

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 17 2017

FOR THE NINTH CIRCUIT

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

SCOTT LEE MICKELSEN,

Plaintiff-Appellant,

v.

STEPHEN POULTER, Sgt., IFPD; et al.,

Defendants-Appellees.

No. 16-35686

D.C. No. 3:14-cv-00385-CWD

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Candy W. Dale, Magistrate Judge, Presiding**

Submitted July 11, 2017***

Before: CANBY, KOZINSKI, and HAWKINS, Circuit Judges.

Scott Lee Mickelsen appeals pro se from the district court's order denying his motion for reconsideration of the judgment dismissing his 42 U.S.C. § 1983 action for failure to prosecute. We have jurisdiction under 28 U.S.C. § 1291. We

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

** The parties 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).

review for an abuse of discretion. *Sch. Dist. No. 1J Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion in denying Mickelsen's motion for relief from judgment under Federal Rule of Civil Procedure 60(b) because Mickelsen failed to demonstrate any basis for relief. *See id.* at 1263 (grounds for reconsideration under Rule 60(b)); *see also Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir. 2002) (discussing the five factors for determining whether to dismiss for failure to prosecute).

We reject as meritless Mickelsen's contention that the magistrate judge erred in not examining the police department video.

Mickelsen's request for the appointment of counsel, set forth in his opening brief, is denied.

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).

AFFIRMED.