

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-2540

Bobby G. Rost,

Appellant,

v.

United States of America,

Appellee.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: August 7, 1998

Filed: August 17, 1998

Before WOLLMAN, HANSEN, and MURPHY, Circuit Judges.

PER CURIAM.

Bobby G. Rost appeals from the district court's¹ denial of his motion under 28 U.S.C. § 2255. We affirm.

Rost was convicted of a number of offenses, including the use and carrying of a firearm in relation to drug offenses, in violation of 18 U.S.C. § 924(c). The district court imposed a 60-month prison sentence on the weapon charge, consecutive to the

¹The Honorable Russell G. Clark, United States District Judge for the Western District of Missouri.

prison sentence he received on the other charges. After an unsuccessful direct criminal appeal, see United States v. Rost, No. 93-3972, 1994 WL 175911 (8th Cir. May 11, 1994) (unpublished per curiam); United States v. Akers, 987 F.2d 507 (8th Cir. 1993), Rost brought this section 2255 motion challenging, under Bailey v. United States, 516 U.S. 137 (1995), the section 924(c) jury instruction given at his trial.

We note that Rost procedurally defaulted this claim by failing to object at trial and to raise the issue on direct appeal. See Velasquez v. United States, 131 F.3d 766, 766-67 (8th Cir. 1997) (per curiam). After careful review of the record and the parties' briefs, we conclude that Rost has not established that with appropriate instructions and "in light of all the evidence it is more likely than not that no reasonable juror would have convicted him." See Bousley v. United States, 118 S. Ct. 1604, 1611 (1998) (internal quotations omitted). We therefore affirm the decision of the district court. See id. at 610-12 (concluding petitioner must establish "actual innocence" where no cause existed for his procedural default).

The judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.