

OCT 13 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERNEST MILLER,

Plaintiff - Appellant,

v.

CALIFORNIA STATE PRISON
CORCORAN; et al.,

Defendants - Appellees.

No. 08-17618

D.C. No. 1:08-cv-00594-OWW-
SMS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted September 14, 2009

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

California prisoner Ernest Miller appeals pro se from the district court's May 9, 2008, dismissal of his 42 U.S.C. § 1983 action for failure to state a claim.

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

We lack jurisdiction to review Miller's challenges to the district court's May 9, 2008, judgment dismissing Miller's § 1983 action challenging his confinement because the notice of appeal was filed more than thirty days after entry of that judgment. *See* Fed. R.App. P. 4(a)(1)(A). The district court did not abuse its discretion by denying Miller's October 7, 2008 motion, seeking a relief from judgment and a return of property because Miller did not demonstrate any ground for relief from judgment or any basis for reconsideration. *See* Fed. R. Civ. P. 60(b); *Sch. Dist. No. 1J, Multnomah County, Or. v. AC and S, 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).

DISMISSED in part, AFFIRMED in part.¹

¹ We deny as moot Miller's motions for summary judgment and his April 8, 2009, motion to lodge exhausted remedies.