

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10265
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY WAYNE ELROD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CV-903-G
& 3:93-CR-377-1-G

January 14, 2000

Before KING, Chief Judge, and SMITH and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Anthony Wayne Elrod, federal prisoner # 24994-077, appeals the district court's denial of his 28 U.S.C. § 2255 motion. He argues that (1) he was coerced into entering a guilty plea by threats, made in bad faith and without probable cause, to indict his then-spouse; and (2) that the district court abused its discretion by not holding an evidentiary hearing with respect to this issue.

A district court may deny a § 2255 motion without conducting

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a hearing only "if the motion, files, and records of the case conclusively show that the prisoner is entitled to no relief." United States v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992). This court reviews a district court's denial of an evidentiary hearing for abuse of discretion. Id.

We conclude, based upon our review of the parties' briefs and the record, that the record does not *conclusively* show that the Government had probable cause to indict Elrod's then-wife. United States v. Nuckols, 606 F.2d 566, 569-70 (5th Cir. 1979); United States v. Diaz, 733 F.2d 371, 375 (5th Cir. 1984). The district court's judgment is therefore VACATED, and this case is REMANDED to the district court for an evidentiary hearing to develop the facts relating to Elrod's claim that he was coerced into entering a guilty plea by threats, made in bad faith and without probable cause, to indict his then-spouse. If the district court finds that the government's threat to indict Elrod's spouse was made in bad faith and without probable cause, it may still determine that this threat was not the motivating factor in Elrod's decision to plead guilty.

VACATED AND REMANDED.