

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD E. MITCHELL, JR.,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS;
DIRECTOR JAMES DZURENDA;
WARDEN BRIAN WILLIAMS; C/O
BINDER; AND SGT. JOSEPH DUGAN,
Respondents.

No. 75223-COA

FILED

DEC 07 2018

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

ORDER OF AFFIRMANCE

Donald E. Mitchell, Jr. appeals a district court order dismissing a civil rights action. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Mitchell, an inmate, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that respondents retaliated against him for seeking to file a grievance by planting contraband in his cell, filing a false notice of charges against him, and ultimately finding him guilty of possessing the contraband based on the notice of charges. Mitchell filed an informal grievance and then filed a disciplinary appeal to the first level, pursuant to the Nevada Department of Corrections' administrative regulations. However, Mitchell never appealed the denial of his first level disciplinary appeal to the second level. The district court dismissed Mitchell's complaint for failure to exhaust his administrative remedies, and this appeal followed. This court reviews a district court's order granting a motion to dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011). An order granting a motion to dismiss is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complainant. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

Here, the district court dismissed Mitchell's complaint because he failed to exhaust his administrative remedies. To proceed with a civil rights action pursuant to 42 U.S.C. § 1983, an inmate must exhaust all available administrative remedies. See 42 U.S.C. § 1997e(a); *Berry v. Feil*, 131 Nev. 339, 341-42, 357 P.3d 344, 345 (Nev. App. 2015). The district court properly dismisses a complaint when the plaintiff fails to exhaust his administrative remedies. *Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), *overruled on other grounds by Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007). Based on our review of the record, we conclude that the district court correctly determined Mitchell failed to exhaust his administrative remedies.¹ Therefore, even accepting Mitchell's factual allegations as true, dismissal was proper. See *Berry*, 131 Nev. at 341-42, 357 P.3d at 345; *Rosequist*, 118 Nev. at 448, 49 P.3d at 653. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



C.J.

Silver



J.

Tao



J.

Gibbons

¹To the extent Mitchell argues that he properly exhausted his administrative remedies despite failing to file an appeal to the second level, or that he was not required to exhaust his administrative remedies because an appeal to the second level was effectively not available to him, Mitchell has failed to provide any cogent argument as to this position. Thus, we need not consider it on appeal. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued).

cc: Hon. Richard Scotti, District Judge
Donald E. Mitchell, Jr.
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk