

AUG 27 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DERRICK LEE BILLUPS,

Plaintiff - Appellant,

v.

A. RAMIREZ; J. HILLER; COLLIER;
GREENLY,

Defendants - Appellees.

No. 09-16309

D.C. No. 1:07-cv-00062-CKJ

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Cindy K. Jorgenson, 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 summary judgment and order denying his motion to reconsider summary

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

** Sitting by designation from the District of Arizona.

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

judgment for Defendants in his 42 U.S.C. § 1983 action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo summary judgment, *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002), and for abuse of discretion a denial of a motion to reconsider, *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

Billups does not challenge in his opening brief the district court's conclusion that the use of force was not excessive, and therefore waives this issue on appeal. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are waived).

The district court did not abuse its discretion by denying Billups' motion to reconsider. Billups did not explain why he was challenging for the first time Dr. Douglass's and Dr. Lee's medical reports nor why he failed to offer Dr. Flynn's medical report during the summary judgment proceedings. *See ACandS, Inc.*, 5 F.3d at 1263.

Finally, we do not consider the evidence attached to Billups's "Motion to Admission of Valid Medical Record" because this evidence was not before the district court. *See Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077 (9th Cir. 1988). We deny the motion.

AFFIRMED.