

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-20891
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EARL DWAYNE RUFFIN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-94-298-3
- - - - -

November 6, 1996

Before JONES, DeMOSS and PARKER, Circuit Judges.

PER CURIAM:*

Earl Dwayne Ruffin appeals his conviction and sentence for use of a firearm during the commission of a crime of violence on the basis that there was insufficient evidence under Bailey v. United States, 116 S. Ct. 501 (1995), which redefined the term "use" in 18 U.S.C. § 924(c)(1) subsequent to his plea of guilty. The record contains sufficient evidence to support appellant's

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

conviction under 18 U.S.C. § 924(c)(1), even in light of the narrower definition of "use" enunciated in Bailey.

As part of his plea agreement, appellant waived his right to appeal his sentence. See United States v. Melancon, 972 F.2d 566, 568 (5th Cir. 1992). His challenge to the sentencing guideline application is not properly before this court.

AFFIRMED.