

When Your State Client Has a Federal Case (or might in the future)

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- Primary Custody and Jail Credit
- Concurrent or Consecutive Sentences?
- Bad Predicates – Armed Career Criminal & Career Offender
- Supervised Release – What is taking so long



Federal vs. State

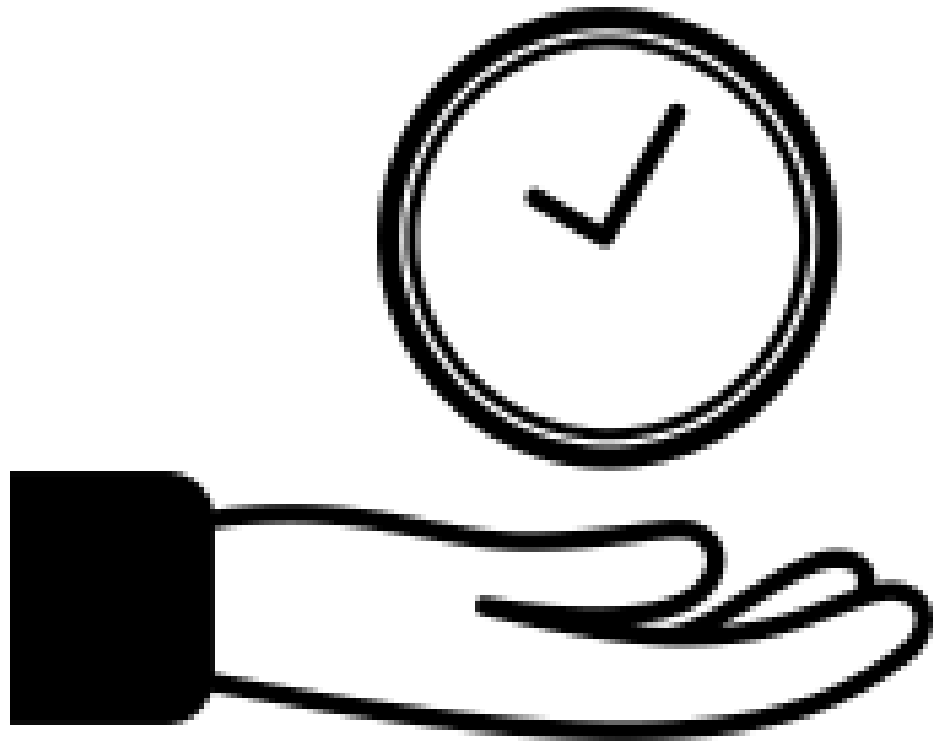
Who Has
Custody?

Who made the last out-of-custody arrest?

They have primary custody.

The client goes NOWHERE until primary charges are disposed.

The client serves the primary sentence FIRST even if it was imposed last.



Will the Feds
Give Jail Credit?

Primary Federal Custody – Federal credit for related state conduct

Primary State Custody with State Sentence (related or unrelated) – No federal credit

State charges dismissed – Federal credit for related and unrelated conduct

Concurrent or Consecutive?



Unrelated Cases



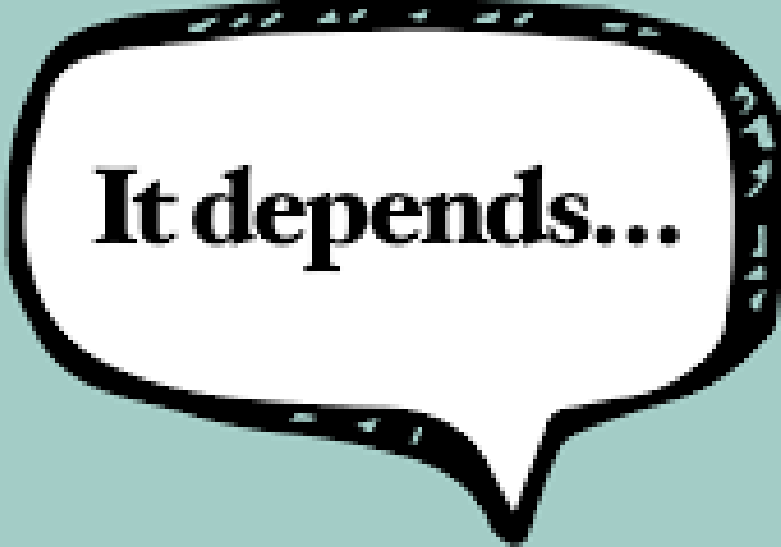
(Policy Statement) In any other case involving an undischarged term of imprisonment, the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.

Reality?

Primary State Custody for Separate Offense?



