

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAUL THOMAS MCCREARY,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
AND RENEE BAKER, WARDEN,  
Respondents.

No. 75451

**FILED**

OCT 31 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Paul Thomas McCreary appeals from a district court order dismissing his civil rights complaint. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

McCreary filed a complaint alleging violations of his constitutional right to be free from cruel and unusual punishment wherein he alleges respondents placed him in segregated housing in retaliation for filing a grievance under the Prison Rape Elimination Act and because he was questioned by a prison official relating to the sale of methamphetamine within the prison population. McCreary served the respondents, and obtained a default against them. When McCreary filed his application for default judgment, respondents filed a motion to dismiss McCreary's complaint for failure to properly serve the complaint. The district court denied the motion to dismiss, but respondents filed a motion to set aside the default and for reconsideration of the motion to dismiss for failure to state

a claim for relief based on NRCP 12(b)(5). The district court then issued an order that denied McCreary's request for default judgment and dismissed McCreary's complaint. This appeal followed.


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 complaint. *Id.* 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.

McCreary's argument on appeal lacks merit. His assertions that the individual defendants below are not peace officers or state officials and therefore NRCP 55(e) does not apply is belied by the very allegations that McCreary was subject to their actions in state prison. Moreover, McCreary's appellate arguments regarding the retaliation claims, where he simply lists what each count is, provide no grounds upon which he would be entitled to relief. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that claims that are not cogently argued need not be considered). Upon our review of the record, especially the numerous documents attached to the complaint regarding McCreary's prison grievance history, we determine that even accepting all factual allegations as true, McCreary does not present any claims that

would entitle him to the relief sought. *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672. As such, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Steve L. Dobrescu, District Judge  
Paul Thomas McCreary  
Attorney General/Carson City  
Attorney General/Las Vegas  
White Pine County Clerk