

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5136

September Term 2008

1:09-cv-00262-UNA

Filed On: July 27, 2009

Michael S. Gorbey,

Appellant

v.

United States of America, et al.,

Appellees

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

BEFORE: Sentelle, Chief Judge, and Rogers and Tatel, 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 February 10, 2009, be affirmed. The district court properly dismissed the complaint based on the prosecutors' immunity. See *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976) (holding that prosecutors enjoy absolute immunity from civil damages in initiating a prosecution and presenting a criminal case). As to the other defendants, they cannot be held liable for any alleged constitutional violations of their employees under a theory of respondeat superior. See *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1948 (2009). To the extent appellant challenges the fact or duration of his confinement, he must first "prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Heck v. Humphrey, 512 U.S. 477, 478-79 (1994). The district court also properly denied appellant's post-judgment motion for reconsideration, construing it as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b) to avoid the 10-day time limitation on motions made pursuant to Fed. R. Civ. P. 59(e).

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5136

September Term 2008

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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