

March 29, 2004

Charles R. Fulbruge III  
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 03-40735  
SUMMARY CALENDAR

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GERALD PHILLIP WOOTEN,

Defendant - Appellant.

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On Appeal from the United States District Court for the  
Eastern District of Texas  
(4:98-CR-64-6)

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Before REYNALDO G. GARZA, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

REYNALDO G. GARZA, Circuit Judge:<sup>1</sup>

In this appeal, we review the district court's denial of Defendant - Appellant, Gerald Phillip Wooten's, motion pursuant to FED. R. CRIM. P. 6(e)(3)(E)(i) and (ii) to disclose grand jury testimony.

We review the denial of a motion for disclosure of grand jury testimony for an abuse of

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<sup>1</sup>Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

discretion. *United States v. Miramontez*, 995 F.2d 56, 58 (5<sup>th</sup> Cir. 1993). The burden is on Wooten to show that a particularized need exists for the grand jury testimony that outweighs the policy of secrecy in regards to these materials. *Id.* The request must amount to more than a request for authorization to engage in a fishing expedition. *In re Grand Jury 95-1*, 118 F.3d 1433, 1437 (5<sup>th</sup> Cir. 1997).

Wooten has demonstrated no particularized need for the grand jury transcripts. *See Miramontez*, 995 F.2d at 59. He has also failed to show that he sought to challenge his indictment and conviction at the earliest possible time. *See United States v. Cathey*, 591 F.2d 268, 271 n.1 (5<sup>th</sup> Cir. 1979). Therefore, the district court did not abuse its discretion in denying Wooten's motion for disclosure of the grand jury transcripts. The district court's judgment is affirmed.