

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 9 2020

FOR THE NINTH CIRCUIT

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

TACUMA J. M'WANZA,

Plaintiff-Appellant,

v.

Q. BYRNA, Deputy Director; et al.,

Defendants-Appellees.

No. 18-17094

D.C. No. 3:16-cv-00590-MMD-WGC

MEMORANDUM*

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

Submitted June 2, 2020**

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

Former Nevada state prisoner Tacuma J. M'Wanza 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 alleging constitutional violations. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Sch.*

* 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-n without oral argument. *See* Fed. R. App. P. 34(a)(2).

Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). We vacate and remand.

The district court denied M'wanza's motion for reconsideration because M'wanza failed to establish a valid basis for relief. However, the district court focused on only one factor of the equitable test for excusable neglect. *See Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993) (outlining the four-factor test for determining excusable neglect); *see also Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (holding that the test set out in *Pioneer* applies to Rule 60(b) motions). We vacate and remand for the district court to consider the four-factor test in the first instance.

VACATED and REMANDED.