

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10633
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY ALLEN RESSLER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:96-CV-049
- - - - -
February 11, 1999

Before BARKSDALE and EMILIO M. GARZA, Circuit Judges.*

PER CURIAM:**

Larry Allen Ressler, federal prisoner # 22047-077, appeals from the district court's dismissal of his second 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence as abusive. Ressler argues that he exercised due diligence in obtaining and attempting to secure the information pertaining to the "housebreaking" convictions and that the district court

*This matter is being decided by a quorum. 28 U.S.C. § 46(d).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

abused its discretion when it summarily dismissed his motion for abuse of the writ without first holding an evidentiary hearing.

We have reviewed the record and find no reversible error. The district court did not abuse its discretion in dismissing Ressler's second § 2255 motion as abusive without first holding an evidentiary hearing because Ressler failed to show cause for his procedural default and there would be no miscarriage of justice if the court did not to consider the claim. United States v. Flores, 981 F.2d 231, 234-36 (5th Cir. 1993). Accordingly, the judgment of the district court is AFFIRMED.