

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONEY ANTHONY WHITE,
Appellant,


vs.

JACOB LAUB, CORRECTIONS
OFFICER; CORBIN NEUWIRTH,
CORRECTIONS OFFICER; A.
ISHMAIL, CORRECTIONS OFFICER;
MARTINEZ, SENIOR CORRECTIONS
OFFICER; WILLIAM OBLAK, SENIOR
CORRECTIONS OFFICER; GUSTAVO
SANCHEZ, CORRECTIONS
SERGEANT; DEAN ONTIVEROS,
CORRECTIONS LIEUTENANT;
JONATHAN BINDER, CORRECTIONS
LIEUTENANT; JEREMY BEAN,
ASSOCIATE WARDEN AT HDSP;
DONALD OLIVER, ASSOCIATE
WARDEN AT HDSP; GARY PICCININI,
ASSOCIATE WARDEN AT HDSP;
CALVIN JOHNSON, WARDEN OF
HDSP; MICHAEL MINEV, MEDICAL
DIRECTOR OF NDOC; CHARLES
DANIELS, DIRECTOR OF NDOC;
KAMEISHA PALMER, ASSISTANT TO
AW PICCININI; JACQUES GRAHAM,
LAW LIBRARY SUPERVISOR AT
HDSP; BENITO GUTIERREZ,
DIRECTOR OF NURSING AT HDSP;
NICK PERET; JAYME (JAIMIE)
CABRERA; GEORGE AVENA, CHARGE
NURSE AT HDSP; AND JOSEPH
AVENA, CHARGE NURSE AT HDSP,
Respondents.

No. 84882-COA

FILED

DEC 12 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Toney Anthony White appeals from a district court order dismissing a civil rights complaint. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.


On August 2, 2021, White, an inmate in the custody of the Nevada Department of Corrections (NDOC), filed a civil rights complaint against several NDOC employees. On April 14, 2022, the district court issued an order to show cause why the case should not be dismissed for failure to prosecute, and a hearing was scheduled for May 23, 2022. Thereafter, White submitted a motion for transport order, seeking to secure his attendance at the hearing. The district court clerk's office received the motion on May 5, 2022, but failed to file the motion until the day of the show-cause hearing. As a result, the district court did not consider the motion. After the hearing, the district court issued an order noting that White did not appear and dismissing the complaint without prejudice. This appeal followed.

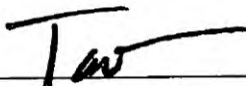
EDCR 7.60(a)(3) permits a court to dismiss a complaint “[i]f without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party . . . at the time set for the hearing of any matter.” We review the district court's dismissal of appellant's case for failure to appear at the show-cause hearing for an abuse of discretion. *See Moore v. Cherry*, 90 Nev. 390, 394-95, 528 P.2d 1018, 1021 (1974).

In this matter, White was incarcerated and attempted to secure his attendance at the show-cause hearing by submitting a motion 18 days prior to the hearing. However, due to circumstances beyond White's control, the district court clerk's office did not file his motion until the day of the hearing. This effectively prevented White from attending the show-cause

hearing, and the district court subsequently dismissed the case, due to White's nonappearance. Under these circumstances, White had just excuse for failing to appear at the show-cause hearing, and we must conclude that the dismissal of the case constituted an abuse of discretion. Therefore, we reverse the district court's order of dismissal and remand this matter for the district court to conduct a new show-cause hearing and to consider White's request for transport to attend the hearing.¹ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹We take no position as to whether White has failed to prosecute his case.

²Although this court generally will not grant a pro se appellant relief without first providing respondents an opportunity to file a response, the filing of a response would not aid this court's resolution of this case and, thus, has not been ordered. See NRAP 46A(c); see also NRAP 34(f)(3).

cc: Hon. Joseph Hardy, Jr., District Judge
Toney Anthony White
Attorney General/Carson City
Eighth District Court Clerk