

REVISED November 15, 2019

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

No. 19-30149
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ERIC J. WICKER,

Defendant-Appellant

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:18-CR-108-1

Before STEWART, DENNIS, and HO, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Eric J. Wicker has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Wicker has not filed a response. We have reviewed counsel's brief and the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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relevant portions of the record reflected therein. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review.

In this circuit, where the oral and written pronouncements vary, it is the oral pronouncement of sentence that controls. *United States v. Shaw*, 920 F.2d 1225, 1231 (5th Cir. 1991). Generally, when there is such a discrepancy, this court remands the case to have the district court amend the written judgment to conform to its oral judgment. *United States v. Martinez*, 250 F.3d 941, 942 (5th Cir. 2001). In its oral pronouncement, the district court stated as follows regarding Wicker's federal sentence:

[It] shall run concurrently [with] any sentence imposed in docket number 03-18-0524 of the 19th Judicial District Court, Baton Rouge, Louisiana. His sentence shall run consecutively to any sentences imposed in docket number 03-15-0863, 09-16-0337 and 05-18-[0]267¹ of the 19th Judicial District Court, Baton Rouge; docket number 16-CR-129181s, 17-CR-118432s, and 18-BR-050392 of the Baton Rouge City Court, docket number 38760 of the 23rd Judicial District Court, Gonzales, Louisiana and any sentence imposed as a result of the defendant's arrest by the Baton Rouge Police Department for theft and traffic control signals on August 3rd, 2018.

These oral instructions, however, were not included in the written judgment. The absence of the oral pronouncement from the written judgment creates a conflict, insofar as the written judgment "imposes a more burdensome requirement than that of the oral pronouncement" by eliminating Wicker's ability to have his federal sentence run concurrently with any state sentence stemming from the same underlying conduct as the federal offense. *See United States v. Flores*, 664 F. App'x 395, 398 (5th Cir. 2016) (internal quotation marks and citation omitted). The district court was without jurisdiction to enter an amended judgment during the pendency of this appeal. *See United States v.*

¹ The oral pronouncement contains a typographical error; the docket number should read, "5-18-0267."

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Lucero, 755 F. App'x 384, 385-87 (5th Cir. 2018). We therefore remand for the limited purpose of allowing the district court to conform the written judgment with the oral pronouncement. *See Flores*, 664 F. App'x at 399.

Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2. The case is REMANDED to the district court for the limited purpose of conforming the written judgment to the oral pronouncement.