

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5261

September Term, 2004

04cv01067

Filed On: March 1, 2005 [880611]

Anthony Andrews,
Appellant

v.

John D. Ashcroft, United States Attorney General, et al.,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Edwards, Henderson, and Garland, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order filed June 29, 2004, be affirmed as modified below. Appellees had no duty to intervene in appellant's post-conviction proceeding, given the discretionary nature of their investigatory and prosecutorial duties. See, e.g., United States v. Nixon, 418 U.S. 683, 693 (1974); Community for Creative Non-Violence v. Pierce, 786 F.2d 1199, 1201 (D.C. Cir. 1986). We therefore affirm the dismissal for failure to state a claim, but modify the district court's order to reflect a dismissal with prejudice.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam