IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK VONSEYDEWITZ,
Appellant,
vs.
THE STATE OF NEVADA; NEVADA BOARD OF PRISON COMMISSIONERS; BRIAN SANDOVAL; ADAM P. LAXALT; ROSS MILLER; CATHERINE CORTEZ MASTO; THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS; JAMES GREG COX; HOWARD SKOLNIK; NEVADA PAROLE BOARD; CONNIE S. BISBEE; THE STATE OF NEVADA DEPARTMENT OF PUBLIC SAFETY; AND JAMES WRIGHT,
Respondents.

No. 82805-COA

FILED
OCT 31 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Frederick Vonseydewitz appeals from a district court order dismissing a complaint in a civil rights action. Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge.

Vonseydewitz filed a civil rights complaint, alleging that he was entitled to monetary damages because the Nevada Department of Corrections (NDOC) violated his constitutional rights by failing to apply good time credits to his minimum sentence in accordance with the version of NRS 209.4465 that was in effect when the crimes underlying his prison sentence were committed, which delayed his eligibility for parole.[1]

[1]In *Vonseydewitz v. LeGrand*, No. 66159, 2015 WL 3936827, at *3 (Nev. June 24, 2015) (Order of Reversal and Remand), the Nevada Supreme Court determined that NDOC improperly denied Vonseydewitz the

Respondents moved for summary judgment, arguing that they were entitled to qualified immunity and that Vonseydewitz's complaint was moot because he had no right to a parole hearing and already had parole hearings. The district court granted that motion; however, this court reversed and remanded because the district court focused on whether Vonseydewitz had improperly been denied a parole hearing rather than considering his allegation that NDOC's failure to apply good time credits to his minimum sentence violated his constitutional rights. *See Vonseydewitz v. State*, No. 78549-COA, 2019 WL 6770165, at *1 (Nev. Ct. App. Dec. 11, 2019) (Order of Reversal and Remand).

On remand, respondents moved to dismiss Vonseydewitz's complaint pursuant to NRCP 12(b)(5), and the parties' subsequent argument largely focused on whether Vonseydewitz stated claims for violation of his rights to due process and freedom from cruel and unusual punishment. Specifically, as relevant here, respondents argued that dismissal was warranted because the denial of good time credits and a parole hearing does not implicate a constitutionally protected liberty interest, while Vonseydewitz asserted that he had a statutory right to the good time credits at issue and that NDOC could not revoke them, and thereby delay his eligibility for parole, without first affording him due process. Following a hearing, the district court entered an order granting respondents' motion to dismiss. In the order, the district court reasoned that this case did not involve the revocation of good time credits, but

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deduction of statutory credits from his minimum sentence based on a misapplication of NRS 209.4465(7)(b), and reversed and remanded with instructions for the district court to direct NDOC to apply Vonseydewitz's good time credits in accordance with that statute.

instead, concerned NDOC's failure to apply them in the first place. And the district court concluded that Vonseydewitz did not have a constitutionally protected liberty interest in the application of good time credits or in his parole eligibility date. This appeal followed.

We review an order dismissing a complaint for failure to state a claim de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Our review is rigorous, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissal for failure to state a claim 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.

On appeal, Vonseydewitz contends his due process rights were violated because his parole hearing was delayed when NDOC failed to apply his good time credits in accordance with NRS 209.4465. However, our review of caselaw addressing substantively identical allegations reveals that courts have uniformly concluded that a delay in parole eligibility resulting from a failure to properly apply good time credits in line with NRS 209.4465 does not implicate a constitutionally protected liberty interest, and therefore, cannot support a due process claim. *See, e.g., Chaziza v. Stammerjohn*, 858 F. App'x 228, 230 (9th Cir. 2021) (concluding that an inmate's due process claim, which was based on the improper application of credits under NRS 209.4465, failed since he did not have a constitutionally protected liberty interest in parole eligibility); *Williams v. Hutchings*, No. 2:21-cv-00123-KJD-DJA, 2021 WL 3605057, at *6-7 (D. Nev. Aug. 13, 2021) (applying *Chaziza* and concluding that an inmate's allegation that NDOC did not properly apply good time credits under NRS 209.4465 did not establish a deprivation of a constitutionally protected liberty interest).

