

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 98-50534  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANKLIN ROLLIN JOHNSTON,  
also known as Johnny Johnston,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-95-CR-154-2  
- - - - -

March 12, 1999

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Franklin Rollin Johnston appeals from the district court's denial of his motion to dismiss the indictment on jurisdictional grounds pursuant to Fed. R. Crim. P. 12(b)(2) after a timely notice of appeal had been filed. Johnston's timely notice of appeal divested the district court of its jurisdiction to address the motion. United States v. 4,970 Acres of Land, 130 F.3d 712, 714 (5th Cir. 1997). Accordingly, we AFFIRM the district court's

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

denial of the motion to dismiss the indictment on the ground that

the district court was without jurisdiction to consider the motion.

Johnston's outstanding motions are DENIED.

AFFIRMED. MOTIONS DENIED.