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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DENNIS DAVID McCULLEY,

Plaintiff - Appellant,

v.

CITY OF TUCSON; et al.,

Defendants - Appellees.

No. 10-16298

D.C. No. 4:08-cv-00007-DCB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
David C. Bury, District Judge, Presiding

Submitted February 21, 2012\*\*

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Dennis David McCulley appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging violations of his civil rights when he was shot by police officers. We have jurisdiction under 28 U.S.C. § 1291. We

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\* 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).

review de novo. *Luchtel v. Hagemann*, 623 F.3d 975, 978 (9th Cir. 2010). We affirm summary judgment for defendants for the reasons set forth in the magistrate judge's report and recommendation entered on March 29, 2010, and adopted by the district court in its order entered on May 24, 2010.

The district court did not abuse its discretion in denying McCulley's motion for reconsideration, because McCulley provided no basis for reconsideration. *See Barber v. State of Hawaii*, 42 F.3d 1185, 1198 (9th Cir. 1994) (setting forth standard of review).

We decline to consider McCulley's argument, raised for the first time on appeal, that his arrest constituted a denial of a public benefit under Title II of the Americans with Disabilities Act. *See Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1321 (9th Cir. 1998) (noting general rule against entertaining arguments on appeal that were not developed before the district court).

McCulley's remaining contentions are unpersuasive.

McCulley's letter received on January 3, 2012 is construed as a supplement to his reply brief, and has been considered.

**AFFIRMED.**