

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 31, 2023

Lyle W. Cayce
Clerk

No. 21-30329

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

THOMAS LANDRY,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:19-CR-175-7

Before ELROD, HAYNES, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Thomas Landry appeals his sentence for conspiring to distribute and to possess with intent to distribute cocaine base and using a communication facility in the commission of a conspiracy. He was sentenced to 151 months' imprisonment on the conspiracy count, and 48 months' imprisonment on the communication facility count.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 21-30329

At sentencing, Landry's defense counsel asked if this federal sentence would run concurrently with Landry's state sentence. The Government informed the district court that it did not believe that the court had the power to run the sentences concurrently.

On appeal, the Government concedes that it was incorrect about the district court's statutory discretion under 18 U.S.C. § 3584(a) to run Landry's sentence concurrently with his undischarged state sentence and acknowledges that its advice may have contributed to the district court's misunderstanding of the scope of its authority.

The Government requests that the case be remanded to allow the district court to consider whether the sentences should run concurrently. We agree. We VACATE the sentence and REMAND for the district court to consider whether to run Landry's federal sentence concurrently with his state sentence.