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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SERGIO ALVAREZ,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>G. D. LEWIS, Warden; et al.,</p> <p>Defendants - Appellees.</p>
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No. 12-15812

D.C. No. 3:10-cv-04833-JSW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Submitted March 12, 2013\*\*

Before: PREGERSON, REINHARDT, and W. FLETCHER, Circuit Judges.

California state prisoner Sergio Alvarez appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to a serious risk of harm to his health due to exposure to cold

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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).

temperatures in his cell. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Keenan v. Hall*, 83 F.3d 1083, 1088 (9th Cir. 1996), and we affirm.

The district court properly granted summary judgment because Alvarez failed to raise a genuine dispute of material fact as to whether defendants knew of and consciously disregarded a serious risk of harm to Alvarez's health from exposure to extremely cold temperatures in his cell. *See Johnson v. Lewis*, 217 F.3d 726, 733 (9th Cir. 2000) (deliberate indifference claim requires a showing that prison officials' subjective state of mind was sufficiently culpable).

We lack jurisdiction to review the district court's order denying Alvarez's motion for reconsideration, and therefore, dismiss that portion of the appeal. *See* Fed. R. App. P. 4(a)(4)(B)(ii) (appellant must file a notice of appeal or amend a previously filed notice of appeal to secure review of a post-judgment order).

**AFFIRMED.**