

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 96-60545  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CALVIN PARNELL,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Northern District of Mississippi  
(3:96-CV-97-D)

---

February 27, 1997

Before KING, JOLLY, and DENNIS, Circuit Judges.

PER CURIAM:\*

Calvin Parnell appeals from the denial of his successive 28 U.S.C. § 2255. Parnell argues that the evidence was insufficient to show that he actively used a firearm under 18 U.S.C. § 924(c) in light of United States v. Bailey, 116 S. Ct. 501 (1995), and that his firearm conviction must be reversed because the jury was instructed as to the liberal pre-Bailey definition of use, and

---

\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

they were not instructed as to the meaning of "carrying" under § 924(c).

To the extent that Parnell is required to file a certificate of appealability (COA) in order to appeal the district court's order, we conclude that Parnell has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Without deciding whether a COA is required, we conclude that the evidence is sufficient to prove that Parnell both actively used and carried the firearm under Bailey: Parnell carried the rifle to the motel; it was not concealed in his clothing but displayed because the surveillance officers saw the weapon. See Bailey, 116 S. Ct. at 508. Because the trial evidence demonstrated that Parnell used the rifle as defined by Bailey and also carried it, any error from the giving of pre-Bailey jury instructions did not seriously affect the fairness, integrity, or public reputation of judicial proceeding, or amount to a due process violation. United States v. Anderson, 987 F.2d 251, 259 (5th Cir.), cert. denied, 510 U.S. 853 (1993).

AFFIRMED. COA DENIED.