

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 15 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JAMES E. SMITH,

Plaintiff - Appellant,

v.

BOARD OF PRISON TERM  
PERSONNEL; et al.,

Defendants - Appellees.

No. 07-16995

D.C. No. CV-06-01434-LJO

MEMORANDUM \*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O'Neill, District Judge, Presiding

Submitted December 17, 2008\*\*

Before: WALLACE, TROTT, and RYMER, Circuit Judges.

James E. Smith, a California state prisoner, appeals pro se from the district court's orders denying his motions for relief from judgment in his civil rights

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo an order ruling upon a Federal Rule of Civil Procedure 60(b)(4) motion. *Export Group v. Reef Indus., Inc.*, 54 F.3d 1466, 1469 (9th Cir. 1995). We affirm.

The district court properly denied Smith's motions to void the judgment because he failed to present any coherent basis for relief. *See United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999) ("A final judgment is 'void' for purposes of Rule 60(b)(4) only if the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law.").

We lack jurisdiction to consider Smith's challenges to the underlying judgment because the notice of appeal was filed more than thirty days after entry of the judgment, and the motions to vacate did not toll the time to appeal from the judgment. *See Fed. R. App. P. 4(a)*.

Smith's remaining contentions are unpersuasive.

**AFFIRMED.**