

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 5 2016

FOR THE NINTH CIRCUIT

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

TERRY MICHAEL MILLER,

No. 15-15649

Plaintiff-Appellant,

D.C. No. 4:11-cv-00164-DCB

v.

MEMORANDUM*

CRAIG APKER, Warden at US
Penitentiary, et al.,

Defendants-Appellees.

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

Submitted July 26, 2016**

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Terry Michael Miller appeals pro se from the district court's order denying his motion to reconsider the district court's summary judgment in his action under the Federal Tort Claims Act, 28 U.S.C. § 1346, and *Bivens v. Six Unknown Named*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion, *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255 (9th Cir. 1993), and we affirm.

The district court did not abuse its discretion by denying Miller's motion to reconsider because Miller did not identify any grounds for relief from the judgment. *See* Fed. R. Civ. P. 59(e); *Sch. Dist. No. 1J*, 5 F.3d at 1263 (setting forth grounds for reconsideration).

We lack jurisdiction to review Miller's challenges to the district court's January 12, 2015 order granting summary judgment because Miller did not file a timely notice of appeal or a timely post-judgment tolling motion. *See* Fed. R. App. P. 4(a)(1)A); Fed. R. App. P. 4(a)(4); Fed. R. Civ. P. 59(e) (motion must be filed within 28 days from entry of judgment); *Fiester v. Turner*, 783 F.2d 1474, 1475 (9th Cir. 1986) (untimely post-judgment motion does not suspend time to appeal from the judgment).

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

Miller's request for appointment of counsel, filed on September 21, 2015, is

denied.

AFFIRMED.