

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60415
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE HOMERO SALINAS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:96-CV-141-Br
- - - - -

March 9, 1999

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Jose Homero Salinas (Salinas), federal prisoner #56742-079, pleaded guilty to using and carrying a firearm during a drug trafficking crime, and aiding and abetting in the using and carrying of a firearm during a drug trafficking crime. 21 U.S.C. § 924(c)(1); 18 U.S.C. § 2.

Salinas appeals the denial of a motion to vacate conviction and sentence pursuant to 28 U.S.C. § 2255. On appeal Salinas argues that he received ineffective assistance of counsel in the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

course of his guilty plea. He also argues that the district court should have granted him an evidentiary hearing. Finally, Salinas contends that he is innocent of the crime to which he pleaded guilty in light of the Supreme Court's holding in *Bailey v. United States*, 516 U.S. 137 (1995), which redefined the "use" prong under § 924(c)(1).

This court reviews the district court's factual findings for clear error and the district court's conclusions of law *de novo*. *United States v. Gobert*, 139 F.3d 436, 437 (5th Cir. 1998).

We have reviewed the record and Salinas' brief and AFFIRM the district court's dismissal for essentially the same reasons set forth by the district court. *United States v. Salinas*, No. 1:96-CV-141-Br (S.D. Miss. June 4, 1998).

AFFIRMED.