

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 3 2016

FOR THE NINTH CIRCUIT

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

NATHAN GUERRIERO,

Plaintiff-Appellant,

v.

BRIAN HADLEY; JORGE C.
HERNANDEZ,

Defendants-Appellees.

No. 15-56854

D.C. No. 5:15-cv-00776-GHK-
PJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Submitted October 25, 2016**

Before: LEAVY, GRABER, and CHRISTEN, Circuit Judges.

Nathan Guerriero appeals pro se from the district court's order denying Guerriero's motion for reconsideration in his 42 U.S.C. § 1983 action alleging constitutional violations in connection with state court proceedings. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's denial of a motion for reconsideration. *Jones v. Aero/Chem Corp.* 921 F.2d 875, 878 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion in denying Guerriero's motion for reconsideration under Federal Rule of Civil Procedure 60(b)(2) because the evidence Guerriero submitted was not newly discovered. *See id.*

We lack jurisdiction over the underlying judgment because Guerriero did not file his notice of appeal within thirty days of entry of judgment. *See Harman v. Harper*, 7 F.3d 1455, 1457-58 (9th Cir. 1993); *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1462-63 (a timely appeal from an untimely tolling motion brings up for review only the post-judgement motion, not the underlying judgement).

Guerriero's motion filed on August 15, 2016, is denied.

AFFIRMED.