

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-5389

September Term 2008

1:08-cv-01043-UNA

Filed On: March 26, 2009

Gary William Holt,

Appellant

Gwyndell Declerk, et al.,

Appellees

v.

George W. Bush, et al.,

Appellees

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

BEFORE: Tatel, Brown, 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 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 entered June 18, 2008, dismissing appellant's complaint as frivolous, be affirmed. As an initial matter, although the notice of appeal contains the language, "Petitioners, by and through Gary William Holt," no plaintiff other than appellant Holt has signed the notice of appeal. Because Holt is not an attorney authorized to represent the remaining plaintiffs, see 28 U.S.C. § 1654, he is the sole appellant.

Appellant's complaint in essence seeks to invalidate his convictions based on the asserted unconstitutionality of the statute conferring district court jurisdiction over violations of federal criminal statutes, a challenge that should be brought by way of a motion pursuant to 28 U.S.C. § 2255. Because appellant has already filed at least one § 2255 motion, see Holt v. United States, 249 Fed. Appx. 753, 754 (11th Cir. 2007),

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appellant was required to proceed by way of a motion for leave to file a second or subsequent § 2255 motion directed to the United States Court of Appeals for the Eleventh Circuit. See 28 U.S.C. § 2255.

In any event, appellant's challenge to 18 U.S.C. § 3231 is frivolous, as two circuit courts and numerous district courts have held. See, e.g., United States v. Collins, 510 F.3d 697, 698 (7th Cir. 2007).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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