

NOV 20 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EARL WARNER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MATTHEW CATE, et al.,</p> <p>Defendants - Appellees.</p>

No. 11-17794

D.C. No. 3:09-cv-04081-JW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted November 13, 2012**

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

Earl Warner, a California state prisoner, appeals pro se from the district court's order denying his motion for relief from judgment in his 42 U.S.C. § 1983 action alleging prison officials discriminated against him with regard to his work

* 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).

assignment. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1100 (9th Cir. 2006), and we affirm.

The district court did not abuse its discretion in denying Warner's motion for relief from judgment because Warner failed to show that the mental breakdown he suffered while the summary judgment motion was pending constituted a basis for relief from the judgment. *See* Fed. R. Civ. P. 60(b); *Sch. Dist. No. 1J, Multnomah Cnty, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (setting forth grounds justifying relief).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.