

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-50410  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN PAT MAXWELL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-99-CV-107 (W-91-CR-55-2)  
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December 8, 1999

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

John Maxwell, Texas inmate # 56084-080, pleaded guilty to and was convicted of one count of possession of amphetamine with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and one count of carrying a firearm during the commission of a felony, in violation of 18 U.S.C. § 924(c). He seeks a certificate of appeal (COA) from the dismissal of his petition for habeas relief filed pursuant to 28 U.S.C. § 2241.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because the district court ruled on the merits of Maxwell's § 2241 petition, Maxwell's motion for a COA is DENIED as unnecessary. Ojo v. INS, 106 F.3d 680, 681 (5th Cir. 1997). Maxwell's argument that he cannot be convicted of "using" or "carrying" a firearm under Bailey v. United States, 516 U.S. 137 (1995), is refuted by the factual basis for his guilty plea which indicates that Maxwell carried a rifle while he was in possession of amphetamine. United States v. Hall, 110 F.3d 1155, 1161 (5th Cir. 1997). The district court's denial of Maxwell's § 2241 petition is AFFIRMED.