

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2008

No. 08-10454
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

WALTER EARL SMITH, II

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:07-CR-66-ALL

Before JOLLY, BARKSDALE, and HAYNES, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Walter Earl Smith, II presents arguments that he concedes are foreclosed by *United States v. Brown*, 920 F.2d 1212, 1216-17 (5th Cir. 1991), abrogated on other grounds by *United States v. Candia*, 454 F.3d 468, 472-73 (5th Cir. 2006), which held that a district court may order a term of imprisonment to run consecutively with an unimposed state sentence. He also presents arguments that he concedes are foreclosed by *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001), which rejected a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Commerce Clause challenge to the felon-in-possession-of-a-firearm statute, 18 U.S.C. § 922(g). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.