

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20524

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUAN MANUEL RUIZ,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(H-96-CV-335)

June 30, 1997

Before DAVIS, EMILIO M. GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Juan Ruiz appeals the district court's denial of his habeas petition filed pursuant to 28 U.S.C. § 2255. Because we find that the evidence is sufficient to support Ruiz's conviction for carrying a firearm in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1), we affirm the district court's order denying Ruiz's § 2255 petition.

I.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Ruiz was convicted of, *inter alia*, using or carrying a firearm in relation to a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1). This court affirmed the conviction on direct appeal. In 1992, Ruiz filed a § 2255 motion challenging his sentence under the guidelines, which the district court denied. This court dismissed the appeal as frivolous.

After the Supreme Court issued its ruling in Bailey v. United States, -- U.S. --, 116 S.Ct. 501, 133 L.ed.d 472 (1995), Ruiz filed a second § 2255 motion, arguing that the evidence was insufficient to support his § 924 conviction for using a firearm under the Bailey definition of use. Bailey defines use as the active employment of a firearm during and in relation to a drug offense. The district court denied Ruiz's motion, concluding that the evidence was sufficient to support his conviction for using a firearm under the Bailey definition of use; the district court also concluded that the evidence was sufficient to support Ruiz's conviction under the carrying prong of § 924. Ruiz filed this appeal.

Ruiz argues that the district court erred in dismissing his § 2255 motion because the evidence is insufficient to support his conviction for using a firearm in relation to a drug offense in light of Bailey. We need not consider whether the evidence is sufficient to support Ruiz's conviction under the "use" prong of § 924(c). For the reasons stated by the district court, the evidence is ample to support Ruiz's conviction under the "carry" prong of

the statute.

AFFIRMED.