

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-30334  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FREDDIE WASHINGTON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 96-CR-10016-2  
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Freddie Washington appeals from his sentencing pursuant to a guilty plea for food stamp fraud. He argues that the trial court's imposition of the instant sentence as consecutive to a prior undischarged sentence is in opposition to Federal Sentencing Guideline § 5G1.3(b).

A district court's decision to order consecutive or concurrent sentences is reviewed for abuse of discretion, but its application of the sentencing guidelines is reviewed *de novo*. *United States v. Richardson*, 87 F.3d 706, 710 (5th Cir. 1996).

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

We have reviewed the record, the parties briefs, and the district court's opinion and find that the imposition of a consecutive sentence is in keeping with 18 U.S.C. § 3584(a)'s premise that multiple terms of imprisonment imposed at different times run consecutively, and the court took the factors listed in 18 U.S.C. § 3553(a) into consideration in constructing the sentence. See *Richardson*, 87 F.3d at 710. Moreover, the prior conviction was used in calculating the criminal history score, but was not used to determine the base offense level and was not fully taken in to account such that the exception of U.S.S.G. § 5G1.3(b) would apply. See *United States v. Hornsby*, 88 F.3d at 336, 339 (5th Cir. 1996). Therefore, the sentence as imposed is not a misapplication of the guidelines and there was no abuse of discretion under § 5G1.3(c).

AFFIRMED.