

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 97-6219**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAYMIONE DESOUZA, a/k/a Fata, a/k/a Demione  
DeSouza,

Defendant - Appellant.

---

Appeal from the United States District Court for the Eastern Dis-  
trict of North Carolina, at Raleigh. Malcolm J. Howard, District  
Judge. (CR-93-53-H, CA-96-162-4-H)

---

Submitted: May 19, 1998

Decided: October 22, 1998

---

Before NIEMEYER, HAMILTON, and WILLIAMS, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

Daymione DeSouza, Appellant Pro Se. Bruce Charles Johnson, OFFICE  
OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for  
Appellee.

---

Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Daymione DeSouza appeals the district court's order denying relief on his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998). DeSouza challenges the validity of his conviction, entered pursuant to his guilty plea, of using and carrying a firearm in relation to a drug trafficking crime in violation of 18 U.S.C. §§ 2, 924(c) (1994). DeSouza contends that in light of the Supreme Court's decision in Bailey v. United States, 516 U.S. 137 (1995), interpreting the meaning of "use" under § 924(c), the requisite factual basis for his plea was lacking and his plea was involuntary.

We reject DeSouza's contention that the record demonstrates that he did not "use" or "carry" a firearm within the meaning of § 924(c)(1) as that statute was interpreted by Bailey. DeSouza is liable for the acts of his co-conspirators which constitute use or carry under § 924(c). See United States v. Wilson, 135 F.3d 291, 305-06 (4th Cir. 1998); United States v. Phan, 121 F.3d 149, 152 n.2 (4th Cir. 1997), cert. denied, \_\_\_ U.S. \_\_\_, 66 U.S.L.W. 3388 (U.S. Feb. 23, 1998) (No. 97-863). Accordingly, we deny DeSouza's motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED