

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-60422  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CASEY GERARD HOWARD,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:96-CV-279-BN  
- - - - -

December 26, 1996

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Casey Howard, federal prisoner #02968-043, appeals from the district court's denial of his motion to set aside his sentence pursuant to 28 U.S.C. § 2255. Howard contends that, after the Supreme Court's recent definition of the "use" prong of 18 U.S.C. § 924(c) in United States v. Bailey, 116 S. Ct. 501 (1995), the evidence is not sufficient to support his conviction for using or

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

carrying a firearm in connection with a drug-trafficking crime. Because the evidence in the presentence investigation report and the evidence presented at the guilty-plea hearing support a determination that Howard carried the firearm during and in relation to the drug-trafficking offense even though he was the passenger rather than the operator of the vehicle, the evidence was sufficient to support his conviction under § 924(c). See United States v. Rivas, 85 F.3d 193, 195-96 (5th Cir. 1996). The district court did not err by denying Howard's § 2255 motion.

This court has not yet determined whether a certificate of appealability (COA) is required under the circumstances of this appeal. See 28 U.S.C. § 2253. If a COA were required, it would be DENIED.

AFFIRMED.