

NOTICE

Decision filed 03/04/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0340

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 97-CF-302
	)	
CHARLES BRUCE THOMAS,	)	Honorable
	)	Terry H. Gamber,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.  
Justices Welch and Donovan concurred in the judgment.

**RULE 23 ORDER**

*Held:* Where the defendant does not file the proper motion within the 30-day time limit provided by the statute, an Illinois state court cannot modify a previous sentence to run concurrently with a later-imposed federal sentence.

The defendant, Charles Bruce Thomas, appeals the circuit court's denial of his motion to run his state sentence concurrently with his federal sentence under section 5-8-4(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4(a) (West 2008)). He asks this court to reverse the order denying his motion and to order his state and federal sentences to run concurrently. In response, the State contends that the defendant waited too long to file the motion. In the alternative, the State also argues that the plain language of the statute requires that sentences must be consecutive in the instant case. We affirm.

**BACKGROUND**

On November 6, 1998, the defendant was convicted of two counts of first-degree murder and sentenced to serve concurrent sentences of 60 years. Eleven years later, the defendant filed a motion to run his state sentence concurrently with his federal sentence

under section 5-8-4(a) of the Code (730 ILCS 5/5-8-4(a) (West 2008)). In this motion, he alleged that he was sentenced to 25 years of imprisonment in the federal court for possession with intent to distribute crack cocaine and that sentence was running consecutively to his state sentence. On July 1, 2010, the circuit court found that the motion was filed 11 years after the state sentencing, which was beyond the 30-day time limit, and that under the Code (730 ILCS 5/5-8-4(d) (West 2008)), consecutive sentences are mandatory when one of the defendant's offenses was first-degree murder. The circuit court denied the defendant's motion. The defendant filed this timely appeal.

#### ANALYSIS

Initially, we observe that the defendant has appended documents to his brief that were not made a part of the record on appeal. The State has filed a motion to strike the appended material from the defendant's brief, and the defendant has filed an objection to the motion. The motion and objection were ordered to be taken with the case. Generally, attachments to appellate briefs that are not otherwise of record are not properly before a reviewing court and cannot be used to supplement the record. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 14 (2009). Although we decline to strike the appended material, we will not consider these documents in resolving the appeal. The State's motion is hereby denied.

On appeal, the defendant asserts that consecutive sentences are not mandatory because there was no predicate offense conviction under an Illinois state statute and that it does not matter that the motion was filed late because the circuit court still had authority to modify its judgment. He prays that this court will reverse the order denying the motion to run his state sentence concurrently with his federal sentence.

The State argues that the circuit court had no jurisdiction to reduce the defendant's sentence 11 years after the judgment. The State also argues that the defendant is subject to

mandatory consecutive sentences because he has been convicted of first-degree murder.

Initially, we address the issue of whether a state court can modify its judgment to run concurrently with a later federal conviction under section 5-8-4(a). Section 5-8-4(a) of the Code, in pertinent part, states as follows:

"When a term of imprisonment is imposed on a defendant by an Illinois circuit court and the defendant is subsequently sentenced to a term of imprisonment by another state or by a district court of the United States, the Illinois circuit court which imposed the sentence may order that the Illinois sentence be made concurrent with the sentence imposed by the other state or district court of the United States. The defendant must apply to the circuit court within 30 days after the defendant's sentence imposed by the other state or district of the United States is finalized." 730 ILCS 5/5-8-4(a) (West 2008).

This provision is discretionary; it is within the discretion of the court to leave the sentences to run consecutively. *People v. Bainter*, 126 Ill. 2d 292, 306 (1989).

In the instant case, the defendant's original motion did not allege the date of the alleged federal conviction to allow the circuit court to decide if the motion was timely. However, it does appear from *Thomas v. McElroy*, No. 10-424-GPM, order at 2 (S.D. Ill. Dec. 8, 2010) (memorandum and order), that in 1999, the defendant was convicted and sentenced in the federal court for possessing crack cocaine with an intent to distribute. See *Metropolitan Life Insurance Co. v. American National Bank & Trust Co.*, 288 Ill. App. 3d 760, 764 (1997) (this court may take judicial notice of public documents that are included in the records of other courts). Thus, 11 years passed between the imposition of the defendant's federal sentence and the defendant's motion. There are no exceptions provided in section 5-8-4(a) that allow for motions to be heard after the 30-day time limit. Furthermore, since the application of the statutory provision is discretionary, it was well

within the circuit court's power to allow the sentences to continue to run consecutively. Therefore, we conclude that the circuit court was correct in denying the motion, and we affirm the order. In light of our decision, we will not address the remaining issues.

#### CONCLUSION

For the foregoing reasons, we affirm the circuit court's order denying the defendant's motion to run his state sentence concurrently with his federal sentence.

Motion denied; judgment affirmed.