

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAMAAR ALEXANDER,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
JAMES G. COX, DIRECTOR OF  
NEVADA DEPARTMENT OF  
CORRECTIONS; DAVID MOLNAR,  
SUPERVISORY CRIMINAL  
INVESTIGATOR, OFFICE OF THE  
INSPECTOR GENERAL; AND JAMES  
JONES, CRIMINAL INVESTIGATOR,  
OFFICE OF THE INSPECTOR  
GENERAL,  
Respondents.<sup>1</sup>

No. 72153

**FILED**

SEP 21 2017

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

*ORDER OF AFFIRMANCE*

Lamaar Alexander appeals from a district court order dismissing an inmate litigation matter. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Alexander contends that an inmate at the Nevada Department of Corrections (NDOC) called an unknown, third-party male who, while on the phone with the inmate, used a second phone to call Alexander. Because NDOC has a policy of recording all outgoing calls made by inmates, the recording of the inmate's call to the unknown male includes the second call made to Alexander. The recording was subsequently used against Alexander in a parole revocation matter. Alexander then sued respondents, alleging a violation of the Federal Wiretap Act and a violation of his Fourth

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<sup>1</sup>We direct the clerk of the court to amend the caption of this case to conform to the caption on this order.

and Fourteenth Amendment rights. Over Alexander's objection, the district court granted respondents' motion to dismiss, and 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); see also *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). 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 complaint. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. 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. All legal conclusions are reviewed de novo. *Id.*

Although it is generally impermissible to intentionally intercept telephone calls, there are exceptions to the rule. See *U.S. v. Van Poyck*, 77 F.3d 285, 290-92 (9th Cir. 1996) (recognizing two exceptions to the wiretap statute—the law enforcement exception and consent, and also concluding that, when an exception applies, no constitutional violation occurs). Notably, as pertinent to Alexander's complaint, respondents did not intercept phone calls made directly to or from Alexander's phone.<sup>2</sup> However, respondents recorded the unknown male's secondary call to Alexander's phone while lawfully recording the inmate's outgoing call from the prison; thus, there was no constitutional or wiretap statute violation. See *id.* at 291-92 (explaining that, under the law enforcement exception,

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<sup>2</sup>Our review of the record indicates that there may have been other calls from the prison made directly to Alexander that were also intercepted, but those calls do not form the basis of Alexander's civil claim at issue here.


telephone calls "may be intercepted by investigative and law enforcement officers acting in the ordinary course of their duties" and that prisons constitute law enforcement agencies).

Additionally, the consent exception also applies because the unknown male caller implicitly consented to his call to Alexander (or anything else he said while still on the line with the inmate) being recorded since the unknown caller necessarily knew that his call with the inmate was being recorded. *See id.* at 292 (explaining that, under the consent exception, only one party's consent is needed and the consent may be implied from surrounding circumstances). Taking the facts alleged in the light most favorable to Alexander, there are no set of facts that would entitle Alexander to relief because respondents lawfully intercepted the phone call. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Silver, C.J.

  
Tao, J.

  
Gibbons, J.

cc: Hon. Gloria Sturman, District Judge  
Lamaar Alexander  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk