

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-20854
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARION EUGENE FAIR,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-91-141-1
- - - - -

April 19, 1996

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Marion Eugene Fair appeals the denial of his motion for relief pursuant to 28 U.S.C. § 2255. Fair contends solely that 18 U.S.C. § 922(g)(1), under which he was convicted, violates the Commerce Clause.

Fair raised his contention for the first time in his second § 2255 motion. He has not shown cause for his failure to raise his contention in his first § 2255 motion, see *United States v. Flores*, 981 F.2d 231, 235 (5th Cir. 1993); the law on which he

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

relies was available to him when he filed the first motion. See *United States v. Lopez*, 2 F.3d 1342 (5th Cir. 1993), *aff'd*, 115 S. Ct. 1624 (1995). Fair has not shown that he is actually innocent of the crime of which he was convicted; he has failed to show that a miscarriage of justice will result should this court decline to consider his Commerce Clause contention. See *Flores*, 981 F.2d at 236. Finally, Fair's motion for appointment of counsel is DENIED.

AFFIRMED.