

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40788
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERIC B. RUSSELL,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:96-CV-271
- - - - -

June 17, 1999

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

PER CURIAM:*

Eric B. Russell, federal inmate # 51170-079, appeals the district court's dismissal of his second 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. The district court determined that Russell's § 2255 motion was an abuse of the § 2255 procedure.

Russell asserts that his firearm conviction is invalid in light of *Bailey v. United States*, 516 U.S. 137 (1995), and that because the *Bailey* decision was not available at the time he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

filed his first § 2255 motion, he has shown cause. Russell argues that he did not admit to possessing a firearm knowingly. Russell pleaded guilty to using and carrying a firearm in relation to a drug-trafficking crime.

We have reviewed the record and find no reversible error. The *Bailey* decision did not address the "carry" prong of 18 U.S.C. § 924(c) and had no effect on this court's "carry" jurisprudence. See *United States v. Wainuskis*, 138 F.3d 183, 186 (5th Cir. 1998). The district court did not abuse its discretion in dismissing Russell's second § 2255 motion as abusive. Russell failed to show cause for failing to assert the instant challenge in his previous § 2255 motion, and there would be no miscarriage of justice if the court did not consider the claim. *United States v. Flores*, 981 F.2d 231, 234-36 (5th Cir. 1993). Accordingly, the judgment of the district court is AFFIRMED.