

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

CRIMINAL ACTION

VERSUS

NO: 09-123

DAVID SAMUELS

SECTION: "S" (3)

ORDER AND REASONS

IT IS HEREBY ORDERED that defendant David Samuel's **Motion to Dismiss Indictment for Failure to State a Claim** (Rec. Doc. 573) is **DENIED**.

BACKGROUND

Defendant Samuels purchased a life insurance policy covering the life of his cousin and an automobile policy on his own van. He then hired a hitman to kill his cousin and attempted to claim the life insurance proceeds. He also burned the van, which had been used in the murder, and claimed insurance proceeds for it.

Following a trial by jury, defendant was convicted in January 2011 of fifteen counts, which included conspiracy to commit mail fraud, wire fraud, use of fire to commit obstruction of justice, use of fire to commit mail fraud, making a false statement and aiding and abetting. The court subsequently sentenced Samuels to serve 900 months in the custody of the Bureau of Prisons. After defendant succeeded on some of his claims on direct appeal, his sentence was reduced to 660 months imprisonment.

In 2015, defendant filed a §2255 motion that the court denied. The court also declined to issue a certificate of appealability, as did the United States Court of Appeals for the Fifth Circuit.

A motion for relief from judgment was denied by the court in 2017, and the Fifth Circuit also denied a certificate of appealability from that ruling. Defendant's motion for declaratory judgment, seeking a ruling that the Eastern District of Louisiana is not a properly constituted federal court of the United States, was denied in 2020. Defendant's "Motion to Recall Mandate [and] Correct Injustice" was construed as a successive petition under 28 U.S.C. 2255 and denied in 2021, and the United States Court of Appeals for the Fifth Circuit denied authorization to pursue the successive section 2255 in 2022. A motion for compassionate release was also denied in 2022.

Defendant has now filed the instant motion to dismiss the indictment, challenging the jury instructions given at his trial.

DISCUSSION

As grounds for jurisdiction, defendant specifically relies upon Federal Rule of Criminal Procedure 12. Rule 12 governs pre-trial motions, and thus has no application to a motion filed twelve years after defendant's conviction. Further, the deadline for filing a challenge to the jury instructions has long-passed under any potential procedural mechanism, with the possible exception of 28 U.S.C. § 2255. Because defendant has previously filed a section 2255 action, he may not pursue one without leave of the United States Court of Appeals for the Fifth Circuit. See 28 U.S.C. § 2255(h); 28 U.S.C. § 2244(b)(3)(A).¹ Therefore, there is no basis for the exercise of


¹The court further observes that the Fifth Circuit has previously denied a certificate of appealability related to defendants' challenge to the jury instructions, stating:

Samuels argues that his convictions for use of fire to commit mail fraud were invalid because the jury instructions erroneously included elements not

jurisdiction. Accordingly,

IT IS HEREBY ORDERED that defendant David Samuel's **Motion to Dismiss Indictment for Failure to State a Claim** (Rec. Doc. 573) is **DENIED**.

New Orleans, Louisiana, this 30th day of January, 2023.



MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE

enumerated in § 844(h). However, Samuels does not allege or establish that his claim either is based on new evidence that would establish that no reasonable factfinder would have convicted him or is premised on a new, previously unavailable rule of constitutional law that the Supreme Court made retroactive to cases on collateral review. Thus, he has not shown that he is entitled to authorization on this basis. See § 2255(h); § 2244(b)(3)(C).

In Re David Samuels, No. 22-30477 (5th Cir. Aug. 26, 2022), Rec. Doc. 19-2 at 2-3.