

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5329

September Term, 2004

03cv01013

Filed On: April 27, 2005 [891135]

Calvin Cole,
Appellant
v.
Department of Justice,
Appellee

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

BEFORE: Sentelle, Garland, and Roberts, 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 briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the judgment of the district court be affirmed. The Department of Justice's decision to withhold information relating to a third party who was a cooperating witness who testified against appellant was proper in these circumstances. The release of any such records is barred by Exemption 7(C), because disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C). Although appellant asserts disclosure of certain records was warranted because the cooperating witness testified in a public criminal trial, this contention fails because appellant has failed to point to "specific information in the public domain that appears to duplicate that being withheld." *Davis v. Department of Justice*, 968 F.2d 1276, 1279 (D.C.Cir. 1992) (internal quotation marks omitted). Moreover, appellant's contention that disclosure of the records is necessary to show prosecutorial misconduct is insufficient to overcome Exemption 7(C), because appellant has failed to put forward a "meaningful evidentiary showing" that would "warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." *National Archives and Records Administration v. Favish*, 541 U.S. 157, 124 S. Ct. 1570, 1581-1582 (2004). As appellant has not demonstrated a public interest in disclosure, the countervailing interest in privacy defeated his request for documents under the Freedom of Information Act. See *Beck v. Dept. of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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