

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ENDREL DECODE POPE,
Appellant,
vs.
THE STATE OF NEVADA; NEVADA
DEPARTMENT OF CORRECTIONS;
DEPUTY DIRECTOR FOSTER;
ROBERT LEGRAND; C/O GODECKE;
AND LARRY HEGGE,
Respondents.

No. 66361

FILED

AUG 31 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a civil rights action. Eleventh Judicial District Court, Pershing County; Richard Wagner, Judge.

Appellant Endrel Decode Pope argues the district court erred in granting the respondents' motion to dismiss his complaint. This court reviews a district court's order granting a motion to dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. ___, ___, 267 P.3d 771, 774 (2011). In addressing Pope's arguments, we must accept all the factual allegations of the complaint as true and draw all inferences in favor of Pope. See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (explaining that, on appeal, a court rigorously reviews a dismissal for failure to state a claim, accepting all of the factual allegations in the complaint as true, and drawing all inferences in favor of the plaintiff). A motion to dismiss is properly granted when the plaintiff fails to exhaust administrative remedies prior to seeking judicial relief. *Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444,

448, 49 P.3d 651, 653 (2002), *overruled on other grounds by Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573, 170 P.3d 989, 995 (2007).


First, Pope argues the district court erred in concluding he failed to properly exhaust the Nevada Department of Corrections' (NDOC) administrative remedies because Pope believed he could wait for the results of an Inspector General's investigation prior to proceeding to the upper grievance levels. Pope's argument lacks merit. An inmate alleging a violation of his civil rights pursuant to 42 U.S.C. § 1983 must exhaust the NDOC's administrative remedies prior to seeking judicial relief. *Berry v. Feil*, 131 Nev. ___, ___, P.3d ___, ___ Ct. App. Nev. (Adv. Op. No. 37, June 11, 2015 at 7). NDOC Administrative Regulation 740.05(12)(A) plainly requires an inmate to seek an appeal to the first level grievance within five days after receiving the response to the informal level grievance. Pope's first level grievance was rejected because he waited 39 days to appeal the informal level grievance response. Accordingly, the district court correctly concluded Pope did not properly exhaust administrative remedies. *See Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (providing "[p]roper exhaustion demands compliance with an agency's deadlines").


Second, Pope argues the district court erred by concluding the NDOC administrative grievance process was constitutional. Pope's argument is without merit "because inmates lack a separate constitutional entitlement to a specific prison grievance procedure." *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). Therefore, the district court properly dismissed this claim.


Third, Pope argues the district court erred in concluding Pope failed to state a claim for which relief could be granted for his denial-of-

access-to-the-courts claim. Pope asserts that his right of access to the courts was violated because the NDOC grievance process is unconstitutional. Pope's argument is without merit. To state a claim regarding access to the courts, a plaintiff is required to allege actual injury, meaning actual prejudice towards the ability to present a nonfrivolous or arguable claim. *Lewis v. Casey*, 518 U.S. 343, 353 and n.3 (1996). Pope does not demonstrate the NDOC's grievance process deprived him of the opportunity to present a nonfrivolous claim. *See id.* at 353; *see also Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (explaining the allegedly anticipated or lost cause of action is an element of the proof of a denial of access to the courts claim). Accordingly, the district court properly concluded Pope did not allege he suffered an actual injury with respect to his denial-of-access-to-the-court's claim. Therefore, the district court properly dismissed this claim.

Having concluded Pope is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Richard Wagner, Senior District Judge
Endrel Pope
Attorney General/Carson City
Pershing County Clerk