

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-50160
Conference 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-JN

October 19, 1999

Before JONES, SMITH, and STEWART, 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 from his convictions 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). This appeal is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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without arguable merit and is thus frivolous. It is DISMISSED.

5TH CIR. R. 42.2.