

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN L. DAVIS,

Defendant.

MEMORANDUM

11-cr-81-bbc

This case was remanded to this court for resentencing after the Supreme Court decided in Setser v. United States, 132 S. Ct. 1463 (2012), that federal courts have the authority to determine whether the sentence they are imposing should run consecutively or concurrently with a yet-to-be-imposed state sentence. On April 30, 2013, I entered an order giving the parties three days in which to advise the court whether they had any objections to the court's entry of a new judgment and commitment order clarifying defendant's sentence to comply with Setser. The government had no objection to such an order, but defendant's counsel was concerned that any order entered by the court before the court of appeals' mandate issued might be a nullity. In addition, counsel said that he was having difficulty determining where his client was incarcerated.

Defendant's counsel did not respond further to the court on the issue and no action was taken. More than a year later, defendant filed a motion for clarification, arguing that

he was entitled to have his sentence corrected to show that his federal sentence was to run concurrently with his state sentence. The motion prompted a review of the case and a status conference with counsel. Defense counsel reported that he had learned where defendant was housed but was having difficulty getting through to him or reaching anyone at the institution to arrange for a telephone call with his client. On May 19, 2014, he wrote to the court to say he had spoken to defendant and that defendant requested an order from the court making his federal sentence concurrent with his state sentence. Accordingly, I will enter a revised judgment and commitment order.

Entered this 19th day of June, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge