

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD EDWARD GRAFF,  
Appellant,  
vs.  
THE STATE OF NEVADA, BOARD OF  
PAROLE COMMISSIONERS, DONALD  
L. DENISON, CORDELIA DUNFIELD,  
NORMAN ZIOLA, AND TAMI BASS,  
Respondents.

No. 39452

FILED

JUL 11 2002

BY Janette M. Bloom  
JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint for failure to state a claim upon which relief can be granted, pursuant to NRCP 12(b)(5).<sup>1</sup> Having reviewed the record in this matter, we conclude that the district court properly dismissed the complaint. In particular, to the extent appellant challenges his sentence or length of confinement, these claims should be raised in a post-conviction petition for writ of habeas corpus.<sup>2</sup> As for appellant's remaining claims, we conclude that appellant failed to set forth in his

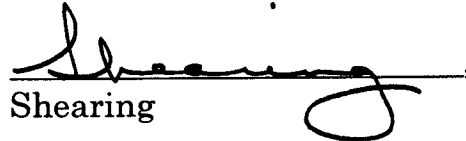
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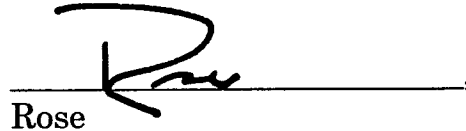
<sup>1</sup>See Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985) (holding that on review of an order granting a motion to dismiss, this court's task is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief).


<sup>2</sup>See NRS 34.724(1) (providing that a post-conviction petition for writ of habeas corpus is the proper vehicle to challenge a conviction, sentence, or the computation of time that the inmate has served); see also Director, Dep't Prisons v. Arndt, 98 Nev. 84, 86, 640 P.2d 1318, 1319 (1982) (stating that a writ of habeas corpus must be used "to challenge present custody or restraint and the legality of that confinement").

pleadings allegations sufficient to establish a right to relief.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. William A. Maddox, District Judge  
Attorney General/Carson City  
Richard Edward Graff  
Carson City Clerk

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<sup>3</sup>See NRS 213.10705; Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980) (noting that a prisoner has no right to parole); see also Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 7 (1979) (recognizing that an inmate does not have a protected liberty interest in parole, and does not have a constitutional right to be conditionally released before the expiration of a valid sentence).

<sup>4</sup>Although appellant was not granted permission to file documents in proper person, see NRAP 46(b), we have considered all proper person documents received in this matter.

We note that initially appellant failed to pay the filing fee mandated by NRS 2.250. On April 15, 2002, appellant submitted documents to this court seeking permission to proceed in forma pauperis pursuant to NRAP 24. The record indicates that on October 3, 2001, the district court granted appellant's motion to proceed in forma pauperis. Accordingly, we order the filing fee waived. See NRAP 24(a).