

MAY 26 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DEBORAH KAY WILSON,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE, Individually and  
in his capacity as Commissioner of the  
Social Security Administration,

Defendant - Appellee.

No. 07-17176

D.C. No. CV-07-00018-FMT

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Guam  
Frances Tydingco-Gatewood, Chief District Judge, Presiding

Submitted May 12, 2009\*\*

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

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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). Accordingly, Wilson's request for oral argument is denied.

Deborah Kay Wilson appeals pro se from the district court's judgment dismissing her action challenging the Social Security Administration's decision deferring her disability benefits to offset debt owed to the U.S. Department of Education. Wilson also appeals from the district court's orders denying her Rule 60(b) motion and Rule 59(e) motions for post-judgment relief. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to exhaust administrative remedies under the Social Security Act. *Kildare v. Saenz*, 325 F.3d 1078, 1082 (9th Cir. 2003). We review for an abuse of discretion denial of Wilson's post-judgment motions. *See United States v. Asarco, Inc.*, 430 F.3d 972, 978 (9th Cir. 2005) (Rule 60(b)); *McQuillion v. Duncan*, 342 F.3d 1012, 1014 (9th Cir. 2003) (Rule 59(e)). We affirm.

The district court properly dismissed Wilson's challenge to the Social Security Administration's benefits determination because Wilson failed to exhaust administrative remedies. *See Bass v. Soc. Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam) (holding that a claimant's failure to exhaust administrative remedies under 42 U.S.C. § 405(g) deprives a district court of jurisdiction).

The district court properly determined that Wilson's failure to exhaust administrative remedies under the Federal Tort Claims Act deprived the district

court of jurisdiction over Wilson's tort law claims. *See Brady v. United States*, 211 F.3d 499, 502 (9th Cir. 2000).

The district court properly dismissed Wilson's constitutional claims because Wilson "cannot pursue a *Bivens* action for the denial of social security benefits." *Butler v. Apfel*, 144 F.3d 622, 624 (9th Cir. 1998) (per curiam).

The district court did not abuse its discretion by denying Wilson's post-judgment motions.

Wilson's remaining contentions are unpersuasive.

All pending motions are denied.

**AFFIRMED.**