



Brown v. Wolstein

2003 | Cited 0 times | Second Circuit | August 14, 2003

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 14th day of August, two thousand and three.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment is AFFIRMED.

Thurman Jerome Brown appeals from a judgment entered in the United States District Court for the Eastern District of New York (Mishler, J.) granting defendants' motions dismiss for failure to state a claim. We affirm for substantially the reasons stated by the district court. See *Brown v. United States*, No. 00-CV-7182(JM) (E.D.N.Y. May 1, 2002).

While the district court may have erred in dismissing Brown's malicious prosecution claims against defendants-appellees Denis Dillon (the District Attorney for Nassau County), the Nassau County Police Department and Joan McKeown on the grounds of collateral estoppel, we are free to affirm the district court on any ground supported by the record. See *AmBase Corp. v. City Investing Co. Liquidating Trust*, 326 F.3d 63, 72 (2d Cir. 2003). Brown has not alleged an unconstitutional policy or custom on the part of the police department. See *Monell v. New York City Dep't Social Serv.*, 436 U.S. 658, 691-94 (1978). And defendant McKeown was a senior probation officer who could neither commence nor continue a criminal proceeding against Brown. See *Posr v. Doherty*, 944 F.2d 91, 100 (2d Cir. 1991). Thus the section 1983 claims against them were properly dismissed. Further, defendant-appellee Dillon enjoys absolute immunity from such charges arising from alleged conduct within the scope of his prosecutorial responsibilities. See *Day v. Morgenthau*, 909 F.2d 75, 77 (2d Cir. 1990).

1. The Honorable Fred I. Parker, who was a member of the panel, died following argument, and the appeal is being decided by the remaining two members of the panel, who are in agreement. See Local Rule § 0.14(b).

