

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10924  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

ROGER DALE BROOKS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:90-CR-55-J(2)  
- - - - -  
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Roger Dale Brooks appeals the district court's denial of his motion for disclosure of grand jury transcripts. He maintains that the transcripts are necessary to enable him to show in a potential future motion to vacate his sentence under 28 U.S.C. § 2255 that two government witnesses, Connie Martin and Brent Clay, lied to the grand jury.

Rule 6 of the Federal Rules of Criminal Procedure prohibits the disclosure of grand jury transcripts except in very limited

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

circumstances "when so directed by a court preliminarily to or in connection with a judicial proceeding." Fed. R. Crim. P. 6(e)(3)(C)(i). Because of the importance of maintaining the secrecy of grand jury proceedings, a party seeking disclosure of grand jury transcripts has the burden "to show that 'a particularized need' exists for the materials that outweighs the policy of secrecy." Miramontez, 995 F.2d at 59 (citation omitted). To meet this burden, a party must demonstrate that: (1) the material is needed to avoid a possible injustice in another judicial proceeding; (2) the need for disclosure is greater than the need for continued secrecy; and (3) the request is limited to cover only that material needed. Id. (citing Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 221-22 (1979)). This showing is required even if the grand jury proceeding at issue has been concluded. Id. We review the denial of such motions for abuse of discretion. Miramontez, 995 F.2d at 59.

In support of his motion, Brooks asserted only that because Connie Martin admitted that she testified differently before the grand jury, other witnesses also may have lied. Martin's inconsistent statements were fully explored at trial because Brooks' counsel had a grand jury transcript. In his appellate brief, Brooks made vague allegations that Brent Clay, a Drug Enforcement Administration investigator, also may have lied in his grand jury or trial testimony. However, Brooks did not make specific allegations that Clay actually committed perjury or that

there were any other irregularities in the grand jury proceedings. Brooks has not shown a need for the transcripts.

Brooks also failed to show that the transcripts were necessary to avoid injustice in another judicial proceeding. A party may not obtain grand jury transcripts for use in a potential future judicial proceeding because the court cannot properly limit the disclosure of the transcripts under such circumstances. In re McDermott & Co., Inc., 622 F.2d 166, 172 (5th Cir. 1980). Brooks cannot conduct a "fishing expedition" to find something that may support a potential Section 2255 motion. United States v. Carvajal, 989 F.2d 170 (5th Cir. 1993). Brooks did not meet his burden to show that he has a particularized need for the transcripts that outweighs the need for continued secrecy of the grand jury proceedings.

Brooks bases his demand for an evidentiary hearing on jurisprudence and rules applicable only to Section 2255 motions. Even if such rules may be applied by analogy to Brooks' motion for disclosure of grand jury transcripts, Brooks is not entitled to an evidentiary hearing because he has not specifically identified any disputed factual issues which cannot be resolved through review of the record. Therefore, the district court's decision affirming the denial of Brooks' motion for disclosure of grand jury transcripts is AFFIRMED.