


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN SAMUEL BRAUNSTEIN,  
Appellant,  
vs.  
THE STATE OF NEVADA EX REL  
EIGHTH JUDICIAL DISTRICT COURT;  
KATHY HARDCASTLE; MICHAEL P.  
VILLANI; ADAM P. LAXALT, NEVADA  
ATTORNEY GENERAL; VICTOR HUGO  
SCHULZE, II; CATHERINE CORTEZ  
MASTO; NATALIE WOOD; STATE OF  
NEVADA PAROLE AND PROBATION;  
CLARK COUNTY; DAVID ROGER;  
STEVEN B. WOLFSON; STEWART  
BELL; MORGAN D. HARRIS; PHILIP J.  
KOHN; GERALD GARDNER; DREW  
CHRISTIANSEN; AND STEVE  
GRIERSON,  
Respondents.

No. 74801

FILED

OCT 15 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Steven Samuel Braunstein appeals from a district court order dismissing a civil rights complaint. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.<sup>1</sup>

Braunstein filed a civil rights action against respondents alleging several causes of action stemming from his criminal conviction, sentence and an amended judgment of conviction. Respondents moved to dismiss, on various grounds, and dismissal of the entire action was granted over Braunstein's opposition. Among other grounds, the district court determined that Braunstein failed to state a claim upon which relief could

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<sup>1</sup>It appears that although Senior Judge Joseph T. Bonaventure signed the order appealed from, the matter was heard by Judge Richard E. Scotti.

18-902454

be granted because he failed to allege his conviction or sentence had been reversed or otherwise invalidated and because challenges to the validity of confinement and duration were to be raised by writ of habeas corpus. This appeal followed.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss 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 plaintiff. *Id.* Dismissing a complaint 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.

Our review of the record indicates that a ruling in Braunstein’s favor on any of his claims “would necessarily imply the invalidity of his conviction or sentence.” *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Therefore, in order to recover on his civil rights claims, he would have to “prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” *Id.* at 486-87. As Braunstein did not even allege that his conviction or sentence had been reversed or otherwise invalidated, his claims fail as a matter of law and dismissal was appropriate. *See id.*; *see also Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.


Additionally, to the extent Braunstein’s claims attempt to directly attack the validity of his conviction and sentence, the Nevada Supreme Court has stated that “[a] post-conviction petition for a writ of


habeas corpus is the *exclusive remedy* for challenging the validity of a conviction or sentence aside from” certain instances not relevant here. *Harris v. State*, 130 Nev. 435, 437, 329 P.3d 619, 621 (2014). Therefore, we conclude dismissal of any such claims was appropriate.

Further, to the extent any of Braunstein’s claims could possibly be construed as seeking any relief that would not implicate the validity of his conviction or sentence, we conclude that he has failed to sufficiently plead facts to support any such claims and dismissal was proper. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

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<sup>2</sup>We have considered Braunstein’s remaining arguments and conclude they do not provide a basis for relief.

cc: Hon. Linda Marie Bell, Chief Judge, Eighth Judicial District Court  
Hon. Joseph T. Bonaventure, Senior Judge  
Steven Samuel Braunstein  
Attorney General/Carson City  
Attorney General/Las Vegas  
Clark County District Attorney/Civil Division  
Eighth District Court Clerk