

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTHUR DANIEL MAYO, AN  
INDIVIDUAL,  
Appellant,  
vs.  
OFELIA L. MONJE, DDA; STEVEN B.  
WOLFSON, DA; ERIKA D. BALLOU,  
ESQ., DPD; AND PHILIP J. KOHN,  
CCPD,  
Respondents.

No. 68979

**FILED**

**MAR 11 2016**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

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

Appellant, an inmate, filed a complaint in the district court against his public defender and her supervisor, as well as the district attorney that criminally prosecuted appellant and her supervisor, alleging civil rights violations and torts claims all stemming from his criminal conviction. Specifically, appellant alleged that the district attorney failed to use the proper procedure to charge him as a habitual criminal, the remaining respondents were complicit in that act, and these actions violated his right to due process and equal protection, as well as made respondents liable for various torts claims. The district court dismissed the action for failure to state a claim upon which relief could be granted and this appeal followed.

We conclude that the district court properly dismissed appellant's complaint. All of appellant's claims related to him being

sentenced as a habitual criminal and, if the district court had found in appellant's favor on those claims, that judgment "would necessarily imply the invalidity of [appellant's] sentence." *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Because appellant's success on his claims would imply that his criminal sentence, or at least the part based on his status as a habitual criminal, was invalid, the district court was required to dismiss appellant's civil rights claims unless he demonstrated that his sentence had already been overturned or invalidated. *See id.* This is true even if appellant only requested money damages as a remedy. *See id.* Here, appellant failed to even allege that his underlying sentence had been overturned, and, thus, the district court properly dismissed the constitutional claims. *See id.* at 486-87 (providing that a plaintiff must demonstrate that the underlying sentence has been overturned to avoid dismissal of civil rights claims alleging an unlawful sentence if the success of those claims would render the sentence invalid); *see also 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).


Similarly, to the extent that appellant's claims were state torts claims, rather than constitutional claims, a habeas corpus petition was the proper avenue for addressing these claims. *See Harris v. State*, 130 Nev. \_\_\_, \_\_\_, 329 P.3d 619, 621 (2014) ("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 direct review of a judgment of conviction on appeal and 'remedies which are incident to the proceedings

in the trial court.” (quoting NRS 34.724(2)(a)). Thus, we also conclude that the district court properly dismissed appellant’s state torts claims.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. James Crockett, District Judge  
Arthur Daniel Mayo  
Clark County District Attorney/Civil Division  
Eighth District Court Clerk