

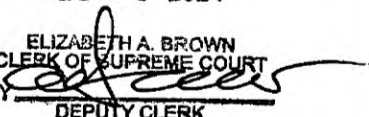
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN H. ROSKY,  
Appellant,  
vs.  
THE STATE OF NEVADA; AND  
WASHOE COUNTY DISTRICT  
ATTORNEY CHRISTOPHER J. HICKS,  
Respondents.

No. 86063-COA

FILED

FEB 08 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

John H. Rosky appeals from an order of the district court granting a motion to dismiss in a civil action. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Rosky filed a complaint alleging he was entitled to equitable relief pursuant to NRCPC 60(b) concerning his criminal conviction. Rosky contended that he was convicted of a criminal offense and that the criminal court failed to properly instruct the jury during his criminal trial pursuant to NRS 47.230 regarding a presumed fact that was an element of his offense. Rosky further contended that the failure of the criminal court to instruct the jury pursuant to NRS 47.230 caused that court to lack jurisdiction to convict him. Rosky therefore sought an order reversing his judgment of conviction.

Respondents moved to dismiss, on various grounds, and Rosky opposed the motion. The district court subsequently determined that Rosky failed to state a claim upon which relief could be granted and it therefore entered an order dismissing Rosky's complaint. This appeal followed.

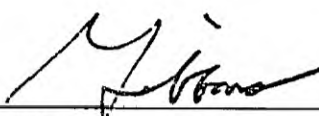
On appeal, Rosky argues that the district court erred by granting respondents' motion to dismiss. Rosky again argues that the criminal court failed to instruct the jury in his criminal matter pursuant to NRS 47.230 and that it therefore lacked jurisdiction to convict him. In addition, Rosky asserts that he pursued relief from a final judgment pursuant to NRCP 60(b) and, thus, he may pursue his claim via a civil action.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* at 227-28, 181 P.3d at 672. Dismissing a complaint 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.


Rosky's underlying claim did not implicate the jurisdiction of the criminal court. *See* Nev. Const. art. 6, § 6 (explaining that the district courts "have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts"); NRS 171.010 (providing that Nevada state courts have jurisdiction over all public offenses committed within the state); *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) ("Subject matter jurisdiction is the court's authority to render a judgment in a particular category of case." (internal quotation marks omitted)). Accordingly, Rosky is not entitled to relief concerning his jurisdictional challenge.

Moreover, our review of Rosky's complaint reveals that his claim necessarily challenges the validity of his judgment of conviction. And "[a] post-conviction petition for a writ of habeas corpus is the exclusive remedy for challenging the validity of a conviction or sentence aside from" certain instances not relevant here. *Harris v. State*, 130 Nev. 435, 437, 329 P.3d 619, 621 (2014) (emphasis omitted); see also NRS 34.724(2)(b) (stating that a postconviction petition for a writ of habeas corpus is the exclusive remedy with which to challenge the validity of a judgment of conviction). Because Rosky did not bring his challenge to the validity of his judgment of conviction via a postconviction petition for a writ of habeas corpus, we conclude dismissal of Rosky's complaint was appropriate.<sup>1</sup> See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that appellate courts may affirm a district court decision on different grounds than those provided by the district court). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

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<sup>1</sup>We express no opinion as to whether Rosky could meet the procedural requirements of NRS Chapter 34 for any subsequent attempts at raising his underlying claim via a postconviction petition for a writ of habeas corpus.

cc: Hon. Kathleen M. Drakulich, District Judge  
John H. Rosky  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe County District Attorney/Civil Division  
Washoe District Court Clerk