

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Nos. 97-20433 c/w 97-20434  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH WAYNE CLEMMENS,  
also known as Kenneth Wayne Clemens,

Defendant-Appellant.

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Appeals from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CV-1362  
- - - - -

June 17, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

Kenneth Wayne Clemmens appeals from the district court's order denying his motion made pursuant to 28 U.S.C. § 2255. He argues that the district court erred in dismissing his motion without requiring the Government to file a pleading in response or order an evidentiary hearing. We have reviewed the record and the district court's opinion and determine that Clemmens' allegations fail to surmount the "formidable barrier" presented by his open-court assertions at the sentencing hearing and his plea agreement. An evidentiary hearing was not required. See

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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*United States v. Smith*, 915 F.2d 959, 964 (5th Cir. 1990).

AFFIRMED.