

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE WRONGFUL
CONVICTION OF KYLE WARNER
TURPIN, SR.

No. 85138-COA

FILED

JUN 12 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

KYLE WARNER TURPIN, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.¹

ORDER OF AFFIRMANCE

Kyle Warner Turpin, Sr., appeals from a district court order dismissing his complaint in a wrongful conviction action. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Turpin commenced the underlying wrongful conviction action pursuant to NRS 41.900,² which authorizes a person who is not currently incarcerated for any offense to bring a civil action for damages based on his or her wrongful conviction. In particular, Turpin sought damages alleging that he served time in prison based on convictions for first-degree kidnapping with use of a deadly weapon, which were vacated after the supreme court determined that he was convicted in violation of his right to

¹We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

²Turpin's complaint specifically referenced Assembly Bill 267, which was enacted in 2019, 2019 Nev. Stat., ch. 632, §§ 1–8.5, at 4366–69 (effective October 1, 2019), and is now codified at NRS 41.900–NRS 41.970.

be free from double jeopardy. *See Turpin v. State*, No. 48509, at *10-11 (Nev. March 17, 2009) (Order Affirming in Part, Reversing in Part and Remanding). Respondent, the State of Nevada, moved to dismiss Turpin's complaint pursuant to NRCP 12(b)(5), arguing, among other things, that Turpin could not recover damages for any period of imprisonment based on his kidnapping convictions since, during such period, he also concurrently served a sentence arising from a conviction of another offence for which he was lawfully convicted and imprisoned. Over Turpin's opposition, the district court granted the State's motion, summarily finding that he failed to state a claim for which relief could be granted. This appeal followed.

Dismissal pursuant to NRCP 12(b)(5) is only appropriate "if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Although the district court generally may not consider matters outside of the pleadings when reviewing an NRCP 12(b)(5) motion, the court "may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). We review district court orders granting an NRCP 12(b)(5) motion to dismiss de novo, accepting all factual allegations in the plaintiff's complaint as true and drawing all inferences in the plaintiff's favor. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. In doing so, this court must determine whether "the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief." *Breliant*, 109 Nev. at 846, 858 P.2d at 1260 (internal quotation marks omitted).

On appeal, Turpin essentially argues that, in dismissing his wrongful conviction claim, the district court ignored evidence attached to his complaint that purportedly established that he was entitled to relief under NRS 41.900, which sets forth the essential elements of a wrongful conviction claim. However, the order dismissing Turpin's complaint specifically indicates that the district court considered the documents attached to his complaint in evaluating the State's motion to dismiss his wrongful conviction claim. *See Breliant*, 109 Nev. at 847, 858 P.2d at 1261. Moreover, that documentation demonstrates that, although Turpin's criminal case had a complex procedural history that eventually resulted in two convictions for first-degree kidnapping with use of a deadly weapon that were later overturned, the sentences associated with those convictions ran concurrently with a sentence that he received for a conviction for another offense, the legality of which he does not dispute on appeal. And because NRS 41.950(4) prohibits the district court from awarding a person "compensation for any period of imprisonment during which the person was concurrently serving a sentence for a conviction of another offense for which the person was lawfully convicted and imprisoned," Turpin cannot recover damages for any period of imprisonment that he served in connection with his convictions for first-degree kidnapping with use of a deadly weapon. As a result, relief is unwarranted in this respect.

Insofar as Turpin nevertheless argues that the district court's decision to dismiss his complaint demonstrates that the court was biased against him, relief is unwarranted because Turpin has not demonstrated that it was based on knowledge acquired outside of the proceedings, and the decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Judicial*

Dist. Court, 138 Nev., Adv. Op. 12, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that, unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings, which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification).

Thus, for the foregoing reasons, we conclude that Turpin has failed to demonstrate that the district court erred by dismissing his wrongful conviction action. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Adriana Escobar, District Judge
Kyle Warner Turpin, Sr.
Attorney General/Carson City
Clark County District Attorney
Attorney General/Las Vegas
Eighth District Court Clerk