In line with these federal court decisions,[2] we conclude that the misapplication of NRS 209.4465 was not enough, by itself, to establish a due process violation, since a plaintiff must demonstrate that he or she was deprived of a constitutionally protected liberty interest under these circumstances. *See Rodriguez v. Williams*, No. 2:19-cv-00726-GMN-VCF, 2020 WL 209311, at *3 (D. Nev. Jan. 13, 2020) (stating that errors of state law do not support due process claims and evaluating whether allegations that were substantively identical to the ones presented here were sufficient to state a claim for a violation of the plaintiff's procedural or substantive due process rights by considering whether a liberty interest was implicated). While we recognize that Vonseydewitz's parole hearing was delayed when NDOC failed to apply his good time credits in accordance with NRS 209.4465, this does not equate to the deprivation of a constitutionally protected liberty interest. Indeed, the grant of parole is discretionary in Nevada, meaning that inmates do not have a constitutionally protected liberty interest in parole. *See* NRS 213.1099(1), (2) (stating that "the Board [of Parole Commissioners] *may* release on parole a prisoner who is otherwise eligible for parole" and setting forth factors for the Board to consider in evaluating whether to release a prisoner on parole); *Severance v. Armstrong*, 96 Nev. 836, 838-39, 620 P.2d 369, 370 (1980) (rejecting an argument that NRS 213.1099 affords the Board of Parole Commissioners too much discretion and concluding that the statute "does not confer a

[2]Insofar as Vonseydewitz argues that federal caselaw, including *Moten v. Dzurenda*, No. 2:19-cv-01826-RFB-BNW, 2020 WL 4194845 (D. Nev. July 20, 2020), and *Young v. Dzurenda*, No 2:19-cv-01235-JAD-EJY, 2020 WL 3840555 (D. Nev. July 8, 2020), is distinguishable from the present case or inconsistent with Nevada law, we have considered his arguments and discern no basis for relief.

legitimate expectation of parole release and therefore does not create a constitutionally cognizable liberty interest sufficient to invoke due process"). And given that parole is discretionary, statutes creating formal procedures relating to that discretion, such as NRS 209.4465's parole eligibility provisions, do not themselves confer constitutionally protected liberty interests. *See, e.g.*, *Chaziza*, 858 F. App'x at 230; *Williams*, No. 2:21-cv-00123-KJD-DJA, 2021 WL 3605057, at *6-7. Consequently, we conclude that the district court did not err when it dismissed Vonseydewitz's due process claim.[3] *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Vonseydewitz next argues that the district court failed to consider his claim for violation of his right to freedom from cruel and unusual punishment. However, while the district court's written order did not include a separate written analysis for this claim, a review of the transcript from the relevant hearing demonstrates that the district court concluded that the claim failed based on its determination that Vonseydewitz did not suffer a deprivation of a constitutionally protected liberty interest. *See Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011) (recognizing that an appellate court may consult the record giving rise to a district court order to construe its meaning when the

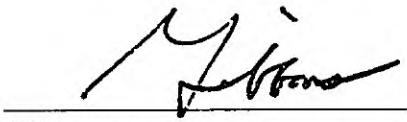
[3]While Vonseydewitz attempts to equate NDOC's failure to correctly apply his good time credits to a revocation of his good time credits, his argument is unavailing. Indeed, the circumstances that gave rise to this appeal arose from a misapplication of NRS 209.4465, *see Vonseydewitz*, No. 66159, 2015 WL 3936827, at *3, rather than any revocation or forfeiture based on disciplinary charges. Consequently, insofar as Vonseydewitz attempts to rely on cases discussing the liberty interest that arises when a state creates a right to good time credits that cannot be forfeited absent serious misconduct to support his position on appeal, *see Wolff v. McDonnell*, 418 U.S. 539, 557-58, 563-66 (1974), we discern no basis for relief.

order is ambiguous). And because we agree that Vonseydewitz did not suffer a deprivation of a constitutionally protected liberty interest for the reasons discussed above, we conclude that the district court did not err by dismissing his claim for violation of his right to freedom from cruel and unusual punishment. *See Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (considering whether defendants were deliberately indifferent to a prisoner's liberty interest to determine whether he suffered cruel and unusual punishment as a result of being detained beyond the termination of his sentence); *Carter v. Sandoval*, No. 2:18-cv-02064-RFB-EJY, 2020 WL 4668190, at *6-7 (D. Nev. July 9, 2020) (considering allegations similar to Vonseydewitz's and concluding, based on *Haygood*, that the plaintiff's claims based on the Eighth and Fourteenth Amendments to the United States Constitution turned on whether he had a liberty interest in the correct application of his good time credits); *see also Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Lastly, insofar as Vonseydewitz asserts that his complaint included other claims for relief based on the same allegations addressed herein, which the district court failed to consider, he did not meaningfully pursue any such claims below and does not specifically address them on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."); *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that appellate courts need not consider issues

unsupported by cogent argument). Consequently, we discern no basis for relief in this respect. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]



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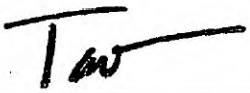

_____, J.
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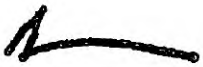

_____, J.
Bulla

cc: Hon. Jessica K. Peterson, District Judge
Frederick Vonseydewitz
Attorney General/Carson City
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Las Vegas
Eighth District Court Clerk

[4]To the extent that Vonseydewitz 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 our disposition of this appeal.