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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>DAVID LAWRENCE SMITH,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>UNITED STATES OF AMERICA, in re: Federal Bureau of Investigation; et al.,</p> <p>Defendants - Appellees.</p> |
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No. 07-15874

D.C. No. CV-06-00790-PHX-JAT

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

David Lawrence Smith appeals from the district court’s order denying his
Fed. R. Civ. P. 60(b) motion to set aside the dismissal of his action against the

* 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).

United States, State of California, State of Arizona, and County of Los Angeles.

We have jurisdiction under 28 U.S.C. § 1291. We affirm.

Smith makes no argument on appeal that the district court abused its discretion in denying him Rule 60(b) relief and, therefore, we deem this issue abandoned. *See Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151, 1168 (9th Cir. 1996) (failure to brief issue on appeal constitutes abandonment of the issue).

We do not consider Smith's contentions challenging the district court's dismissal of his underlying claims because his appeal as to that judgment is untimely and his Rule 60(b) motion did not toll the deadline. *See Fed. R. App. P. 4(a)(1)(B), (a)(4)(A)(vi); Fed. R. Civ. P. 60(c).*

AFFIRMED.