Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SETSER *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10–7387. Argued November 30, 2011—Decided March 28, 2012

When petitioner Setser was indicted in a Texas court on drug charges, the State also moved to revoke the probation term that he was then serving for another drug offense. At about the same time, Setser pleaded guilty to federal drug charges. The Federal District Court imposed a 151-month sentence to run consecutively to any state sentence imposed for the probation violation, but concurrently with any state sentence imposed on the new drug charge. While Setser's federal appeal was pending, the state court sentenced him to 5 years for the probation violation and 10 years for the drug charge, but ordered the sentences to be served concurrently. The Fifth Circuit affirmed the federal sentence, holding that the District Court had authority to order a sentence consecutive to an anticipated state sentence, and that Setser's sentence was reasonable, even if the state court's decision made it unclear exactly how to administer it.

Held:

1. The District Court had discretion to order that Setser's federal sentence run consecutively to his anticipated state sentence for the probation violation. Pp. 2–12.

(a) Judges have traditionally had broad discretion in selecting whether the sentences they impose will run concurrently or consecutively with respect to other sentences that they impose, or that have been imposed in other proceedings, including state proceedings, see *Oregon* v. *Ice*, 555 U. S. 160, 168–169. The statutory text and structure do not foreclose a district court's exercise of this discretion with respect to anticipated state sentences. The Sentencing Reform Act of 1984 addresses the concurrent-vs.-consecutive decision, but not the situation here, since the District Court did not impose "multiple terms of imprisonment . . . at the same time," and Setser was not "al-

Syllabus

ready subject to" the state sentences at issue, 18 U. S. C. §3584(a). This does not mean, as Setser and the Government claim, that the District Court lacked authority to act as it did and that the Bureau of Prisons is to make the concurrent-vs.-consecutive decision after the federal sentence has been imposed. Section 3621(b), from which the Bureau claims to derive this authority, says nothing about concurrent or consecutive sentences. And it is more natural to read §3584(a) as leaving room for the exercise of judicial discretion in situations not covered than it is to read §3621(b) as giving the Bureau what amounts to sentencing authority. Setser's arguments to the contrary are unpersuasive. Pp. 2–8.

(b) None of the other objections raised by Setser and the Government requires a different result. Pp. 8–12.

2. The state court's subsequent decision to make the state sentences run concurrently does not establish that the Federal District Court imposed an unreasonable sentence. The difficulty here arises not from the federal-court sentence—which is to run concurrently with one state sentence and consecutively with another—but from the state court's decision. Deciding which of the District Court's dispositions should prevail under these circumstances is a problem, but it does not show the District Court's sentence to be unlawful. The reasonableness standard for reviewing federal sentences asks whether the district court abused its discretion, see *Gall* v. *United States*, 552 U. S. 38, 46, but Setser identifies no flaw in the District Court's decisionmaking process, nor anything available at the time of sentencing that the court failed to consider. Where late-onset facts make it difficult, or even impossible, to implement the sentence, the Bureau of Prisons may determine, in the first instance, how long the District Court's sentence authorizes it to continue Setser's confinement, subject to the potential for judicial review. Pp. 12–14.

607 F. 3d 128, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. BREYER, J., filed a dissenting opinion, in which KENNEDY and GINSBURG, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 10–7387

MONROE ACE SETSER, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[March 28, 2012]

JUSTICE SCALIA delivered the opinion of the Court.

We consider whether a district court, in sentencing a defendant for a federal offense, has authority to order that the federal sentence be consecutive to an anticipated state sentence that has not yet been imposed.

I

When officers of the Lubbock Police Department arrested petitioner Monroe Setser for possessing methamphetamine, he was already serving a 5-year term of probation imposed by a Texas court for another drug offense. Setser was indicted in state court for possession with intent to deliver a controlled substance, and the State also moved to revoke his term of probation. As often happens in drug cases, the federal authorities also got involved. A federal grand jury indicted Setser for possessing with intent to distribute 50 grams or more of methamphetamine, 21 U. S. C. §841(a)(1), (b)(1)(A)(viii), and he pleaded guilty.

Before the federal sentencing hearing, a probation officer calculated the applicable Guidelines range to be 121 to 151 months' imprisonment. Citing precedent from the United States Court of Appeals for the Fifth Circuit,

United States v. *Brown*, 920 F. 2d 1212 (1991) *(per curiam),* he indicated that the District Court had discretion to make Setser's sentence either concurrent with or consecutive to any sentence anticipated in the separate state-court proceedings. Setser objected, arguing that the District Court lacked such authority. The court nevertheless made the sentence of 151 months that it imposed consecutive to any state sentence imposed for probation violation, but concurrent with any state sentence imposed on the new drug charge. Setser appealed.

While Setser's appeal was pending, the state court sentenced him to a prison term of 5 years for probation violation and 10 years on the new drug charge. It ordered that these sentences be served concurrently. Setser then made before the Court of Appeals, in addition to the argument that the District Court had no authority to order a consecutive sentence, the argument that his federal sentence was unreasonable because it was impossible to implement in light of the concurrent state sentences.

The Court of Appeals for the Fifth Circuit affirmed. 607 F. 3d 128 (2010). Following its earlier *Brown* decision, the court held that the District Court did have authority to order a consecutive sentence. 607 F. 3d, at 131–132. It also held that Setser's sentence was reasonable, even if it was "'partially foiled'" by the state court's decision. *Id.,* at 132–133. We granted certiorari, 564 U. S. ___ (2011), and appointed an *amicus curiae* to brief and argue this case in support of the judgment below, 564 U. S. ___ (2011).

II

Before proceeding further, it is important to be clear about what is at issue. Setser does not contend that his federal sentence must run concurrently with both state sentences imposed after his federal sentencing hearing. He acknowledges that *someone* must answer "the consecutive versus concurrent question," Brief for Petitioner 27,

and decide how the state and federal sentences will fit together. The issue here is *who* will make that decision, which in turn determines *when* that decision is made. One possible answer, and the one the Fifth Circuit gave, is that the decision belongs to the Federal District Court at the federal sentencing hearing.

The concurrent-vs.-consecutive decision has been addressed by §212(a) of the Sentencing Reform Act of 1984, 18 U. S. C. §3584, reproduced in full as Appendix A, *infra*. The first subsection of that provision, which says when concurrent and consecutive sentences may be imposed, and specifies which of those dispositions will be assumed in absence of indication by the sentencing judge, does not cover the situation here. It addresses only "multiple terms of imprisonment . . . imposed . . . at the same time" and "a term of imprisonment . . . imposed on a defendant who is already subject to an undischarged term of imprisonment." §3584(a). Here the state sentence is not imposed at the same time as the federal sentence, and the defendant was not already subject to that state sentence.

Setser, supported by the Government, argues that, because §3584(a) does not cover this situation, the District Court lacked authority to act as it did; and that the concurrent-vs.-consecutive decision is therefore to be made by the Bureau of Prisons at any time after the federal sentence has been imposed. The Bureau of Prisons is said to derive this authority from 18 U. S. C. §3621(b) (2006 ed. and Supp. IV), reproduced in full as Appendix B, *infra*.

On its face, this provision says nothing about concurrent or consecutive sentences, but the Government explains its position as follows: Section 3621(b) gives the Bureau the authority to order that a prisoner serve his federal sentence in any suitable prison facility "whether maintained by the Federal Government or otherwise." The Bureau may therefore order that a prisoner serve his federal sentence in a *state* prison. Thus, when a person subject to

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