

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 3 2017

FOR THE NINTH CIRCUIT

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

SAMUEL ROBERT QUEEN, Jr.,

No. 16-35154

Petitioner-Appellant,

D.C. No. 3:15-cv-00916-AA

v.

MEMORANDUM*

CONRAD GRABER,

Respondent-Appellee.

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

Submitted June 26, 2017**

Before: PAEZ, BEA, and MURGUIA, Circuit Judges.

Federal prisoner Samuel Robert Queen, Jr., appeals pro se from the district court's order denying his motion for reconsideration of the court's order dismissing his 28 U.S.C. § 2241 habeas petition for failure to prosecute. We dismiss.

In denying Queen's motion for reconsideration, the district court granted

* 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).

Queen leave to file an amended petition within 30 days. Rather than filing an amended petition, Queen immediately filed a notice of appeal. Because the district court's order denying Queen's motion for reconsideration granted Queen leave to amend his petition, the order was not a final decision and we lack jurisdiction over this appeal. *See* 28 U.S.C. § 1291; *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1135-37 (9th Cir. 1997) (en banc) (when a district court expressly grants leave to amend, it is plain that the order is not final).

The Clerk is directed to send a courtesy copy of this decision directly to the chambers of the Honorable Ann L. Aiken.

DISMISSED.