

RELEVANT CONDUCT SCENARIOS

Charleston, October 25, 2018

Scenario #1

The defendant is convicted of Conspiracy to Distribute Cocaine Base, in violation of 21 U.S.C. §846. The indictment states that from December 2015 until April 2016, the defendant, on three separate occasions, distributed 50 grams of crack, for a total of 150 grams. The presentence investigation report reveals that on November 15, 2015, the defendant was sentenced in state court to serve one month in jail for distribution of 25 grams of crack cocaine that occurred in October 2015.

For what amount of drugs should the defendant be held accountable?

- A. 50 grams
- B. 150 grams
- C. 175 grams

Scenario #2

Defendant is convicted of Theft of Mail, a violation of 18 U.S.C. § 1708. The defendant, a mail carrier, stole several bags of mail from his mail truck. When police contacted the defendant regarding the mail theft, he fled from officers. The defendant was charged and convicted by the state for fleeing officers and false statements to police officers. As a result, the defendant is currently serving a 6-month sentence in county jail.

The court applied §2B1.1 for the theft of mail. The court did not apply an enhancement for obstruction at §3C1.1. Application note 5(B) and (D) indicates that fleeing arrest and false statements to law enforcement are examples of conduct ordinarily not covered under §3C1.1.

2-A

Since §3C1.1 is not applicable, should this prior conviction receive criminal history points?

- A. Yes
- B. No

RELEVANT CONDUCT SCENARIOS, Cont.

#2-B

The court now needs to determine whether to run the theft of mail sentence concurrently or consecutively to the undischarged state term under §5G1.3.

a) If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing for, but before commencing service of, such term of imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.

b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of §1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed as follows:

1. the court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and
2. the sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment.

d) (Policy Statement) In any other case involving an undischarged term of imprisonment, the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.

Which provision of §5G1.3 applies?

- A. Subsection (a)
- B. Subsection (b)
- C. Subsection (d)

RELEVANT CONDUCT SCENARIOS, Cont.

Scenario #3

Defendant is convicted of a count charging a three-year conspiracy to import 5 kg or more of cocaine, with multiple participants and multiple importations. The applicable guideline is §2D1.1 (Drugs).

During the three years of the conspiracy a total of 300 kg was imported. It is determined that Defendant (1) joined the conspiracy after its first year of operation, during which 100 kg had been imported, and (2) after Defendant joined the conspiracy, his undertaking was limited to two importations, each in a quantity of 5 kg.

For what amount of drugs would the guidelines hold Defendant accountable?

- A. 300 kg
- B. 200 kg
- C. 10 kg

Scenario #4

Defendant is convicted of one count of Conspiracy to Commit Health Care Fraud (18 USC §§ 1349 & 1347), committed in the three years from January 2014 through December 2016. Applicable guideline is §2X1.1 (Conspiracy) which directs us to use §2B1.1 (Fraud/Theft).

The three-year conspiracy involved numerous fraudulent claims by a health clinic to Medicare for services that were never provided. The conspiracy included a total of 12 participants, with each fully involved in the fraud activity, but only during the period he/she was employed by the clinic. Defendant doctor joined the clinic and began participating in the illegal activity during the final ten months of the conspiracy, but Defendant doctor knew of all the preceding defrauding.

Does Defendant doctor's relevant conduct include:

- A. All the fraudulent acts by all the participants and all the resulting losses during the three-year conspiracy?
- B. Only the fraudulent acts and resulting losses by Defendant doctor and other participants during Defendant doctor's involvement in the conspiracy?
- C. Only the fraudulent acts and resulting losses by Defendant doctor?

RELEVANT CONDUCT SCENARIOS, Cont.

Scenario #5

Defendant is convicted of one count of bank robbery; Applicable guideline is §2B3.1.

There were no injuries in this robbery.

However, on the day prior to the robbery of conviction, the defendant committed another bank robbery in a similar manner, and in which he struck a teller, resulting in serious bodily injury.

In the application of the robbery guideline, will the §2B3.1(b)(3)(B) SOC for serious bodily injury apply?

- A. Yes
- B. No
- C. It's arguable

Scenario #6

The defendant is convicted of one count of production of child pornography, citing one minor, age 14, exploited during the production on July 15, 2017. On July 7, 2017, the defendant also produced child pornography exploiting a different child, age 9.

The probation officer applied a 2-level increase for the offense involving a minor between 12-16 under §2G2.1(b)(1)(B). The government has objected, arguing that the court should impose a 4-level increase for a minor under 12 under §2G2.1(b)(1)(A).

Which enhancement at §2G2.1(b)(1) should apply, if any?

- A. 4-Levels
- B. 2-Levels
- C. Neither
- D. Both for a total of 6-Levels