

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5320

September Term 2010

1:10-cv-01345-UNA

Filed On: January 27, 2011

Antonio Colbert,

Appellant

v.

United States Marshal's Office,

Appellee

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

BEFORE: Sentelle, Chief Judge, and Garland 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 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 issued August 10, 2010, be affirmed. The district court properly dismissed appellant's complaint pursuant to Fed. R. Civ. P. 12(h)(3) because the complaint failed to demonstrate that appellant had exhausted his administrative remedies prior to filing a complaint for damages against an agency of the United States, as required by the Federal Tort Claims Act ("FTCA"). See 28 U.S.C. § 2675(a); Simpkins v. District of Columbia Government, 108 F.3d 366, 371 (D.C. Cir. 1997) (holding that the FTCA's requirement to exhaust administrative remedies is jurisdictional); see also Acosta v. U.S. Marshals Service, 445 F.3d 509, 513 (1st Cir. 2006) (holding that the FTCA required the plaintiff to exhaust his administrative remedies before filing a complaint for damages against the U.S. Marshals Service).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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