

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIE JAMES SMITH, JR.,
Appellant,
vs.
THE HONORABLE JESSIE
ELIZABETH WALSH, DISTRICT
JUDGE,
Respondent.

No. 72270

FILED

JAN 29 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Willie James Smith Jr. appeals from a district court order granting a motion to dismiss in an inmate litigation matter. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

In his underlying complaint, Smith, an inmate, alleged that he filed a petition for a writ of habeas corpus in an independent proceeding that respondent, former Eighth Judicial District Court Judge Jessie Elizabeth Walsh presided over, and that she initially refused to rule on his petition for an extended period, but ultimately denied it in a written order. Based on those allegations, Smith requested \$5,000 in damages on the grounds that Judge Walsh violated his rights to due process and equal protection and that he was entitled to relief under NRS 34.670, which provides that a judge who refuses to grant "a proper application" for a writ of habeas corpus "shall forfeit and pay to the person aggrieved a sum not

exceeding \$5,000.” Judge Walsh, in turn, moved to dismiss Smith’s complaint under NRCP 12(b)(5), arguing that NRS 34.670 was unconstitutional based on separation-of-powers principles, see *Oppenheimer v. Ashburn*, 343 P.2d 931, 932-36 (Cal. Dist. Ct. App. 1959) (reviewing a statute that was substantively identical to NRS 34.670 and holding that it violated California’s separation-of-powers doctrine to the extent it impinged upon judicial discretion), that she was entitled to absolute judicial immunity, and that Smith’s requested relief did not satisfy the district court’s jurisdictional amount-in-controversy requirement. The district court then dismissed Smith’s complaint, reasoning that, regardless of whether Smith’s claim was construed as arising under NRS 34.670 or 42 U.S.C. § 1983, it failed because Judge Walsh was entitled to absolute judicial immunity. This appeal followed.

On appeal, Smith challenges the dismissal of his complaint, arguing that NRS 34.670 was constitutional and that the statute barred application of the absolute-judicial-immunity doctrine under these circumstances. While Smith’s challenge to the district court’s ruling turns on the constitutionality of NRS 34.670, we need not resolve that issue, because Smith failed to allege sufficient damages to satisfy the district court’s jurisdictional amount-in-controversy requirement. See *Miller v. Burk*, 124 Nev. 579, 588-89, 188 P.3d 1112, 1118-19 (2008) (recognizing that appellate courts will not resolve constitutional questions that are unnecessary to the disposition of the case at hand). In particular, regardless of whether Smith’s complaint is construed as presenting one or more claims,

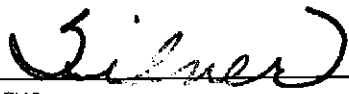
his request for \$5,000 in damages did not meet the \$10,000 threshold for the district court's subject matter jurisdiction. See NRS 34.670 (authorizing actions against judges who fail to grant proper habeas petitions "in any court of competent jurisdiction"); see also Nev. Const. art. 6, § 6(1) (granting the district courts original jurisdiction over matters outside the justice courts' original jurisdiction); NRS 4.370(1)(b)¹ (providing that the justice courts have original jurisdiction over actions for damages for injury to the person when the damages do not exceed \$10,000).


Given the foregoing, we conclude that the district court properly dismissed Smith's complaint, albeit for a reason slightly different than its stated ground. See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (reviewing a district court order granting a motion to dismiss de novo and explaining that such an order will be upheld "if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle it to relief"); *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009) (reviewing subject matter jurisdiction de novo); see also *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 460 n.22, 168 P.3d 1055, 1062 n.22 (2007) (explaining that the appellate court may affirm the


¹Although NRS 4.370 was amended during the 2015 and 2017 legislative sessions, 2015 Nev. Stat., ch. 200, § 2.2, at 945-47 (effective January 1, 2017); 2017 Nev. Stat., ch. 484, § 7, at 3023-24 (effective June 8, 2017), we apply the 2013 version of the statute, which was in effect when Smith filed his complaint and when it was dismissed.

district court's decision, if correct, for different reasons than relied upon below). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²Although Smith vaguely asserts on appeal that Judge Walsh violated his rights to due process and was biased, we need not address those assertions given our disposition of this appeal.

To the extent that Smith moved to disqualify the judges of this court from presiding over this appeal based on our decision in one of his prior appeals, *Smith v. State*, Docket No. 70010 (Order of Affirmance, October 19, 2016), we discern no basis for relief. See *Allum v. Valley Bank of Nev.*, 112 Nev. 591, 594, 915 P.2d 895, 897 (1996) (“[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994))). Insofar as Smith further asserts that the fact that Judge Walsh formerly held judicial office necessarily creates disqualifying biases, that argument is without merit. See *Goldman v. Bryan*, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988) (explaining that, among other things, judges have a duty to preside absent a compelling reason to the contrary), *disavowed on other grounds by Halverson v. Hardcastle*, 123 Nev. 245, 265-66, 163 P.3d 428, 442-43 (2007). Accordingly, Smith’s motion is denied.

cc: Hon. Rob Bare, District Judge
Willie James Smith, Jr.
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk