

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-7319  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH WADE HILL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. CR-D91-51-D-0

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(January 22, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Defendant-appellant Joseph Wade Hill contests his consecutive sentences for aiding and abetting in arson and aiding and abetting in the use of a destructive device during a crime of violence. Generally, "where two statutory provisions proscribe the same offense, they are construed not to authorize cumulative punishments . . . ." Missouri v. Hunter, 459 U.S. 359, 366, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983) (internal quotation and citation omitted). However, even if statutes are construed to prohibit the same conduct, cumulative punishments may be imposed where a

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

legislature specifically authorizes cumulative punishment under two statutes. Id. at 368.

Section 924(c) was amended by the Comprehensive Crime Control Act of 1984 to include a mandatory penalty for the use of a firearm during a federal crime of violence . . . . Its legislative history clearly shows that Congress intended to completely revise § 924(c) so that it would serve as a cumulative punishment in addition to that provided for the underlying violent crime.

United States v. Holloway, 905 F.2d 893, 894 (5th Cir. 1990)

(citation omitted).

Hill's contention that § 924(c) was enacted to prevent only the use of guns during the commission of a felony is contradicted by the fact that Congress defined a "firearm" in that chapter to include a "destructive device" such as an explosive or incendiary bomb. 18 U.S.C. §§ 921(a)(3)(D) and (a)(4)(A)(i).

Hill argues that the rule of lenity should be applied because the scope of § 924(c) is ambiguous and the prosecution's interpretation is not in accord with the legislative history and purposes of the statute. "[T]he rule of lenity is not to be applied where to do so would conflict with the implied or expressed intent of Congress . . . ." Liparota v. United States, 471 U.S. 419, 427, 105 S.Ct. 2084, 85 L.Ed.2d 434 (1985). As discussed above, in enacting and amending § 924(c), Congress clearly intended that cumulative punishment should be imposed where a defendant uses or carries a firearm during or in relation to a violent crime. Holloway, 905 F.2d at 894-895.

AFFIRMED.