was terminated from counseling by Red Rock would not, in any manner, imply that his underlying conviction was invalid. *See Lockett v. Ericson*, 656 F.3d 892, 896-97 (9th Cir. 2011) (holding that, because the plaintiff's DUI conviction was derived from a plea, the allegedly illegally obtained evidence was never used against him, and thus plaintiff's civil rights claim challenging the manner in which the police obtained the evidence was not barred by *Heck*); *Ove v. Gwinn*, 264 F.3d 817, 823 (9th

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<sup>3</sup>Red Rock alternatively argues that Pryor is raising these arguments for the first time on appeal and, therefore, we should decline to address them. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that arguments not raised in the trial court are waived). The record on appeal, however, demonstrates that Pryor did raise these arguments below in filings responding to Red Rock's dispositive motion that were never challenged by Red Rock nor stricken by the district court. Therefore, contrary to Red Rock's assertion, these arguments were raised below. Additionally, this court may consider constitutional issues even if they were not raised below. *Levingston v. Washoe Cty.*, 112 Nev. 479, 482, 916 P.2d 163, 166 (1996) ("[I]ssues of a constitutional nature may be addressed when raised for the first time on appeal.").

Cir. 2001) (holding, in a civil rights case challenging the manner in which blood was drawn for a DUI check, that because the plaintiffs' convictions were based on pleas, "[t]he validity of their convictions does not in any way depend upon the legality of the blood draws," and, thus, their civil rights claims were not *Heck*-barred).<sup>4</sup> Indeed, Pryor has made no allegations that his plea was "illegal, involuntary or without factual bases." *Ove*, 264 F.3d at 823. Based on the foregoing, we conclude that Pryor's claims against Red Rock are not barred by *Heck*, and, thus, the district court's dismissal of those claims was in error. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing that an order dismissing a complaint for failure to state a claim upon which relief could be granted is rigorously reviewed on appeal). Accordingly, we reverse the court's dismissal of the claims against Red Rock Psychological Services and Melissa Webb, and remand to the district

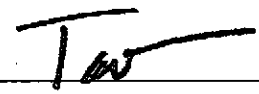
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<sup>4</sup>Red Rock argues that these cases do not apply because other evidence could have been used to convict the plaintiffs in *Lockett* and *Ove*. Those cases, however, explicitly hold that, because a plea was entered, no evidence was used. *See Lockett*, 656 F.3d at 897 ("He was not tried, and no evidence was introduced against him."); *Ove*, 264 F.3d at 823 ("*Their convictions derive from their pleas, not from verdicts obtained with supposedly illegal evidence.*"). Thus, Red Rock's arguments in this regard fail.

court for further proceedings.

It is so ORDERED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Joseph Hardy, Jr., District Judge  
Edd Pryor, Jr.  
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody  
Clark County District Attorney/Civil Division  
Eighth District Court Clerk

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<sup>5</sup>Pryor argues that Red Rock is a state entity for purposes of his civil rights claims. Because Red Rock did not refute or otherwise address this issue in its answering brief, it has conceded that it is a state entity for purposes of Pryor's civil rights claims. *See Bates v. Chronister*, 100 Nev. 675, 681-82, 691 P.2d 865, 870 (1984) (concluding that respondent confessed error by failing to respond to appellant's argument).