

FEDERAL PUBLIC DEFENDER
227 NORTH BRONOUGH ST., STE. 4200
TALLAHASSEE, FL 32301

CJA PANEL MEMBERS
Northern District of Florida

FEDERAL PUBLIC DEFENDER

NORTHERN DISTRICT OF FLORIDA

A Newsletter for Panel Attorneys

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NEWSLETTER CORRECTION

In the newsletter we just sent you, in the article entitled "State Sentence to Run Concurrently?" I discussed the problem of trying to arrange for a state sentence to run concurrently with a federal sentence. The discussion included reference to the general rule that the priority of the sentence depends upon who makes the initial arrest. That is, if the state makes the initial arrest, and the defendant remains in custody, the Bureau of Prisons is going to let the defendant serve the state sentence first, regardless of whether the state judge orders the sentence to run concurrently. If, however, you can secure your client's release from state custody, *prior to* the imposition of the federal sentence, your client will find himself the beneficiary of an exception to the rule, and the state judge can, then, successfully impose a concurrent sentence.

I, however, went on to *erroneously* tell you that you could achieve the same result even after the federal sentence was imposed. That advice, however, is simply *wrong*. If your client has already been sentenced in federal court there, unfortunately, isn't a lot that can be done. *Securing his release from state charges after imposition of the federal sentence won't have any effect at all.* As mentioned in the newsletter article there is the obvious solution of a state sentence of time served. If the state plea was conditioned upon the agreement for a concurrent sentence the defendant is also, needless to say, entitled to withdraw his state plea, and start all over.

Thus, if the state prosecutor is insisting on something beyond time served, the best alternative is to secure your client's release from state custody *prior to* the federal sentencing. In many instances the client will be held on both the state and federal charges. If that's the case, the argument for a release on the state charge is one many state prosecutors and state judges find most appealing - it saves the county money. From their perspective a release on recognizance, means, not that the defendant is given his liberty, but only that the defendant will be, prior to sentencing, housed at the expense of the federal budget rather than the county budget, and upon sentencing, housed at federal rather than state expense. If it's the unusual situation where the defendant is being held only on the state charge, and not the federal charge, it would, if a release on recognizance isn't a possibility, still be worth the money for your client to post bail. Arguably, it may also be worth whatever risk the state runs, as a release ensures that the sentence will be served in federal prison.

It means, too, that once your client is sentenced in federal court you will have to enlist the help of the state prosecutor to get him back to state court for that concurrent sentence. As mentioned in the newsletter article the vehicle is a petition for writ of habeas corpus ad prosequendum.

Call us if we can help.

RPM