

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-5404

September Term 2008

07cv02066

Filed On: September 24, 2008

Kevin M. Jones,

Appellant

v.

United States of America,

Appellee

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

BEFORE: Sentelle, Chief Judge, and Griffith and Kavanaugh, 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 the 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 November 15, 2007, dismissing the case without prejudice for lack of subject matter jurisdiction, be affirmed. Claimants under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671, et seq., must meet the prerequisite of exhausting administrative remedies with the appropriate agency before filing suit in district court. Because appellant failed to demonstrate he exhausted his administrative remedies, his claim against the United States was properly dismissed without prejudice. See Simpkins v. District of Columbia Government, 108 F.3d 366, 371 (D.C. Cir.1997) (dismissal for failure to exhaust is without prejudice). Moreover, sovereign immunity bars suits against the United States absent an explicit or unequivocal waiver. See 28 U.S.C. §§ 2675(a), 2679(d)(5). Congress has not waived the United States's sovereign immunity as to constitutional tort claims. See Clark v. Library of Congress, 750 F.2d 89, 103 n.31 (D.C. Cir. 1984). Appellant has not set forth any other basis for the district court to exercise subject matter jurisdiction over the United States.

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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