

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY R. SALAZAR,
Appellant,


vs.

THE STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; JAMES DZURENDA,
DIRECTOR; BRIAN WILLIAMS,
WARDEN; CASE WORKER BAKER;
AND DEPUTY DIRECTOR TRISTON,
Respondents.

No. 78944-COA

FILED

FEB 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony R. Salazar appeals from a district court order dismissing a civil rights action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.¹

In the proceedings below, Salazar, an inmate at High Desert State Prison serving two consecutive sentences, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against respondents asserting that they violated his civil rights when they failed to properly apply good time credits to both of his sentences pursuant to NRS 209.4465. Salazar asserts that this alleged deprivation of his rights entitles him to money damages. Respondents filed a motion for summary judgment asserting, as relevant here, that Salazar's claim was moot because he had previously been before the parole board and was denied parole. The district court concluded that Salazar's claim was moot, denied his request for relief, and denied

¹Although Judge Allf signed the order, the Honorable Linda M. Bell, Chief Judge, presided at the hearing and issued the oral ruling from the bench.

respondents' motion for summary judgment based on its conclusion that Salazar's claim was moot. This appeal followed.

As an initial matter, while the district court's order states that it denied Salazar's petition and request for relief as moot, Salazar filed a complaint, not a petition. However, the district court effectively concluded that Salazar's complaint failed to state a claim upon which relief could be granted based on his claim being moot pursuant to *Williams v. State*, 133 Nev. 594, 402 P.3d 1260 (2017). Specifically, the district court explained that, under *Williams*, an inmate is entitled to good time credits under NRS 209.4465 only if he was sentenced under a statute that did not specify a parole eligibility date and he has not already been before the parole board on that sentence. 133 Nev. at 601, 402 P.3d at 1265-66. And because Salazar had already been before the parole board in 2015, the court held that his claim was moot and he was not entitled to any relief. Thus, we construe the district court's order as an order dismissing the complaint for failure to state a claim. *Cf. Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994) ("This court determines the finality of an order or judgment by looking to what the order or judgment actually *does*, not what it is called.").

This court reviews an order granting a motion to dismiss for failure to state a claim under NRCP 12(b)(5) 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). This court will affirm the decision to dismiss a complaint under NRCP 12(b)(5) when the complaint's factual allegations do not entitle a plaintiff to relief under the claims asserted. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Here, Salazar's complaint seeks damages based on his allegation that respondents failed to properly apply his credits pursuant to NRS 209.4465. Because success on Salazar's claim would necessarily imply that at least part of his sentence was invalid based on the calculation of good time credits, the district court was required to dismiss the civil rights complaint unless Salazar demonstrated that his sentence had been overturned or invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (holding that while a plaintiff may seek damages for an allegedly unconstitutional conviction or imprisonment pursuant to 42 U.S.C. § 1983, dismissal is required unless the plaintiff demonstrates that the conviction or sentence has been overturned or called into question by the issuance of a writ of habeas corpus). And Salazar failed to demonstrate that his sentence had been reversed or otherwise called into question by the grant of a writ of habeas corpus.² Thus, we discern no error in the district court's dismissal of Salazar's complaint.³ *See id.*; *Saavedra-Sandoval v. Wal-Mart Stores*,

²We note that prior to filing the instant complaint, Salazar filed a petition for writ of habeas corpus and, as relevant here, the writ was denied pursuant to *Williams* because Salazar had been before the parole board on his first sentence. The district court in that matter also purported to grant Salazar's habeas petition as to his second sentence, concluding that Salazar would be entitled to good time credits pursuant to NRS 209.4465 on that sentence once he began serving time on the same. But the computation of good time credits as to his second sentence is not at issue in this appeal.

³To the extent Salazar's complaint could be construed as bringing a state tort claim, Salazar has failed to present any argument as to that claim below or on appeal. Thus, any challenge to its dismissal is waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that if a matter is not raised on appeal, it is considered waived); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d

Inc., 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (holding that this court will affirm a district court's order if it reached the correct result, even if for the wrong reason).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Nancy L. Allf, District Judge
Anthony R. Salazar
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”).

And insofar as Salazar raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

⁴The Honorable Jerome Tao, Judge, voluntarily recused himself from participating in the decision of this matter.