

JUN 17 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DWIGHT A. STATEN,

Plaintiff - Appellant,

v.

JAMES WALKER, Warden; et al.,

Defendants - Appellees.

No. 09-16011

D.C. No. 2:08-cv-00517-JAM-
GGH

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Dwight A. Staten, a California state prisoner, appeals pro se from the district court's order denying his motion to alter or amend the judgment dismissing his 42

* 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).

U.S.C. § 1983 action alleging that defendants fabricated a rules violation report against him. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion by denying Staten's motion to reconsider because he did not advance any applicable ground for relief under either Rule 59(e) or Rule 60 of the Federal Rules of Civil Procedure. *See id.* at 1262-63 (setting forth requirements for reconsideration under Fed. R. Civ. P. 59(e) and 60).

We do not consider issues that were not raised in Staten's opening brief. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

AFFIRMED.