

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-7025

September Term 2008

1:09-cv-00261-UNA

Filed On: September 3, 2009

Michael S. Gorbey,

Appellant

v.

District of Columbia and Gregory Jackson,
Judge,

Appellees

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

BEFORE: Sentelle, Chief Judge, and Henderson and Brown, 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 and supplements thereto filed by 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 as to the D.C. Superior Court judge who presided over appellant's criminal trial, because the judge is absolutely immune from liability for damages for acts taken in his official capacity. See Atherton v. District of Columbia Office of Mayor, 567 F.3d 672, 682-83 (D.C. Cir. 2009) (and cases cited therein). To the extent appellant complained about and sought damages regarding the fact of his confinement, the court properly dismissed as well. See Heck v. Humphrey, 512 U.S. 477 (1994) (criminal defendant may not recover damages under section 1983 for harm caused by actions whose unlawfulness would render conviction or sentence invalid unless conviction or sentence has been invalidated in another proceeding). We also affirm the dismissal of the section 1983 claims against the District of Columbia; a municipality is liable for constitutional torts

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arising out of official municipal policy, but is not liable under principles of respondeat superior. See Atherton, 567 F.3d at 691.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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