

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50973
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARY DWAYNE ALLBRIGHT,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-97-CA-123
(SA-94-CR-58-1)
- - - - -

April 23, 1999

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Gary Dwayne Allbright, federal inmate #63846-080, appeals the denial of his 28 U.S.C. § 2255 motion. He argues that his 18 U.S.C. § 924(c) conviction should be vacated because the jury received an erroneous pre-Bailey** instruction on "using" and therefore, the jury could have convicted him for mere possession of firearms. We have carefully reviewed the arguments and the appellate record. For essentially the same reasons as given by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** Bailey v. United States, 516 U.S. 137, 150 (1995).

the district court, see United States v. Albright, No. SA-97-CA-123 (W.D. Tex. Oct. 28, 1997), we conclude that Albright is not entitled to relief on the jury-instruction claim. See United States v. Brown, 161 F.3d 256, 259 (5th Cir. 1998) (en banc); United States v. Hall, 110 F.3d 1155, 1162 (5th Cir. 1997); United States v. Shaid, 937 F.2d 228, 232 (5th Cir. 1991) (en banc).

AFFIRMED.