

FILED

August 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50215
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THURMAN D. PAYNE,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-01-CR-899-3-DB

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Thurman D. Payne, federal prisoner # 16992-180, appeals the district court's denial of his FED. R. CIV. P. 60(b)(3) motion seeking relief from his guilty-plea conviction and sentence. Because Payne waived his right to indictment by grand jury, the record does not support Payne's allegations of fraud. See United States v. Cothran, 302 F.3d 279, 283 (5th Cir. 2002). The district court did not abuse its discretion in denying Payne's motion. See Seven Elves v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). Accordingly, the district court's order is AFFIRMED.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.