

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 20 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALLEN EARL WITHERALL,

Defendant - Appellant.

No. 07-35391

D.C. Nos. CV-07-00001-JDS
CR-05-00113-JDS

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges

Allen E. Witherall, a federal and Montana state prisoner, appeals pro se the denial of his 28 U.S.C. § 2255 motion to amend the sentence imposed following his guilty plea to being a felon in possession of a firearm. After he had begun

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

serving his federal sentence, he was transferred back to Montana to continue serving an undischarged state sentence. He contends that the district court erred in denying his claim that his transfer from the federal to the Montana prison system improperly resulted in his serving consecutive sentences. As stated by the district court, in the absence of a specific order that a federal sentence run concurrently, it runs consecutively. *See* 18 U.S.C. § 3584(a); *United States v. Fifield*, 432 F.3d 1056, 1065 (9th Cir. 2005). We therefore affirm the district court's judgment.

AFFIRMED.