

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-505

MAY TERM, 2003

John Grega	}	APPEALED FROM:
	}	
	}	Windham Superior Court
	}	
v.	}	
	}	DOCKET No. 436-9-02 WmCr
Dan Davis	}	
	}	Trial Judge: Hon. John P. Wesley
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff John Grega appeals from the trial court's order dismissing his complaint for failure to state a claim on which relief could be granted. He argues that the trial court erred because: (1) it has inherent judicial authority under 13 V.S.A. § §7131-7135 to order the production of " material exculpatory evidence" for post-conviction review purposes; (2) it has inherent authority to grant his request in the interests of justice or due process; and (3) it has jurisdiction under the post-conviction review statute to release the fingerprint evidence necessary to complete the record for further appellate and collateral review. We affirm.

Grega is currently serving a life sentence without parole for aggravated murder. See State v. Grega, 168 Vt. 363 (1998). In September 2002, Grega filed a pro se " complaint and motion" asking the court to order Windham County State's Attorney Dan Davis to request the release of certain fingerprint identification cards from the Vermont Department of Public Safety and the Vermont Criminal Information Center (VCIC). Grega asserted that the requested evidence was relevant to his guilt or innocence and could be necessary in future post-conviction proceedings. Grega argued that the court had inherent jurisdiction to order the release of this information " in the interest of justice and fundamental fairness."

Davis moved to dismiss Grega's complaint for failure to state a claim on which relief could be granted, and for failure to name the Vermont Department of Public Safety and the Vermont Criminal Information Center as defendants. The court granted Davis' motion, explaining that it had no authority to compel actions by persons who were not parties to the case. Even if the proper parties had been named, the court explained, it was not apparent that the court would have the independent authority to compel agency disclosure separate from a V.R.C.P. 74 or 75 action. The court therefore dismissed Grega's claim. The court denied Grega's motion for reconsideration, and this appeal followed.

In reviewing the court's decision to grant a motion to dismiss, we " accept as true all well-pleaded factual allegations in the complaint." Powers v. Office of Child Support, 173 Vt. 390, 392 (2002). A motion to dismiss should not be granted " unless it is beyond doubt that there exist no facts or circumstances that would entitle [a party] to relief." Id. at 395.

We conclude that the court properly dismissed appellant's complaint for failure to state a claim on which relief could be granted. Accepting Grega's factual allegations as true, there is no legal basis to support the relief he requests. Grega's complaint is not a petition for post-conviction relief under 13 V.S.A. §§ 7131-7137, in which he seeks to have his sentence vacated, set aside, or corrected. Instead, Grega asks the court to direct Davis to request the production of evidence from a third-party. In the absence of a post-conviction review petition, the court does not have the authority

under the post-conviction relief statutes to grant his request.

Grega next argues that the court has "inherent authority" in the "interests of justice" or due process to order Davis to request evidence from VCIC. He asserts that the court can act to protect his "right to call for evidence in his favor," as well as his rights under the Vermont Public Records Act. However, as the trial court noted, Grega has already requested this information under the Vermont Public Records Act, and he is pursuing a V.R.C.P. 74, 75 action in another forum. Therefore, because these issues are the subject of another proceeding, we decline to address them here.

Finally, Grega argues that his complaint should be construed as a discovery motion under V.R.C.P. 27(b). Grega did not raise this argument below, and we will not address it for the first time on appeal. See State v. Jones, 160 Vt. 440, 448 (1993); V.R.A.P. 28(a)(4) (appellant's brief must explain how issues were presented below and preserved for appellate review).

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned