

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

AUG 11 1992

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
GEORGE DAVIS,)
)
Defendant-Appellant.)

Nos. 91-3344 & 91-3354
(D.C. Nos. 91-10040-01 & 89-10033-01)
(D. Kan.)

ORDER AND JUDGMENT*

Before LOGAN, TACHA, and EBEL, Circuit Judges.

This appeal is from an order of the district court sentencing defendant to two consecutive imprisonment terms of 24 months. Defendant appeals this sentence on the ground that the district court erred by failing to make sufficient findings that would reveal to the appellate court whether the district court believed it had discretion to impose concurrent rather than consecutive sentences in two separate cases consolidated for sentencing. We affirm.

The determination of whether to impose a consecutive or concurrent sentence is within the sound discretion of the trial court. United States v. Kalady, 941 F.2d 1090 (10th Cir. 1991).

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Although the parties entered into a plea agreement in this case, the district court clearly considered the agreement and determined not to follow it. The transcript of the sentencing hearing in this case clearly indicates that the judge knew that he had discretion with respect to the issue of ordering sentences to run consecutively or concurrently. The judge on the record sentenced consecutively and reiterated his intent to sentence consecutively. The record here is amply developed to allow appellate review and contains no evidence to support the argument that the district court believed he had no discretion regarding this sentence.

A letter from appellant to his counsel was attached to appellant's brief on appeal. In the letter, defendant suggests that his counsel raise several issues that are not listed or argued in appellant's appellate brief. Because these issues were not raised in the appellant's brief, the government did not have an opportunity to address them. **AFFIRMED.** Motion to Withdraw by appellant's counsel is hereby granted.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge