

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 28, 2019

Lyle W. Cayce
Clerk

No. 17-20740
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EDWARD GRAHAM,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CV-2129

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

In this 28 U.S.C. § 2255 proceeding, Edward Graham raises a claim of ineffective assistance of counsel under the Sixth Amendment based on his trial counsel's alleged failure to advise him about the consequences of proceeding to trial rather than pleading guilty. Without holding an evidentiary hearing, the district court denied the claim. Because there is a material fact dispute as to the advice, if any, provided to Graham by his trial counsel, the record does not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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“conclusively show that [Graham] is entitled to no relief.” 28 U.S.C. § 2255(b). Consequently, the district court abused its discretion in denying Graham’s § 2255 motion without an evidentiary hearing. *Id.* (“Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall . . . grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.”).

We VACATE the district court’s order denying this particular claim of ineffective assistance of counsel and REMAND the case for further proceedings, including an appropriate hearing to resolve all material factual disputes related to Graham’s claim. We express no view on the merits of Graham’s claim.

VACATED AND REMANDED.