

OCT 22 2015

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RODERICK HIMES,

Plaintiff - Appellant,

v.

CONNIE GIPSON, Warden; et al.,

Defendants - Appellees.

No. 14-16659

D.C. No. 1:13-cv-00021-DLB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Dennis L. Beck, Magistrate Judge, Presiding\*\*

Submitted October 14, 2015\*\*\*

Before: SILVERMAN, BERZON, and WATFORD, Circuit Judges.

Roderick Himes, 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

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

\*\* Himes consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

action alleging denial of access to the courts. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Sch. Dist. No. 1J Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), and we affirm.

The district court did not abuse its discretion in denying Himes's motion for relief from judgment under Federal Rule of Civil Procedure 60(b) because Himes failed to demonstrate any basis for relief. *See id.* at 1263 (grounds for reconsideration under Rule 60); *see also Christopher v. Harbury*, 536 U.S. 403, 414-16 (2002) (discussing elements of a backward-looking access-to-courts claim); *Lewis v. Casey*, 518 U.S. 343, 348-53 (1996) (access-to-courts claim requires showing that the defendant's conduct caused actual injury to a non-frivolous legal claim).

We do not consider Himes's challenge to the underlying order dismissing the first amended complaint without leave to amend because Himes failed to file a timely notice of appeal or a timely post-judgment tolling motion. *See Fed. R. App. P. 4(a)(1)(A), (a)(4)(A)*. We reject Himes's contention, set forth in his submission filed on August 28, 2015, that this result is altered by the mailbox rule. Himes's request for a ruling on his August 28, 2015 motion, filed on September 15, 2015, is granted.

**AFFIRMED.**