

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 21, 2012

Lyle W. Cayce
Clerk

No. 11-10140
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DONALD LEE MCLEAN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:10-CR-136-1

Before SMITH, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Donald Lee McLean raises 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 has the discretion under 18 U.S.C. § 3584 to order a federal sentence to run consecutively to a yet-to-be-imposed state sentence. *See Setser v. United States*, 132 S. Ct. 1463, 1466-73 (2012). The Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.