

DEC 20 2016

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUSTAVO C. ESTRADA,

Plaintiff-Appellant,

v.

DOUGLAS GILLESPIE; et al.,

Defendants-Appellees.

No. 15-17242

D.C. No. 2:13-cv-00280-APG-  
PAL

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Andrew P. Gordon, District Judge, Presiding

Submitted December 14, 2016\*\*

Before: WALLACE, LEAVY, and FISHER, Circuit Judges.

Nevada state prisoner Gustavo C. Estrada appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his safety. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Frost v. Agnos*, 152 F.3d 1123, 1128 (9th Cir. 1998). We affirm.

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\* 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 properly granted summary judgment for defendant Munoz because Estrada failed to raise a genuine dispute of material fact as to whether defendant Munoz knew of and disregarded an excessive risk to Estrada's safety. *See Farmer v. Brennan*, 511 U.S. 825, 837-38 (1994).

The district court did not abuse its discretion by denying Estrada's motion for reconsideration because the evidence Estrada submitted was not newly discovered. *See Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 211-12 (9th Cir. 1987) (setting forth standard of review and noting that evidence is not newly discovered if it could have been discovered earlier with reasonable diligence).

We do not consider matters not specifically and distinctly argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**