

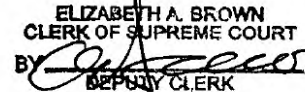
IN THE SUPREME COURT OF THE STATE OF NEVADA

EVAN SCOTT GRANT,  
Appellant,  
vs.  
THE STATE OF NEVADA BOARD OF  
PAROLE COMMISSIONERS; AND  
CHRISTOPHER DERICCO,  
Respondents.

No. 84324

FILED

DEC 15 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order dismissing a complaint for declaratory and injunctive relief. First Judicial District Court, Carson City; James E. Wilson, Judge.<sup>1</sup>

Appellant Evan Scott Grant filed a complaint for declaratory and injunctive relief in connection with respondent State Board of Parole Commissioners' decision to deny him release on parole, alleging that several Nevada Administrative Code (NAC) regulations the Board uses in making parole decisions are unconstitutional or violate enabling statutes. The district court granted the Board's motion to dismiss Grant's complaint. As Grant's claims do not support a declaratory judgment or injunctive relief, we affirm the district court's dismissal.<sup>2</sup> *Buzz Stew, LLC v. City of N. Las*

<sup>1</sup>Having considered the pro se brief filed by appellant, we conclude that a response is not necessary, NRAP 46A(c), and that oral argument is not warranted, NRAP 34(f)(3). This appeal therefore has been decided based on the pro se brief and the record. *Id.*

<sup>2</sup>Grant contends that the order should be construed as a summary judgment because the motion to dismiss referenced Grant's criminal convictions and sentences, but consideration of such information does not convert the motion into one for summary judgment. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (providing that in the NRCP 12(b)(5) context, "the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint").

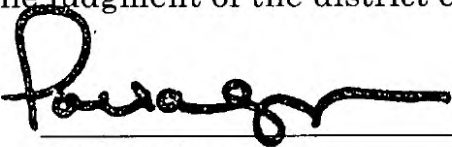
*Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (reviewing de novo an order granting a motion to dismiss under NRCP 12(b)(5)); *Kress v. Corey*, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948) (providing that, to obtain declaratory relief, a plaintiff must show (1) a justiciable controversy, (2) between persons with adverse interests, (3) where the party seeking declaratory relief has a legal interest in the controversy, and (4) the issue is ripe for judicial determination).

First, Grant argues that the Board improperly uses Nevada Department of Corrections (NDOC) crime severity levels in making parole determinations. Under NRS 213.10885(2)(a), the Board must consider crime severity in evaluating an inmate's probability of violating the law if parole is granted. However, as the district court determined, that statute does not require that the Board use the crime severity levels in NRS 193.130 and NRS 193.153 (formerly NRS 193.330), as Grant argues. Thus, we perceive no error in the district court's conclusion that the Board may properly use the crime severity levels developed by the NDOC in the Board's risk assessment metric. Next, although Grant argues that NAC 213.518 violates NRS 213.10885 (requiring the Board to adopt NACs based on objective criteria) because it does not expressly state that the Board must consider parole factors objectively, NAC 213.518 lists objective criteria and the Board uses an objective process to consider parole. Thus, the district court properly dismissed Grant's claim for relief on this ground.

Next, Grant argues that several NACs violate Nevada Constitution article 4, sections 20 and 21, which require that laws have uniform application and prohibit local and special laws "for the punishment of crimes and misdemeanors," and that the Board violated NRS Chapter 233B by enacting regulations that violate these Constitutional provisions. The NACs apply equally to all prisoners eligible for parole, and they are not

used to punish crimes. Therefore, the district court did not err in dismissing this claim. Next, Grant argues that the “district court erred in concluding that NRS 213.10885(2) affords the parole Board discretion to decide which ‘other factors’ are relevant, after codifying specific standards and criteria.” Under NRS 213.10885(2), the Board must consider six specific factors and “all other factors which are relevant” to a parole determination. The statute does not mandate that the Board consider all factors outside those six unless it determines that those factors are relevant, and the district court properly rejected Grant’s argument to the contrary.<sup>3</sup> Thus, as Grant’s claims do not support a declaratory judgment or injunctive relief, we

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

  
\_\_\_\_\_, C.J.  
Parraguirre

  
\_\_\_\_\_, J.  
Stiglich

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

cc: Hon. James E. Wilson, District Judge  
Evan Scott Grant  
Attorney General/Carson City  
Attorney General/Dep’t of Public Safety/Carson City  
Carson City Clerk

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<sup>3</sup>We have considered all of Grant’s additional arguments and conclude that they do not provide a basis for reversal. And insofar as Grant claims a liberty interest or due process rights in his parole hearing, he is mistaken. *See Anselmo v. Bisbee*, 133 Nev. 317, 318, 396 P.3d 848, 851, 850 (2017).

<sup>4</sup>The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.