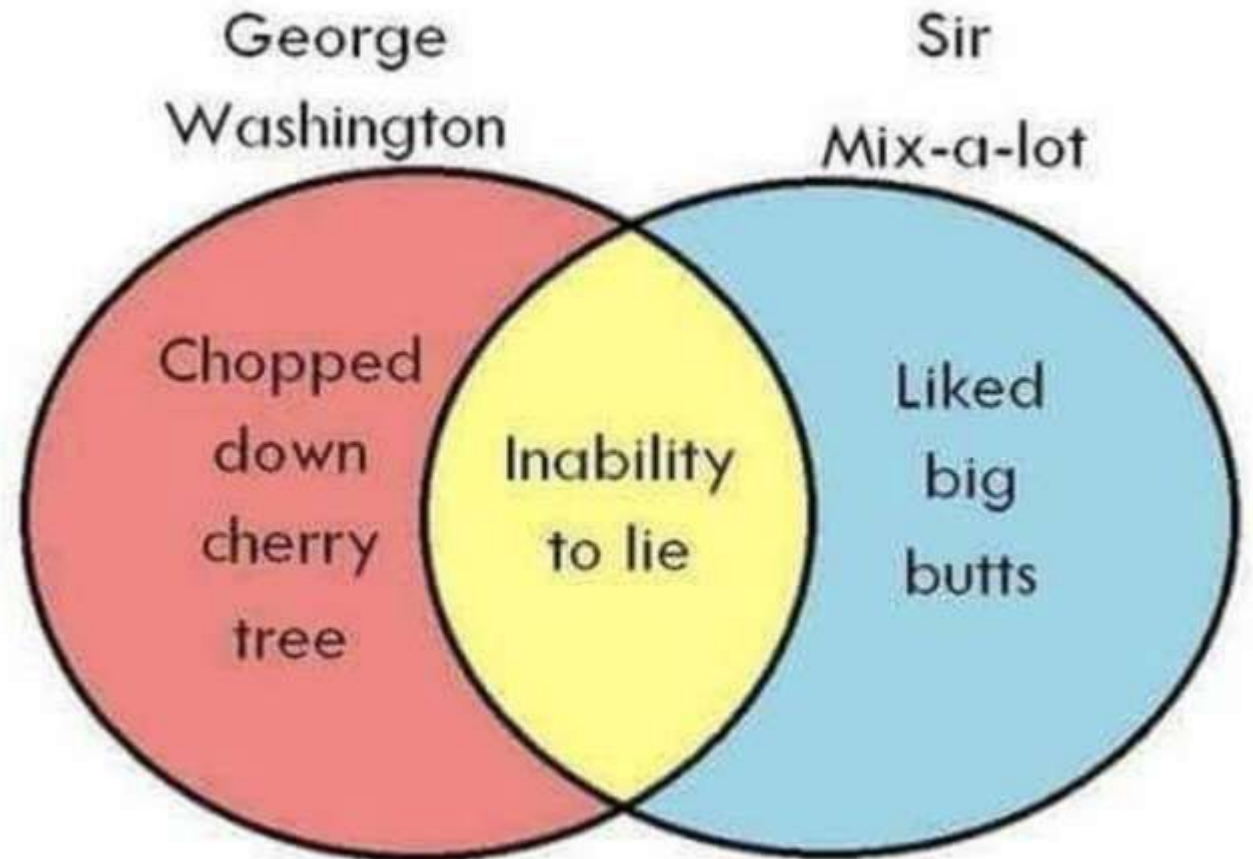
Primary State Custody for a Related Offense?



It depends...

Source: Westlaw® 1000

Primary State Custody for a Related Case



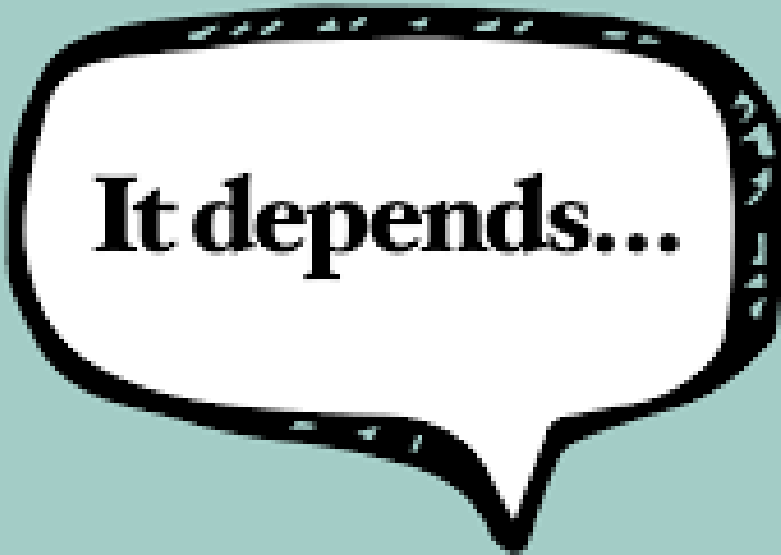
If state case involves “relevant conduct” to the federal case, the federal judgment will run concurrently with the state judgment.

