

AUG 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DERRICK LEE BILLUPS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>JEAN E. HOWARD; MATTHEW C. KRAMER, CMO; J. TENNISON, CC II,</p> <p>Defendants - Appellees.</p>

No. 09-15571

D.C. No. 1:04-cv-05107-AWI-DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, Chief District Judge, Presiding

Submitted August 10, 2010 **

Before: HAWKINS, McKEOWN, and IKUTA, Circuit Judges.

Derrick Billups, a California state prisoner, appeals pro se from the district court's order denying his motion to reconsider. We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion a district court's decision

* 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).

denying a motion to reconsider. *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court determined that Billups failed to exhaust his administrative remedies prior to filing his complaint because his last administrative appeal was completed approximately six months after he filed his complaint in district court. *See McKinney v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). The district court did not abuse its discretion in denying Billups's motion to reconsider because Billups did not present grounds warranting relief. *See Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (on reconsideration, a party must "demonstrate both injury and circumstances beyond his control that prevented him from proceeding with the action in a proper fashion" (internal quotations and citation omitted)).

AFFIRMED.