

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50219
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES B. MITCHELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-94-CV-60

February 14, 1997

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

PER CURIAM:*

James B. Mitchell, No. 47109-080, appeals the district court's denial of his § 2255 motion to vacate, set aside, or correct sentence. We need not determine whether Mitchell needs a certificate of appealability (COA) under the newly enacted Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (1996); 28 U.S.C.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

§ 2253(c)(1)(B). After reviewing the record and the arguments on appeal, we would neither grant a COA if the amendment applies, nor would we grant relief under the unamended version of § 2255. We make this determination for substantially the reasons cited by the district court. See United States v. Mitchell, DR-89-CR-8 (Jan. 12, 1996). Mitchell's argument that the Government breached its plea agreement also fails under the intervening case United States v. Price, 95 F.3d 364, 368-69 (5th Cir. 1996).

AFFIRMED.