

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11-5333

September Term 2011

1:11-cv-01949-UNA

Filed On: March 16, 2012

Irving James Berry,

Appellant

v.

Federal Bureau of Investigation,

Appellee

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

BEFORE: Sentelle, Chief Judge, and Henderson and Griffith, 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 November 7, 2011, be affirmed. The district court properly dismissed for failure to state a claim under 28 U.S.C. § 1915A(b)(1) appellant's petition for a writ of mandamus. 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Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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

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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