U.S.S.C. §5G1.3

But there's a catch:

Relevant conduct may increase the
federal sentence & may complicate
state case

Primary Federal Custody?



It depends...

Source: MedStar/RTS, Inc.

Predicates for Career Enhancements



Armed Career Criminal (ACCA)

- Charged crime is felon in possession of firearm OR ammunition

Career Offender

- Charged crime is controlled substance offense or crime of violence

Armed Career Criminal

18 U.S.C. § 924(e)



(e)(1) In the case of a person who violates [section 922\(g\)](#) of this title and has three previous convictions by any court referred to in [section 922\(g\)\(1\)](#) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under [section 922\(g\)](#).

THREE previous convictions for serious drug offense or violent crime (any combination)

NO TIME LIMIT

Juvenile adjudications COUNT if they would be violent felonies if committed by an adult

Consolidated judgments DO NOT MATTER

“Occasions different from one another”

“Serious Drug Offense”

1. Serious = Maximum term of imprisonment 10 years or more
2. Drug Offense = “Controlled Substance Offense” = Manufacture or distribute (or possess with intent to)

“Violent Felony”

1. “Juvenile delinquency involving the use or carrying of a knife, firearm, or destructive device” that would be punishable by imprisonment for a term exceeding one year if committed by an adult
2. “Has as an element the use, attempted use, or threatened use of physical force against the person of another”
3. “Is burglary, arson, extortion, or involves the use of explosives”

NC Breaking and/or Entering is considered BURGLARY

3 B/E felony convictions that happened on different occasions
+ a gun or a bullet
= 15 years to life in federal prison

NC Conspiracy is NOT a
violent crime



Non-exhaustive list of NC violent felonies for ACCA:

1. Common Law Robbery
2. Robbery with a Dangerous Weapon
3. Breaking and/or Entering
4. Burglary
5. Assault with a Deadly Weapon With Intent to Kill
6. Arson

NOTE: Assault with a Deadly Weapon Inflicting Serious Injury is NOT a violent felony (mens rea = reckless)

Career Offender

U.S.S.C. §4B1.1



A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

Career Offender Penalty

Most CO federal drug pleas =
151-188 months or 188-235 months

Except as provided in subsection (c), if the offense level for a career offender from the table in this subsection is greater than the offense level otherwise applicable, the offense level from the table in this subsection shall apply. A career offender's criminal history category in every case under this subsection shall be Category VI.

OFFENSE STATUTORY MAXIMUM		OFFENSE LEVEL*
(1)	Life	37
(2)	25 years or more	34
(3)	20 years or more, but less than 25 years	32
(4)	15 years or more, but less than 20 years	29
(5)	10 years or more, but less than 15 years	24
(6)	5 years or more, but less than 10 years	17
(7)	More than 1 year, but less than 5 years	12.

*If an adjustment from §3E1.1 (Acceptance of Responsibility) applies, decrease the offense level by the number of levels corresponding to that adjustment.

Two previous felony convictions for controlled substance offense or crime of violence

15-year time limit (from last served, not sentenced)

Consolidated judgments DO matter

“Controlled Substance Offense”

Manufacture or distribute (or possess with intent to)

Simple possession is not a controlled substance offense

“Crime of Violence”

1. “Has as an element the use, attempted use, or threatened use of physical force against the person of another”
2. “Is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the unlawful use or possession” of certain firearms (short barreled shotgun, machine gun, silencer) or explosive material
3. Includes attempt, aiding and abetting, federal conspiracy

NC Conspiracy is NOT a
crime of violence



Non-exhaustive list of NC crimes of violence for Career Offender:

1. Common Law Robbery
2. Robbery with a Dangerous Weapon
3. Assault with a Deadly Weapon With Intent to Kill
4. Kidnapping
5. Arson

NOTE: But NOT Breaking and/or Entering (burglary)

