

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5648  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM ABROMS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-92-CA-0717 (SA-89-CR-250(1))  
- - - - -

March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:\*

William Abrams argues that because the issue of materiality is an essential element of the offense of conviction, the trial court violated his due process rights by not submitting the issue to the jury. He argues that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. See In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

Although it is couched in different terms, the issue that

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Abroms raises in the present motion is the same issue which he presented in his direct appeal. In that action, he argued that materiality is an element that the Government must prove beyond a reasonable doubt. United States v. Abroms, 947 F.2d 1241, 1246 (5th Cir. 1991), cert. denied, 112 S.Ct. 2992 (1992). This Court held that materiality is a legal question that need not be proved beyond a reasonable doubt and need not be submitted to the jury. Id. at 1246-47.

"[I]ssues raised and disposed of in a previous appeal from an original judgment of conviction are not considered in § 2255 Motions." United States v. Kalish, 780 F.2d 506, 508 (5th Cir.), cert. denied, 476 U.S. 1118 (1986). Accordingly, Abroms's claim in this cause does not state a ground for relief under § 2255. The judgment of the district court is AFFIRMED.