

2003 WL 21715870

--- F.3d ---

(Cite as: 2003 WL 21715870 (11th Cir.(Ala.)))

Only the Westlaw citation is currently available.

United States Court of Appeals,  
Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Phillip Wayne McDANIEL, Jr.,  
Defendant-Appellant.

**No. 02-16671**

**Non-Argument Calendar.**

July 25, 2003.

Defendant was convicted in the United States District Court for the Southern District of Alabama, Callie V.S. Granade, J., No. 02-00072-CR-CG, of possession of a firearm by a convicted felon. Defendant appealed. The Court of Appeals held that District Court had authority to order sentence to run concurrently with as-yet unimposed sentence on pending state charges.

Vacated and remanded.

### **[1] Sentencing and Punishment** 🔑

350Hk0 k.

District court had authority to order defendant's federal sentence for possession of a firearm by a convicted felon to run concurrently with as-yet unimposed sentence on pending state charges. 18 U.S.C. §§ 922(g)(1), 3584.18.

### **[2] Criminal Law** 🔑

110k0 k.

Questions of pure law warrant de novo review.

### **[3] Sentencing and Punishment** 🔑

350Hk0 k.

A district court has the authority to make a federal

sentence concurrent to a state sentence not yet imposed for pending state charges. 18 U.S.C. § 3584.

K. Lyn Campbell and Carlos Alfredo Williams, Fed. Pub. Defenders, Fed. Def. Org., Mobile, AL, for Defendant-Appellant.

Leigh Lichty Pipkin, Richard H. Loftin, Mobile, AL, for Plaintiff- Appellee.

Appeal from the United States District Court for the Southern District of Alabama.

Before CARNES, BARKETT and WILSON, Circuit Judges.

PER CURIAM:

\*1 [1] Phillip Wayne McDaniel, Jr., appeals his 33 month sentence for possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). On appeal, McDaniel argues that the district court erred by ruling that it did not have the authority to order McDaniel's sentence to run concurrently with an unimposed sentence on pending state charges. McDaniel maintains that if, at the time of his federal sentencing, he had already been sentenced in state court, his federal sentence would fall under the provisions of U.S.S.G. § 5G1.3 (b) or (c), which would mandate or at least allow for concurrent sentencing. He states that the language of 18 U.S.C. § 3584, which governs the imposition of multiple sentences, indicates that a district court may order terms of imprisonment imposed at different times to run concurrently. He further contends that this Court's decision in United States v. Ballard, 6 F.3d 1502 (11th Cir.1993), "specifically noted that both [18 U.S.C. § 3584] and the [G]uidelines were silent ... on this situation" and that Ballard "directed that the lower courts consider the policy of § 5G1.3 as if the state sentence had been imposed and then consider the factors of 18 U.S.C. § 3553 in order to determine if a consecutive or concurrent sentence is warranted."

[2] The issue presented, whether a district court is authorized to make a federal sentence concurrent to a

state sentence not yet imposed for pending state charges, is one of first impression. It raises a pure question of law that we review *de novo*. See [United States v. Barbour](#), 70 F.3d 580, 586 (11th Cir.1995) (articulating that pure questions of law are subject to *de novo* review).

[3] Upon careful review of the record and our precedent, and upon consideration of the parties' briefs, we find reversible error. Our opinion in [United States v. Andrews](#), 330 F.3d 1305 (11th Cir.2003), clarifies that under [United States v. Ballard](#), 6 F.3d 1502 (11th Cir.1993), a district court does have the authority to make a federal sentence concurrent to a state sentence not yet imposed for pending state charges, ("*Ballard* clearly concludes that a district court need not concern itself with whether a state sentence has already been imposed when determining whether to make the federal sentence consecutive or concurrent with the state sentence." *Id.* (citing [Ballard](#), 6 F.3d at 1504-10)). Because the district court mistakenly believed it lacked the authority to impose a concurrent sentence, we vacate McDaniel's sentence and remand for resentencing.

VACATED AND REMANDED.

2003 WL 21715870 (11th Cir.(Ala.))

END OF DOCUMENT