

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 21, 2012

Lyle W. Cayce
Clerk

No. 10-11237
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DARRYL B. MCCULLOUGH,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:10-CR-125-1

Before SMITH, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Darryl B. McCullough raises arguments that he concedes are foreclosed by *Setser v. United States*, 132 S. Ct. 1463 (2012), and *United States v. Harrimon*, 568 F.3d 531 (5th Cir. 2009). In *Setser*, the Supreme Court held that 18 U.S.C. § 3584 authorizes a district court to order a federal sentence to run consecutively to a yet-to-be-imposed state sentence. *Setser*, 132 S. Ct. at 1466-73. In *Sykes v. United States*, 131 S. Ct. 2267, 2277 (2011), the Supreme Court validated our holding in *Harrimon*, that

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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the Texas offense of evading arrest or detention by use of a vehicle is a violent felony under the Armed Career Criminal Act (ACCA), by holding that a conviction under Indiana's felony vehicle flight law constituted a violent felony under the ACCA. Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.