

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA**

**ALEXANDRIA DIVISION**

**FILED**  
USDC, WESTERN DISTRICT OF LA  
ROBERT A. BREMWELL, CLERK  
DATE 08/24/04  
BY wh

**ZENO EUGENE SIMMS**

**CIVIL ACTION NO. 04-CV-0227-A**

**-vs-**

**JUDGE LITTLE**

**ROBERT TAPIA, WARDEN**

**JUDGMENT**

Before the court is a report and recommendation of the magistrate suggesting that the 28 U.S.C. § 2241 petition of Plaintiff, Zeno Eugene Simms ("Simms"), be granted and that this court order the Bureau of Prisons to implement immediately the sentence imposed by the United States District Court for the Western District of Missouri. After full record review, this court does not adopt the recommendation of the magistrate.

In his report and recommendation, the magistrate recognized that there could be difficulties in attempting to enforce the district court's judgment that the sentence imposed on Simms be served concurrently with any state sentence that was to be imposed. These difficulties have come to fruition. The United States Attorney's Office has received correspondence from the Missouri Department of Corrections ("MDOC") stating that it is unwilling to accept custody of Simms. Further, MDOC stated that, even if it were to accept custody of Simms, because the Missouri court sentenced Simms to a term of imprisonment

to run consecutively with his federal sentence, his state term of imprisonment would not begin to run until completion of his federal sentence. It is important to note that while the federal government and the State of Missouri are separate and distinct sovereigns, the sovereign with incipient jurisdiction is the entity that was first to arrest the defendant. See Zerbst v. McPike, 97 F.2d 253, 254 (5th Cir. 1938) (stating that “[u]nder the inviolable rules of comity...the State having first arrested and imprisoned McPike could not without its consent be deprived of his custody”); See also, United States v. Warren, 610 F.2d 680, 684-85 (9th Cir. 1980) (stating that “the sovereign which first arrests an individual acquires priority of jurisdiction for purposes of trial, sentencing, and incarceration”).

There is no constitutional right to have state and federal sentences run concurrently. United States v. Donovan, 711 F.2d 737, 739 (5th Cir. 1983). Both the state and federal governments, as sovereigns, have the right to impose a sentence for a single act that constitutes an offense under each sovereign’s law. United States v. Shillingford, 586 F.2d 372, 375 (5th Cir. 1978). It is within Missouri’s power to sentence Simms to a consecutive sentence, even though that sentence conflicts with the district court’s judgment that the sentences be served concurrently. Missouri is enforcing its own laws and judgments. This court does not have the power to compel Missouri to enforce the district court’s judgment that the sentences be served concurrently instead of its own court’s judgment that the sentences be served consecutively. Cf. United State v. Smith, 972 F.2d 243, 244 (8th Cir. 1992) (holding that because of the Dual Sovereignty Principle a state court cannot compel

a federal court to run a sentence concurrently). Therefore, this court finds that Plaintiff's complaint is without foundation, and that his petition should be dismissed.

Plaintiff's 28 U.S.C. § 2241 petition is DISMISSED.

Alexandria, Louisiana

24 August 2004



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F. A. LITTLE, JR.  
UNITED STATES DISTRICT JUDGE