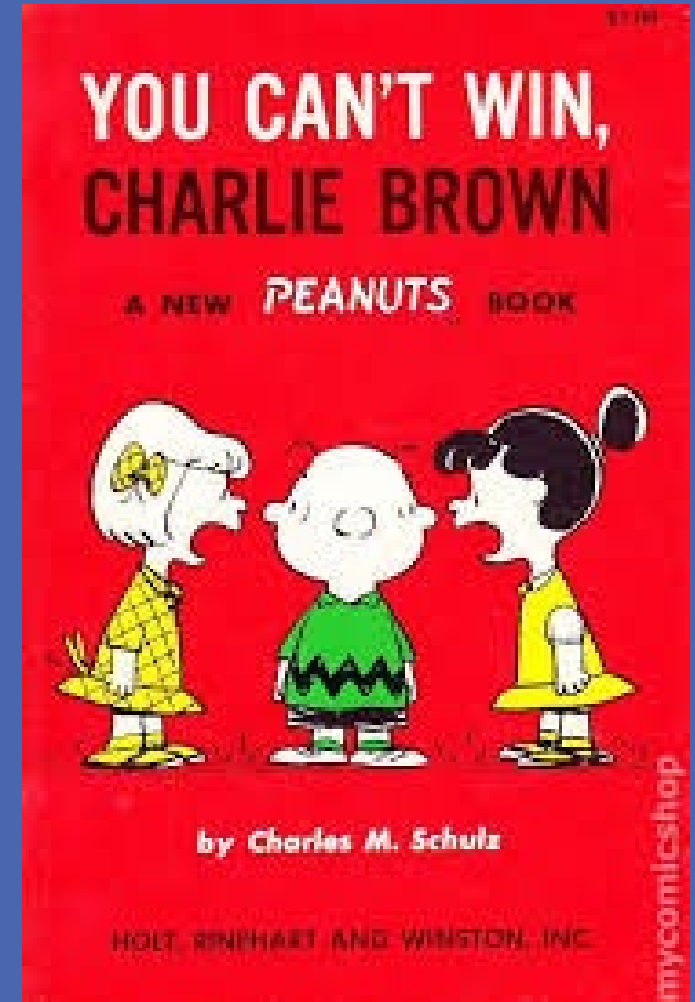
Supervised Release Violations



Violation petition
remains sealed until
person is arrested

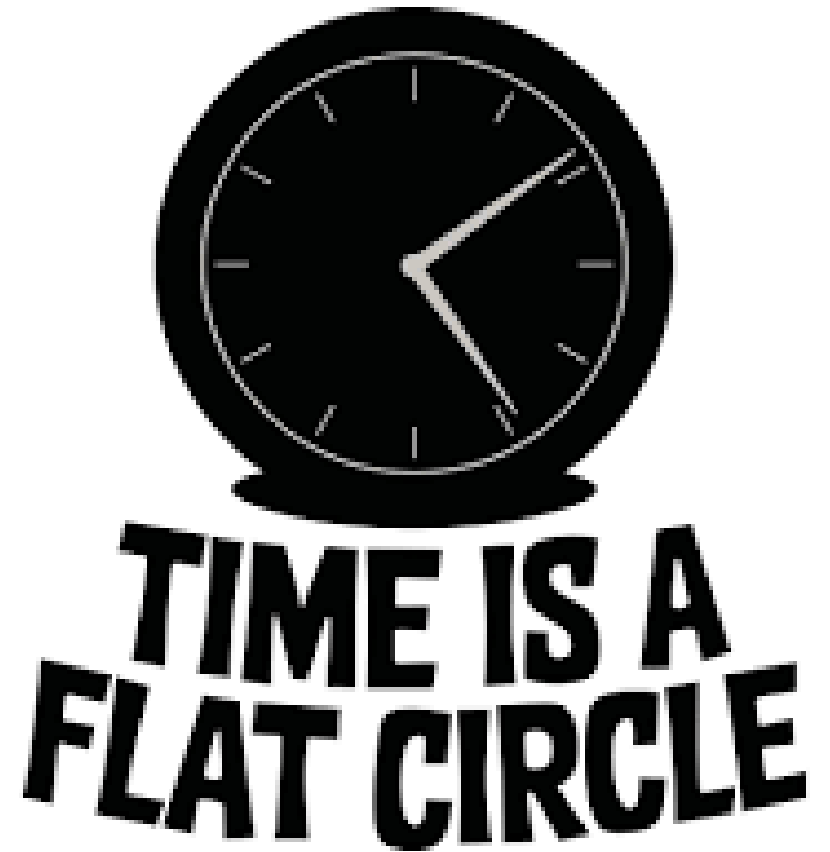


- Statute allows delay “reasonably necessary for the adjudication of matters arising before its expiration” 18 U.S.C. § 3583(i)
- Dismissals and acquittals for violation conduct are not dispositive
- Preponderance of the evidence standard



- (b) Any term of imprisonment imposed upon the revocation of supervised release generally should be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of supervised release.
- (c) If supervised release is revoked, the court may include a requirement that the defendant be placed on a term of supervised release upon release from imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.
18 U.S.C. § 3583(h).

- More prison time even if served entire original sentence
- More supervision after re-incarceration
- Potentially ad infinitum (PROTECT Act) – no aggregation of revocation time







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