

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5299

September Term 2009

1:09-cv-01544

Filed On: October 28, 2009

Carmon Elliott,

Appellant

v.

Eric H. Holder, Jr., U.S. Attorney General,

Appellee

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

**BEFORE:** Sentelle, Chief Judge, and Henderson and Rogers, 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 August 17, 2009, be affirmed. The district court properly dismissed the petition for writ of mandamus because the question of whether prosecution is to be instituted is within the discretion of the Attorney General, and that prosecutorial discretion may not be controlled through mandamus. See Powell v. Katzenbach, 359 F.2d 234, 234 (D.C. Cir. 1965) (per curiam). Appellant has not shown a "clear and indisputable" right to mandamus relief. Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 289 (1988).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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