

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5154

September Term 2010

1:10-cv-00647-UNA

Filed On: November 8, 2010

Robert Heard,

Appellant

v.

US Attorney General,

Appellee

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

BEFORE: Sentelle, Chief Judge; and Griffith and Kavanaugh, 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 appendix 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 April 27, 2010, be affirmed. The district court properly dismissed for failure to state a claim under 28 U.S.C. § 1915A(b)(1) appellant's complaint, which essentially sought mandamus relief in the form of an order compelling the Attorney General to investigate his allegations of prison abuse. Appellant does not have a clear and indisputable right to relief, see Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 289 (1988), because the Executive Branch has absolute discretion to decide whether to conduct an investigation or prosecute a case. See United States v. Nixon, 418 U.S. 683, 693 (1974); see also Powell v. Katzenbach, 359 F.2d 234 (1965) (the prosecutorial discretion of the Attorney General may not be controlled through mandamus).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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