

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2021

FOR THE NINTH CIRCUIT

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

ALBERT M. KUN,

Appellant,

v.

STATE BAR OF CALIFORNIA;
FRANCHISE TAX BOARD,

Appellees.

No. 20-15115

D.C. No. 3:19-cv-05783-RS

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Richard Seeborg, District Judge, Presiding

Submitted February 17, 2021**

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

Chapter 7 debtor Albert Kun appeals pro se from the district court's order dismissing his bankruptcy appeal for failure to prosecute. We have jurisdiction under 28 U.S.C. §§ 158(d) and 1291. We review for an abuse of discretion. *Ash v. Cvetkov*, 739 F.2d 493, 495 (9th Cir. 1984). We affirm.

* 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).

The district court did not abuse its discretion by dismissing Kun's appeal after Kun failed to file the documents required by Federal Rule of Bankruptcy Procedure 8009 in a timely manner. *See Pagtalunan v. Galaza*, 291 F.3d 639, 640-43 (9th Cir. 2002) (discussing factors to be considered before dismissing a case for failure to prosecute; a district court's dismissal should not be disturbed absent "a definite and firm conviction" that it "committed a clear error of judgment" (citations and internal quotation marks omitted)); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (this court may review the record independently if the district court does not make explicit findings to show its consideration of the factors).

The district court did not abuse its discretion by denying Kun's motion for rehearing because Kun failed to demonstrate any basis for relief. *See Fed. R. Bankr. P. 8022(a)(2)*; *United States v. Fowler (In re Fowler)*, 394 F.3d 1208, 1214-15 (9th Cir. 2005) (setting forth standard of review and requiring a movant to state with particularity each point of law or fact a court overlooked).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments or allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Kun's motion for a stay of execution (Docket Entry No. 17) is denied.

AFFIRMED.