

APR 15 2010

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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NOT FOR PUBLICATION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>JOHN RAY MILLER,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JIM BENEDETTI, Warden,</p> <p>Respondent - Appellee.</p> |
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No. 08-16906

D.C. No. 3:08-cv-00077-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Nevada state prisoner John Ray Miller appeals pro se from the district court's denial of the motion for reconsideration he filed pursuant to Federal Rule of Civil Procedure 60(b). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we

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

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

affirm.

Miller contends the district court erred by denying his motion to reconsider. The district court did not abuse its discretion by denying Miller's motion to reconsider because he presented no grounds justifying relief under Rule 60(b). *See Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985).

Miller's motion to remand the case because the State did not file an answering brief is denied.

AFFIRMED.