

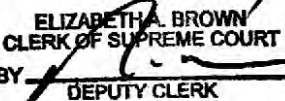
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL LARRY LOCKWOOD,  
Appellant,  
vs.  
THE STATE OF NEVADA; JAMES  
DZURENDA; DWAYNE DEAL; RENEE  
BAKER; NEVADA AG ADAM P.  
LAXALT; AND BRIAN SANDOVAL,  
GOVERNOR,  
Respondents.

No. 77703-COA

**FILED**

NOV 27 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Michael Larry Lockwood appeals from a district court order granting summary judgment in a civil rights action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Lockwood filed a civil rights complaint against the respondents, alleging he was entitled to monetary damages because the Nevada Department of Corrections (NDOC) had violated his constitutional rights by improperly failing to apply statutory credits toward his minimum parole eligibility date. Respondents filed a motion for summary judgment, arguing, in relevant part, that Lockwood failed to exhaust his administrative remedies as required under the Prison Litigation Reform Act of 1995. Lockwood opposed the motion, but the district court granted summary judgment in favor of the respondents. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.*

When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

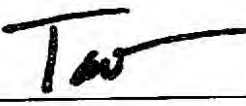
Lockwood contended he was excused from exhausting administrative remedies because NDOC displayed a flyer which he asserted directed inmates not to file grievances concerning the calculation of sentences. Lockwood asserted the flyer amounted to a command that he refrain from pursuing grievances related to the calculation of his sentence. “[W]hen an inmate files a § 1983 civil rights complaint in a Nevada district court challenging conditions of confinement without first having exhausted all available administrative remedies, the district court is required to dismiss the complaint.” *Berry v. Feil*, 131 Nev. 339, 347, 357 P.3d 344, 349 (Ct. App. 2015). An inmate must exhaust available remedies; once the respondents showed there was an available remedy, it was Lockwood’s burden “to come forward with evidence showing that there is something in his particular case that made the existing and generally available administrative remedies effectively unavailable to him.” *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014).

The respondents filed the pertinent flyer in support of their motion for summary judgment and the district court reviewed it when weighing the motion. The district court found the flyer informed inmates that there was no need to file a grievance in order to have the calculation of their sentences reviewed as all sentences would be reviewed for compliance with NRS 209.4465. The district court further found that Lockwood was not merely seeking a calculation of his sentence, but rather sought monetary damages for the alleged violation of his constitutional rights. In

light of the nature of Lockwood's claims, the district court found the flyer did not excuse Lockwood from utilizing the grievance process. The record supports the district court's findings and demonstrated that Lockwood failed to meet his burden to demonstrate he was excused from exhausting administrative remedies. *See id.* Therefore, as the record shows Lockwood failed to properly exhaust the available administrative remedies, summary judgment was proper. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *Berry*, 131 Nev. at 347, 357 P.3d at 349. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. James Todd Russell, District Judge  
Michael Larry Lockwood  
Attorney General/Las Vegas  
Carson City Clerk