

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-3078

September Term 2009

1:00-cr-00159-JR-1

Filed On: March 19, 2010

United States of America,
Appellee

v.

Derrek E. Arrington,
Appellant

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

BEFORE: Henderson, Tatel, and Garland, 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 appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, the motion for appointment of counsel, and the motion to dismiss and the opposition thereto, it is

ORDERED that the motion for appointment of counsel be denied. With the exception of defendants appealing or defending in criminal cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court's order filed July 9, 2009, be affirmed. The writ of *audita querela* is not available in cases within the ambit of 28 U.S.C. § 2255 and the writ of *coram nobis*. See United States v. Ayala, 894 F.2d 425, 428-29 (D.C. Cir. 1990); In re Kennedy, No. 07-3048, unpublished order (D.C. Cir. July 27, 2007).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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