

MAY 18 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAYTON L. HOWARD,

Plaintiff - Appellant,

v.

OREGON DEPARTMENT OF  
CORRECTIONS; et al.,

Defendants - Appellees.

No. 13-35964

D.C. No. 6:10-cv-06390-AA

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Ann L. Aiken, Chief Judge, Presiding

Submitted May 13, 2015\*\*

Before: LEAVY, CALLAHAN, and M. SMITH, Circuit Judges.

Oregon state prisoner Clayton L. Howard appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging claims in connection with disciplinary proceedings that resulted in the garnishment of his

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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).

prison trust account funds. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal for failure to prosecute, *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996), and we affirm.

The district court did not abuse its discretion by dismissing with prejudice Howard's action for failure to prosecute after Howard failed to respond to defendants' motion to dismiss, despite being ordered to respond and receiving extensions of time to file a response. *See id.* (discussing factors to guide the court's decision whether to dismiss for failure to prosecute); *see also Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002) (noting dismissal will be disturbed only if there is "a definite and firm conviction that the court below committed a clear error of judgment" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion by denying Howard's motion for reconsideration because Howard failed to establish grounds for such relief. *See Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (standard of review and grounds for reconsideration).

Because we affirm on the basis of Howard's failure to prosecute, we do not consider Howard's contentions that his claims have merit, or that the district court should have first allowed discovery and argument.

**AFFIRMED.**