

October 14, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60367
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DERWIN RENWICK MCWAIN, also known as Skibow,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:98-CR-22-1

Before SMITH, DUHÉ, and WIENER, Circuit Judges.

PER CURIAM:¹

Derwin Renwick McWaine, federal prisoner # 10797-042, appeals the district court's denial of his motion for an evidentiary hearing and immediate release, apparently brought under FED. R. CRIM. P. 33. McWaine alleged that Officer David Sullivan presented false information in obtaining a search warrant for his residence and that Officer Ronnie Jones was indicted and convicted after McWaine's trial. McWaine has not shown that the district court

¹ 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 in denying his motion as he has not shown that his motion is based on new evidence unknown despite due diligence on his part, that the evidence is material, or that the evidence would probably have produced an acquittal. See United States v. Sullivan, 112 F.3d 180, 182-83 (5th Cir. 1997). Therefore, the district court's denial of McWaine's motion is

AFFIRMED.