

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTHUR DANIEL MAYO,
Appellant,
vs.
WARDEN WILLIAMS; MR.
HOLLINGSWORTH; DWAYNE DEAL;
AND CSW GARCIA,
Respondents.

No. 69849

FILED

JUL 13 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a civil rights and torts action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Appellant Arthur Daniel Mayo, an inmate, filed a complaint alleging that respondents wrongly concluded that his prior arrests for indecent behavior and lewd and lascivious conduct were sexual offenses, precluding him from receiving a minimum security classification and preventing him from earning good time credits. He asserted claims for denial of due process, negligence, and deliberate indifference or cruel and unusual punishment.

The district court dismissed the complaint for failure to state a claim, and this appeal followed. Having reviewed Mayo's informal appeal statement and the record, drawing every inference in his favor, and accepting all of his allegations as true, we conclude that the district court

properly dismissed Mayo's complaint for failure to state a claim because he failed to allege facts demonstrating the existence of each of the elements of his claims. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing that the appellate courts rigorously review a dismissal for failure to state a claim, accepting all factual allegations in the complaint as true and drawing all inferences in the plaintiff's favor); *see also Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (explaining that, to avoid dismissal for failure to state a claim, a plaintiff must allege facts sufficient to provide respondents "fair notice of the nature and basis of a legally sufficient claim").

Initially, Mayo did not state a due process claim because he did not allege facts demonstrating that he had been deprived of a protected liberty or property interest. *See Pressler v. City of Reno*, 118 Nev. 506, 510, 50 P.3d 1096, 1098 (2002) ("The protections of due process only attach when there is a deprivation of a protected property or liberty interest."); *see also Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976) (recognizing that an inmate does not have an inherent constitutional right to a particular custodial classification); *Luken v. Scott*, 71 F.3d 192, 193-94 (5th Cir. 1995) (reasoning that an inmate does not have a liberty interest in the potential ability to accrue good time credits); *Reinkemeyer v. Safeco Ins. Co. of Am.*, 117 Nev. 44, 50, 16 P.3d 1069, 1072 (2001) (looking to federal authority to interpret Nevada's due process clause). Similarly, he did not state a claim for negligence because he did not identify a legally

cognizable injury caused by respondents' conclusion that he was ineligible for minimum security classification. *See Sadler v. PacifiCare of Nev., Inc.*, 130 Nev. ___, ___, 340 P.3d 1264, 1267, 1269 (2014) (recognizing that the causation element of a negligence claim contemplates that the plaintiff has suffered an injury and looking to the Restatement (Second) of Torts § 7(1) (1965), which defines an injury for purposes of tort law as "the invasion of any legally protected interest of another").

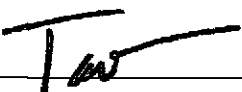
And finally, insofar as Mayo's claims only related to his classification and good time credits, Mayo also did not state a claim for deliberate indifference or cruel and unusual punishment under the Eighth Amendment of the United States Constitution because he failed to allege any related infliction of pain. *See Myron v. Terhune*, 476 F.3d 716, 719 (9th Cir. 2007) (concluding that an Eighth Amendment violation must involve the infliction of pain). Thus, we conclude that the district court properly dismissed each of these claims.¹


¹To the extent Mayo intended to state an abuse of process claim or an equal protection claim, these claims were also properly dismissed for failure to state a claim as a matter of law. *See Land Baron Invs. v. Bonnie Springs Family LP*, 131 Nev. ___, ___, 356 P.3d 511, 520 (2015) (explaining that an abuse of process claim requires abuse of "legal process"); *In re Candelaria*, 126 Nev. 408, 416, 245 P.3d 518, 523 (2010) (explaining that an equal protection claim arises when a statute treats similarly situated people differently); *see also Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (providing that, in order to establish a class-of-one equal protection claim, a plaintiff must show that he or she has been "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James Crockett, District Judge
Arthur Daniel Mayo
Attorney General/Carson City
Eighth District Court Clerk

²To the extent that Mayo argues the district court improperly denied his motion for an extension of time to file an opposition to respondents' NRCP 12(b)(5) motion, we conclude that the district court acted within its discretion in denying that motion, *see* NRCP 6(b) (providing that the district court may exercise its discretion to grant an extension of time), as Mayo has not identified anything that he would have provided in the opposition that would have remedied the defects in his complaint. Thus, we affirm the district court's order denying Mayo's request for an extension of time to file an opposition.

Given our decision to affirm the dismissal of Mayo's complaint for the reasons discussed above, we need not reach his arguments with regard to whether he complied with the naming and service requirements set forth in NRS 41.031(2) and whether respondents were entitled to qualified immunity.