

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 14-50318
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 19, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PETER VICTOR AYIKA,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:09-CR-660-1

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Peter Victor Ayika appeals the district court's order denying his motion to dismiss his indictment pursuant to Federal Rule of Criminal Procedure 12(b)(3)(B) and his motions for summary disposition of his Rule 12(b)(3)(B) motion. Ayika was convicted after a jury trial of drug offenses in violation of 21 U.S.C. § 841. In his Rule 12(b)(3)(B) motion, Ayika argued that the indictment was jurisdictionally defective because he was a licensed pharmacist

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 14-50318

and that he therefore could not be prosecuted under § 841. The district court determined that Ayika's Rule 12(b)(3)(B) motion was untimely and alternatively that it was precluded from considering his challenge to the indictment because that issue was already rejected by this court on direct appeal.

We need not address whether Ayika's Rule 12(b)(3)(B) motion was timely as the district court's alternative ruling was correct. Although Ayika framed his Rule 12(b)(3)(B) challenge to the indictment as a jurisdictional issue, it is substantively the same as the challenge that he raised to his indictment on direct appeal. Our rejection of that argument on direct appeal constitutes the law of the case. *See United States v. Lawrence*, 179 F.3d 343, 351 (5th Cir. 1999); *United States v. Ayika*, 542 F. App'x 344 (5th Cir. 2013). The district court's denial of Ayika's Rule 12(b)(3)(B) motion and his motions for summary disposition are AFFIRMED.