

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-60738
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DLOYS GIVHAN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 3:96-CV-7-S
- - - - -

April 9, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Federal prisoner Dloys Givhan (# 09244-042) appeals the district court's denial of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Givhan argues that his 18 U.S.C. § 924(c)(1) conviction must be reversed in light of the Supreme Court's decision in Bailey v. United States, 516 U.S. 137 (1995), because the jury was erroneously instructed as to the "use" prong of § 924(c)(1).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We have reviewed the record and find no reversible error. The district court instructed the jury as to the "carrying" prong only. The court's instructions regarding the use of a firearm with respect to the "in relation to" prong are unaffected by Bailey. United States v. Tolliver, 116 F.3d 120, 125 (5th Cir.) ("Bailey did not address the 'in relation to' prong of § 924(c)(1). The pre-Bailey interpretation of the 'in relation to' language therefore remains unaffected."), cert. denied, 118 S. Ct. 324 (1997). The judgment of the district court is AFFIRMED.