



IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE WRONGFUL  
CONVICTION OF ROBERT ALAN  
ROGINSKY

No. 90954

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ROBERT ALAN ROGINSKY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting summary judgment in an action for wrongful conviction compensation. Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

Appellant Robert Roginsky argues the district court erred in granting summary judgment for the State. We review an order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law.” *Id.* (citation modified).

In 2014, Roginsky was convicted of violating the conditions of lifetime supervision, which were imposed after Roginsky pleaded no contest to lewdness with a child under the age of 14. Because the alleged conduct did not violate the statutory conditions, we determined Roginsky was actually innocent of the supervision violation. *Roginsky v. State*, No. 75742, 2019 WL 1450199, at \*1 (Nev. Mar. 29, 2019) (Order of Reversal and Remand). As a result, we instructed the district court to vacate the

conviction. *Id.* at \*2. Roginsky then filed a cause of action for wrongful conviction compensation pursuant to NRS 41.900, which permits “[a] person who is *not currently incarcerated* for any offense [to] bring a civil action for his or her wrongful conviction.” (Emphasis added.) Because Roginsky was in county jail for an unrelated offense when he filed the cause of action, the district court granted summary judgment for the State.

Roginsky argues that the term “incarcerated” means confinement in prison and the district court therefore misconstrued NRS 41.900(1). Construing the statute as a whole, *see McCord v. State*, 139 Nev. 598, 601, 540 P.3d 433, 437 (2023), we disagree for two reasons. First, NRS 41.900 refers to both incarceration and imprisonment. *Compare* NRS 41.900(1) (using the term “incarcerated”), *with* NRS 41.900(2)(a) (using the term “imprisoned”). Because the statute uses “one term in one place, and a materially different term in another,” we presume that “the different term denotes a different idea.” *Kabew v. Eighth Jud. Dist. Ct.*, 140 Nev. 184, 187, 545 P.3d 1137, 1140 (2024) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012)). And second, the word “incarceration” means confinement generally. *See Incarceration, Black’s Law Dictionary* (12th ed. 2024) (defining “incarceration” as “[t]he act or process of confining someone”). Thus, Roginsky’s interpretation is belied by the plain meaning of “incarceration” and the presumption of consistent usage. *See Moore v. State*, 136 Nev. 620, 622-23, 475 P.3d 33, 36 (2020) (“[W]e interpret clear and unambiguous statutory language by its plain meaning unless doing so would lead to an unreasonable or absurd result.”). Given that Roginsky was incarcerated when he sought compensation for the wrongful conviction, the district court did not err in



granting summary judgment for the State. Accordingly, we  
ORDER the judgment of the district court AFFIRMED.



Herndon, C.J.



Bell, J.



Cadish, J.

cc: Hon. Bita Yeager, District Judge  
Kirk T. Kennedy  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk

