

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50874
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BUDDY RAY GUNN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-93-CR-34
- - - - -

June 21, 1996

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Buddy Ray Gunn appeals from the district court's denial of his motion for a new trial, filed pursuant to Fed. R. Crim. P. 33. He contends that the district court abused its discretion by denying his motion without a hearing, as he presented newly discovered evidence that was material and which would probably have resulted in either his acquittal or the mitigation of his sentence. The district court did not abuse its discretion by

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

denying the motion without a hearing as review of the evidence demonstrates that it was not material and would not have changed the result of Gunn's trial or sentence. See United States v. MMR Corp., 954 F.2d 1040, 1046-47 (5th Cir. 1992).

AFFIRMED.