

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 21 2018

FOR THE NINTH CIRCUIT

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

INGINIO HERNANDEZ,

No. 17-16384

Plaintiff-Appellant,

D.C. No. 3:13-cv-00083-MMD-
WGC

v.

RENEE BAKER, Warden; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON, and NGUYEN, Circuit Judges.

Nevada state prisoner Inginio Hernandez appeals pro se from the district court's order denying his post-judgment motion following a jury verdict in favor of defendants in his 42 U.S.C. § 1983 action alleging cruel and unusual punishment.

We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of

* 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).

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 by denying Hernandez's post-judgment motion seeking reconsideration because Hernandez failed to establish any basis for relief. *See id.* at 1262-63 (grounds for reconsideration under Federal Rule of Civil Procedure 59(e) and 60(b)).

As to the merits of Hernandez's underlying claims, we lack jurisdiction to review the district court's judgment. After the district court entered judgment against Hernandez, Hernandez's untimely motion did not toll the time to file an appeal. Thus, his notice of appeal is untimely as to the judgment. *See* Fed. R. App. P. 4(a)(1)(A), 4(a)(4) (notice of appeal must be filed within 30 days after entry of judgment or order appealed from; Rule 60(b) motion must be filed within 28 days of judgment to have tolling effect); Fed. R. Civ. P. 59(b) (Rule 59(e) motion must be filed within 28 days of judgment to have tolling effect); *Stephanie-Cardona LLC v. Smith's Food & Drug Ctrs., Inc.*, 476 F.3d 701, 703 (9th Cir. 2007) ("A timely notice of appeal is a non-waivable jurisdictional requirement.").

Hernandez's motion to file an oversized reply brief (Docket Entry No. 29) is granted. The Clerk shall file the reply brief submitted on May 14, 2018.

AFFIRMED.