

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50549

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UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

v.

JOHN THOMAS MCCUSKER,  
Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
(A-89-CR-173-01 & A-95-CA-853)

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March 2, 1998

Before DEMOSS and DENNIS, Circuit Judges, and LEE,<sup>1</sup> District  
Judge.

PER CURIAM:<sup>2</sup>

John Thomas McCusker, federal prisoner #49205-080, filed a  
motion under 28 U.S.C. § 2255 to vacate, set aside or correct  
sentence by a person in federal custody.

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<sup>1</sup> Chief Judge of the Southern District of Mississippi,  
sitting by designation.

<sup>2</sup> 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that this opinion should not be published.

Because the motions, files and records of this case do not conclusively show that McCusker was entitled to no relief as to Count III of the indictment, we reverse the district court's decision only insofar as it rejected, without an evidentiary hearing, both McCusker's claim that his trial counsel was ineffective for failing to interview and/or call alibi witnesses and his claim that he was denied his right to testify on his own behalf as to the events of June 4, 1987, and remand these claims for an evidentiary hearing. See United States v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.