

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30288
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THEODORE HATHEWAY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 96-CA-305"A"

- - - - -
July 25, 1996

Before DAVIS, PARKER and DENNIS, Circuit Judges.

PER CURIAM:*

A movant for in forma pauperis (IFP) status on appeal must show that he is a pauper and that he will present a nonfrivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). In the absence of a nonfrivolous issue, the appeal will be dismissed. 5th Cir. R. 42.2.

Theodore Hatheway, BOP No. 22100-034, challenges the factual basis supporting his guilty-plea conviction for using and

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

carrying a firearm in connection with a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1). Hatheway contends that he did not use any firearm as defined by Bailey v. United States, 116 S. Ct. 501 (1995), and requests that Bailey be applied to his case to invalidate his conviction.

The record demonstrates that Hatheway did use firearms within the context defined by Bailey, as he openly displayed the guns in his safe during a drug transaction, such that they were an "obvious and forceful presence." Id. at 508. Hatheway does not present a nonfrivolous issue for appeal. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). IFP is DENIED, and Hatheway's appeal is DISMISSED as frivolous. See 5th Cir. 42.2.