

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4991

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARRYL MCCORMICK SOUTHERN,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Jr., District Judge. (1:08-cr-00006-WO-1)

Submitted: June 18, 2009

Decided: June 22, 2009

Before NIEMEYER, GREGORY, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Louis C. Allen, III, Federal Public Defender, Gregory Davis, Senior Litigator, Winston-Salem, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Robert A.J. Lang, Assistant United States Attorney, Winston-Salem, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darryl McCormick Southern appeals from his 188-month sentence imposed pursuant to his guilty plea to possession of a firearm by a convicted felon. On appeal, Southern argues that the decision to run his sentence consecutively to the state sentence he was then serving was unreasonable and constituted an abuse of discretion. We affirm.

Under U.S. Sentencing Guidelines Manual § 5G1.3(c) (2007), the district court possessed the discretion to run the imposed sentence concurrently, partially concurrently, or consecutively to Southern's prior undischarged term of imprisonment. In choosing to run the sentence consecutively, the court considered the undisputed advisory Guidelines range of 180-210 months in prison, the 18 U.S.C. § 3553 (2006) sentencing factors, the fact that Southern's undischarged state sentence was the result of a "series" of probation violations, the fact that the state and federal sentences were not related, and Southern's "extensive criminal history." In fact, the court noted that there was a significant argument to be made that an appropriate sentence would require an upward departure from the Guidelines, but the court declined to so depart, given Southern's cooperation, age, and the fact that his sentence would be run consecutively. We find no abuse of discretion and

hold that the decision to run Southern's sentence consecutively to his undischarged state sentence was reasonable.

Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED