

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7335
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FERNANDO S. RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-B-91-68 (CR-81-806-04)

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March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:*

Rodriguez argues that the district court erred in imposing consecutive sentences for conspiracy to possess with intent to distribute marijuana and possession with intent to distribute marijuana because such is prohibited by double jeopardy and the "Merger of Sentence Doctrine."**

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

** The "Merger of Sentence Doctrine" provides that a court may not impose multiple punishments for different steps in one criminal transaction. See Prince v. United States, 352 U.S. 322, 328, 77 S.Ct. 403, 1 L.Ed.2d 370 (1957).

The Double Jeopardy Clause protects against multiple punishments for the same offense. See Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932). Conspiracy and the substantive offense that is the object of the conspiracy are separate and distinct offenses. United States v. Casiano, 929 F.2d 1046, 1051 (5th Cir. 1991). Thus, a sentencing court may properly impose consecutive sentences for conspiracy to possess with intent to distribute and for possession with intent to distribute marijuana. See id.

Rodriguez also argues that the district court had no authority to order that his federal sentence run consecutively to his state sentence. A federal court has the power to direct that a federal sentence will run consecutively to an unexpired state sentence. United States v. Pungitore, 910 F.2d 1084, 1119 (3rd Cir. 1990), cert. denied, 111 S.Ct. 2009 (1991).

A district court lacks authority to order that a defendant's federal sentence run concurrently with a state sentence and may only recommend to the Attorney General that the sentence be served concurrently. United States v. Holmes, 816 F.2d 420, 421 (8th Cir. 1987). However, because the Attorney General is not called upon to designate a place of confinement until after the state sentence is completed and a defendant is delivered into federal custody, a district court's imposition of a federal sentence to run consecutively to an unexpired state sentence does not encroach upon the Attorney General's exclusive authority under 18 U.S.C. § 4082. Pungitore, 910 F.2d at 1119.

There is no constitutional right to have state and federal sentences run concurrently. United States v. Dovalina, 711 F.2d 737, 739 (5th Cir. 1983). The imposition of a consecutive sentence did not violate 18 U.S.C. § 3568. See McKlemurry v. United States, 478 F.2d 1185, 1188 (5th Cir. 1973). The judgment of the district court is AFFIRMED.