

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DALE F. MAISANO,
Plaintiff/Appellant,

v.

CO II HENRY,
Defendant/Appellee.

No. 2 CA-CV 2015-0055
Filed September 8, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV201500380
The Honorable Jason R. Holmberg, Judge

AFFIRMED

COUNSEL

Dale F. Maisano, Florence
In Propria Persona

Mark Brnovich, Arizona Attorney General
By Michael E. Gottfried, Assistant Attorney General, Phoenix
Counsel for Appellee

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MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Dale Maisano appeals from the trial court's order dismissing his petition for relief for failure to state a claim. For the reasons stated below, we affirm.

¶2 When reviewing a trial court's dismissal of a complaint for failure to state a claim, "we must take the alleged facts as true." *Dube v. Likins*, 216 Ariz. 406, ¶ 2, 167 P.3d 93, 97 (App. 2007), quoting *Riddle v. Ariz. Oncology Servs., Inc.*, 186 Ariz. 464, 465, 924 P.2d 468, 469 (App. 1996). Maisano is an inmate at the Arizona State Prison Complex in Florence, Arizona. In February 2015, he filed a one-page petition for relief, stating that defendant Henry, a correctional officer, had served him "the wrong food" on one particular date in January. The complaint alleged that this constituted "a gross violation" of the Eighth, Eleventh, and Fourteenth Amendments of the U.S. Constitution, but did not elaborate further. Construing Maisano's threadbare complaint as a petition for habeas corpus, the court in a March minute entry went on to note that Maisano had "state[d] no damages or causation." The trial court proceeded to dismiss the action for failure to comply with Rule 8, Ariz. R. Civ. P. Maisano appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).¹

¶3 In civil matters, Arizona follows a notice pleading standard, requiring a complaint to contain "[a] short and plain

¹In a subsequent minute entry, the trial court clarified that its March minute entry dismissing the complaint is a final judgment pursuant to Rule 54(c), Ariz. R. Civ. P.

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statement of the claim showing that the pleader is entitled to relief.” Ariz. R. Civ. P. 8(a)(2); *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, ¶ 6, 189 P.3d 344, 346 (2008). “In determining whether [Maisano] stated a claim upon which relief can be granted, we look only to the well-pleaded factual allegations in the complaint, ‘and indulge all reasonable inferences from those facts.’” *Belen Loan Inv’rs, LLC v. Bradley*, 231 Ariz. 448, ¶ 17, 296 P.3d 984, 991 (App. 2012) (footnote omitted), quoting *Coleman v. City of Mesa*, 230 Ariz. 352, ¶ 9, 284 P.3d 863, 867 (2012). We will uphold the trial court’s dismissal of a complaint for failure to state a claim if “the plaintiff is not entitled to any relief under the facts stated in the complaint.” *McAlister v. Citibank*, 171 Ariz. 207, 211, 829 P.2d 1253, 1257 (App. 1992). Mere conclusory legal statements, without any supporting factual allegations, are insufficient to state a claim upon which relief can be granted. *Cullen*, 218 Ariz. 417, ¶ 7, 189 P.3d at 346.

¶4 Regardless of whether Maisano’s complaint was styled a petition for habeas corpus, or any other form of relief, the trial judge correctly observed that it fails to allege causation or damages. Nor is a one-sentence, conclusory reference to three alleged constitutional violations enough to save the complaint, in the absence of any factual support for the allegations therein.² See *Cullen*, 218 Ariz. 417, ¶ 7, 189 P.3d at 346. As a matter of law, Maisano “‘would not be entitled to relief under any interpretation of the facts susceptible of proof.’” See *Coleman v. City of Mesa*, 230 Ariz. 352, ¶ 8, 284 P.3d at 867, quoting *Fid. Sec. Life Ins. Co. v. State Dep’t of*

²Given that our only task is to review the trial court’s ruling that the pleadings failed to state a claim upon which relief can be granted, the various new allegations, documents, and legal arguments that Maisano presents for the first time on appeal are irrelevant, and we will not consider them. See, e.g., *Belen Loan Inv’rs*, 231 Ariz. 448, ¶ 17, 296 P.3d at 991 (in reviewing dismissal for failure to state claim, “we look *only* to the well-pleaded factual allegations *in the complaint*”) (emphasis added); *Orfaly v. Tucson Symphony Soc’y*, 209 Ariz. 260, ¶ 15, 99 P.3d 1030, 1035 (App. 2004) (arguments raised for first time on appeal deemed waived).

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Ins., 191 Ariz. 222, ¶ 4, 954 P.2d 580, 582 (1998). Thus, the trial court did not err in dismissing the complaint, and thus we affirm the court's judgment.