

JUN 23 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD L. PICKETT,

Plaintiff - Appellant,

v.

BENNIE ROLLINS, Deputy Warden in
his individual & official capacity; et al.,

Defendants - Appellees.

No. 08-17268

D.C. No. 2:98-CV-00198-SRB-
MHB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Argued and Submitted June 16, 2010
San Francisco, California

Before: RYMER and FISHER, Circuit Judges, and RIPPLE, Senior Circuit
Judge.**

Richard L. Pickett appeals the summary judgment in favor of the Arizona
Department of Corrections (ADC) officials against whom he brought this action

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

** The Honorable Kenneth F. Ripple, Senior United States Circuit Judge
for the Seventh Circuit, sitting by designation.

under 42 U.S.C. § 1983. We have jurisdiction pursuant to 28 U.S.C. § 1291, and affirm.

To prevail on his denial-of-access to court claim, Pickett must show the loss of a “nonfrivolous” or “arguable” underlying claim. *Phillips v. Hust*, 477 F.3d 1070, 1076 (9th Cir. 2007), *vacated on other grounds by Hust v. Phillips*, 129 S. Ct. 1036 (2009). He did not do so. No underlying claims were identified in his complaint, *see Christopher v. Harbury*, 536 U.S. 403, 415 (2002), but even assuming the claims on which he would have sought review in the Arizona Supreme Court would track those presented to the court of appeals, he failed to show that any had arguable merit.

Although the district court should have considered Pickett’s motion to reconsider as a Rule 60(b) motion, *see Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001), the error is harmless as Pickett did not demonstrate that he was entitled to relief from judgment.

AFFIRMED.