IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LEE BUTLER,
Appellant,
vs.
THE STATE OF NEVADA ATTORNEY
GENERAL, FRANKIE SUE DEL PAPA,
Respondent.

No. 39479

FILED

AUG 2 1 2002

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY _____
CHIEF 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).
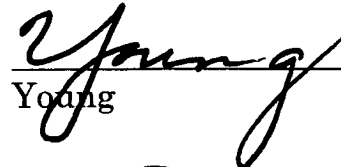
Having reviewed the record in this matter, we conclude that the district court properly dismissed the complaint.[1] In particular, appellant challenges the constitutionality of Nevada's burglary statute under which he was convicted. The district court properly concluded that this claim was limited to a post-conviction petition for writ of habeas corpus.[2] As for appellant's remaining claims, we conclude that appellant

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[1]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).
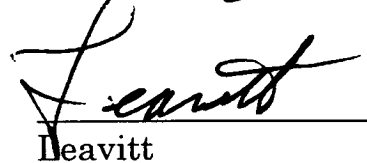
[2]See NRS 34.724(1) (providing that a post-conviction petition for writ of habeas corpus is the proper vehicle to challenge a conviction, sentence, or the computation of time that the inmate has served); Director, Dep't Prisons v. Arndt, 98 Nev. 84, 86, 640 P.2d 1318, 1319 (1982) (stating that a writ of habeas corpus must be used "to challenge present custody or restraint and the legality of that confinement"); see also Parachristou v. City of Jackson, 405 U.S. 156 (1972) (providing that if a statute under which one is convicted is declared unconstitutional, the conviction is void).

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failed to set forth in his pleadings allegations sufficient to establish a right to relief.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. William A. Maddox, District Judge
       Robert Lee Butler
       Attorney General/Carson City
       Carson City Clerk

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[3]See Edgar, 101 Nev. at 226, 699 P.2d at 110.