

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-7055**September Term, 2017****1:15-cv-00442-CKK****Filed On: April 17, 2018**

Clifton Stanley Diaz, Jr.,

Appellant

v.

WMATA Metro Transit Police,

Appellee

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

BEFORE: Henderson, Tatel, and Katsas, 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 briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, and appellant's motion for declaratory judgment, which includes requests for appointment of counsel, attorney's fees, monetary damages, and injunctive relief, it is

ORDERED that the request for appointment of counsel be denied. In civil 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 March 22, 2017 be affirmed. Appellant argues on appeal that appellee discriminated against him on the basis of age, national origin, and perceived sexual orientation, in violation of Title VII and the Fourteenth Amendment. Appellant failed to allege age discrimination in the complaint he filed with the Equal Employment Opportunity Commission, and therefore did not exhaust his administrative remedies with respect to that claim. See *Payne v. Salazar*, 619 F.3d 56, 65 (D.C. Cir. 2010); *Park v. Howard Univ.*, 71 F.3d 904, 907 (D.C. Cir. 1995). And appellant's Fourteenth Amendment claim is not properly before the court because he raises it for the first time on appeal. See *United States v. Stover*, 329 F.3d 859, 872 (D.C. Cir. 2003).

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With respect to appellant's remaining claims, the district court assumed that appellant's claim of discrimination based on his perceived sexual orientation was actionable as a claim of sex-based stereotyping, and ruled that he failed to produce sufficient evidence that his termination was based on discrimination. Similarly, we conclude that even if appellant's claims are cognizable under Title VII, the district court correctly ruled that no reasonable jury could find that appellee's legitimate, non-discriminatory reasons for terminating appellant's employment were pretextual and that appellee discriminated against him on the basis of national origin, sex-stereotyping, or perceived sexual orientation. See, e.g., Brady v. Office of the Sergeant at Arms, 520 F.3d 490, 496 (D.C. Cir. 2008).

Finally, appellant's amended complaint included a claim of intentional infliction of emotional distress, but appellant has raised no argument on appeal related to that claim, and therefore has forfeited any such argument. See United States ex. rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004). It is

FURTHER ORDERED that the motion for declaratory judgment and requests for attorney's fees, monetary damages, and injunctive relief be dismissed as moot.

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