

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5148

September Term, 2005

05cv00378

Filed On: March 10, 2006 [955031]

Carey A. Fortson,
Appellant

v.

Department of Justice, et al.,
Appellees

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

BEFORE: Ginsburg, Chief Judge, and Henderson and Griffith, 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. It is

ORDERED AND ADJUDGED that the district court's order filed March 22, 2005 be affirmed. The district court correctly dismissed appellant's complaint without prejudice for failure to state a claim, because appellant's damages claims are barred by Heck v. Humphrey, 512 U.S. 477 (1994) (criminal defendant may not recover damages under 42 U.S.C. § 1983 for harm caused by actions whose unlawfulness would render conviction or sentence invalid unless conviction or sentence has been invalidated in another proceeding). See Williams v. Hill, 64 F.3d 1339 (D.C. Cir. 1996) (applying Heck to actions against federal officials under Bivens). Although appellant argues that the United States Court of Appeals for the Eleventh Circuit's decision, In re: Carey A. Fortson, No. 04-11425-E, unpublished order, (11th Cir. April 12, 2004), called into question the validity of his conviction or sentence, that decision denied appellant leave to file a successive motion pursuant to 28 U.S.C. § 2255. Furthermore, to the extent appellant's claims against the Assistant United States Attorneys arise out of activities "intimately associated with the judicial phase of the criminal process," those claims are barred by prosecutorial immunity. See Imbler v. Pachtman, 424 U.S. 409, 430 (1976). Finally, the sua sponte dismissal without leave to amend was appropriate because it is clear "the claimant cannot possibly win relief." Razzoli v. Federal Bureau of Prisons, 230 F.3d 371, 377 (D.C. Cir. 2000). Dismissal was, nevertheless, without prejudice to refiling should appellant ever meet the requirements of Heck.

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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