

JUL 07 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JERRYAL J. CULLER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>CALIFORNIA DEPARTMENT OF CORRECTIONS; et al.,</p> <p>Defendants - Appellees.</p>

No. 08-15878

D.C. No. 3:07-CV-01849-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Jerryal J. Culler, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action without prejudice for

* 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).

failure to pay the filing fee or apply for leave to proceed in forma pauperis. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002). We affirm.

The district court did not abuse its discretion by dismissing Culler's action after warning him that failure to submit the filing fee or an in forma pauperis application would result in the dismissal of the case. *See id.* at 847-50 (holding that the filing fee provisions of the Prison Litigation Reform Act, 28 U.S.C. § 1915(b), are constitutional).

The district court did not abuse its discretion by denying Culler's motion for reconsideration because he did not identify any new evidence, change in law, clear error, or manifest injustice. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (stating that district court's denial of a motion to reconsider is reviewed for an abuse of discretion; setting forth requirements for reconsideration).

AFFIRMED.