

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41044
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JIMMY BEAUMONT,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:95-CV-320
- - - - -

December 1, 1998

Before DAVIS, DUHE', and PARKER, Circuit Judges.

PER CURIAM:*

Jimmy Beaumont, federal prisoner # 03018-078, appeals from the district court's dismissal of this 28 U.S.C. § 2255 motion as an abuse of the motion pursuant to Rule 9(b) of the Rules Governing Section 2255 Proceedings. His assertion that the district court erred by misconstruing his earlier pleading as a § 2255 motion is incorrect and does not establish cause for his failure to raise in that pleading the claims he sought to raise in his successive § 2255 motion. Because Beaumont fails to establish cause and resulting prejudice, and because he fails to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

show that a miscarriage of justice would result from the court's failure to address his successive claims, the district court did not abuse its discretion by dismissing Beaumont's motion pursuant to Rule 9(b). See Hudson v. Whitley, 979 F.2d 1058, 1063 (5th Cir. 1992). Nor did the district court abuse its discretion by dismissing the motion without conducting an evidentiary hearing. See United States v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992).

AFFIRMED.