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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JERRY L. COBB,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>JEANNE WOODFORD; et al.,</p> <p>Defendants - Appellees.</p>
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No. 09-17132

D.C. No. 5:06-cv-06372-RMW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

California state prisoner Jerry L. Cobb appeals pro se from the district court’s order denying his Federal Rule of Civil Procedure 60(b) motion for reconsideration of the district court’s judgment dismissing his 42 U.S.C. § 1983 action. 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 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

discretion. *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1100 (9th Cir. 2004). We vacate and remand.

The district court denied the Rule 60(b) motion because it concluded that Cobb was challenging prison disciplinary proceedings that resulted in loss of good-time credits and he could only bring a civil action for damages after the disciplinary findings were invalidated. As Cobb argued in his motion for reconsideration, however, he was not challenging any loss of good-time credits. Cobb demonstrates in his complaint and the attachments thereto that the disciplinary findings were invalidated through the inmate appeals process prior to his filing this action and that his good-time credits were restored. Therefore, we vacate the district court's order and remand for further proceedings. *See Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005) (“§ 1983 remains available for procedural challenges where success in the action would not necessarily spell immediate or speedier release for the prisoner”) (emphasis omitted)).

We express no opinion as to the merits of his claims.

VACATED and REMANDED.