

Felon-in-Possession Scenario Sentencing Exercise

U.S. v. James Wallace

United States Sentencing Commission
Office of Education & Sentencing Practice

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FELON-IN-POSSESSION SCENARIO

Conviction:	Count 1
Offense:	Possession of a firearm by a prohibited person on March 1, 2014; specifically a .38 caliber Smith & Wesson revolver; in violation of 18 U.S.C. § 922(g)
Maximum Statutory Penalties:	<ul style="list-style-type: none">• Up to 10 years imprisonment (no mandatory minimum)• Up to \$250,000 fine• Class C Felony (18 U.S.C. § 3559(a)(3))<ul style="list-style-type: none">○ supervised release of up to 3 years following imprisonment (18 U.S.C. § 3583(b)(2))○ up to 2 years imprisonment upon a subsequent revocation of supervised release (18 U.S.C. § 3583(e)(3))

Facts

1. Pursuant to a plea agreement, Defendant:
 - pled guilty to a single count criminal indictment charging knowing possession of a firearm by a prohibited personIn exchange, the government:
 - will not pursue charge of knowingly making false statements in connection with a purchase of a firearm; in violation of 18 U.S.C. § 922(a)(6)
 - will support and make a motion for Defendant to get the “full” reduction for Acceptance of Responsibility
2. The criminal indictment cites Defendant with knowing possession of a firearm, specifically a .38 caliber Smith & Wesson revolver, by a prohibited person on March 1, 2014.
3. Defendant had previously been convicted in state court 15 years ago for armed robbery. That conviction resulted in Defendant being sentenced to a term of imprisonment of 10 years, with credit for 10 months’ time-served pretrial. Defendant was paroled from the state imprisonment after serving seven years.
4. To make “ends meet,” Defendant routinely performed auto repair services for family members and friends outside of the auto repair shop where he is employed. Two years ago, Defendant received from a friend, a .38 caliber Smith & Wesson (S&W) revolver as payment for services made to his vehicle.
5. Defendant immediately pawned the revolver at a local pawnshop.

6. Over the course of the next few months, Defendant's neighborhood suffered a rash of burglaries and home invasions. As a result, Defendant redeemed his .38 caliber S&W revolver from the pawnshop, an action he later explained as a need to protect himself and his property.
7. In redeeming the firearm on December 1, 2013, Defendant had to complete the required Alcohol Tobacco Firearms (ATF) Form 4473, on which he made the false statement that he did not have a prior felony conviction.
8. In its routine review of firearms transaction forms, the Federal Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) was now alerted to the fact that Defendant was a prohibited person in possession of a firearm. Execution of a search warrant at Defendant's residence on March 1, 2014, discovered the .38 caliber S&W revolver Defendant had redeemed from the pawn shop.
9. At the time of the search Defendant was arrested for the instant federal offense, but has remained on pretrial release since later that day.

Prior Record

Defendant has prior criminal record, resulting from conduct committed after he had attained the age of 18, and disposed of in state court, as follows:

- December 1, 1999 Armed Robbery 10 years' imprisonment, with credit given for 10 months pretrial custody
- The offense occurred 15 years ago when Defendant was age 20, and involved Defendant robbing a finance company while armed with a pistol, and upon his flight from the business, forcing a driver from her car and carjacking her vehicle as a getaway car.
- Defendant was paroled at age 27, after serving seven years in state prison and successfully completed parole at age 30, five years ago.

Offender Characteristics

- 35 year old male
- Parents divorced at an early age and Defendant is estranged from both. Defendant has two brothers and a sister, and is especially close with all three.
- High school graduate and has a technical school certificate in automotive repair

- Never married, Defendant has two children, a son age 17 and a daughter age 16, from a prior relationship. Defendant and the ex-girlfriend are on friendly terms, but Defendant only occasionally spends time with his children. He says the children were raised by their mother with whom he never lived, and were so small when he went to prison for almost seven years, that he never had developed a relationship with them.
- Except for the period Defendant was imprisoned, he has regularly provided child support. The children's mother said with the defendant working and providing support for the first time she is able to provide adequately for the children. She fears that they will return to financial hardships if Defendant is incarcerated and unable to continue in his support payments.
- Since his release from incarceration, Defendant has worked in auto repair. For the last two years, including during the period of his pretrial release Defendant has worked as a service technician for an automotive service company and is currently making about \$50,000 annually plus benefits. His employer says Defendant has been a reliable and valuable employee for the company and can maintain his job. Should Defendant be incarcerated for the instant offense his employer said he would be eligible for rehire, assuming a job opening existed at that time.
- Defendant drinks alcohol occasionally. He says he used to smoke marijuana but he has not done so since being released from state imprisonment.
- Defendant is in good physical health, but has a history of bouts of depression for which he takes prescribed medication.
- Defendant is active in his church, regularly attending services and involved with projects around the church. The senior pastor has enthusiastic praise for Defendant's character and work ethic, and will submit a letter to the court stating such, and would like to be a character witness at Defendant's sentencing hearing if allowed to do so.
- Defendant's leisure activities include bowling, playing cards, and watching movies.
- Defendant has an older car on which he has used his car repair skills to make reliable transportation, and he has furnishings and a few electronic entertainment devices for his apartment, but otherwise has no noteworthy assets.

Guideline Application

Offense Level Calculations

Chapter Two Offense Guideline

§2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition)

- §2K2.1(a)(4)(A)

20 (base offense level; Defendant committed the instant offense subsequent to sustaining a felony conviction for a crime of violence)

[Chapter Two Offense Level Total: 20]

Chapter Three Adjustments

- §3E1.1(a)&(b)

-3 (Acceptance of Responsibility)

Offense Level Total 17

Criminal History Calculations

Chapter Four, Part A

Criminal History Category II (based on a total of 3 criminal history points)

Applicable Guideline Range

Chapter Five, Part A - Sentencing Table

27-33 months (2 yrs., 3 mo. - 2 yrs., 9 mos.)

Zone D - no imprisonment substitutions provided for under the guidelines, pursuant to §5C1.1(f), because the guideline range of 27-33 months is in Zone D on the Sentencing Table

Supervised Release

The statute of conviction 18 U.S.C. § 922(g) is a Class C Felony and therefore, the advisory guidelines direct a term of supervised release of at least one year but not more than three years, pursuant to §§5D1.1(a) and 5D1.2(a)(2).

Conditions of Supervised Release

The statutory based Mandatory Conditions and the “Standard Conditions” are addressed at §5D1.3(a)&(c)

Determine if any “Special Conditions,” pursuant to §5D1.3(d)&(e), appear appropriate

Determine if any other conditions, pursuant to §5D1.3(b), warranted in the case at hand to ensure the rehabilitation of the defendant, the protection of the public, or to afford adequate deterrence

Restitution

Because the offense of conviction of 18 U.S.C. § 922(g), there is no issue of restitution in this case

Fine

\$5000 to \$50,000, assuming an ability to pay, pursuant to §5E1.2(a), and based on offense level 17, pursuant to §5E1.2(c)(1), (c)(3), and (c)(4)

Special Assessment

\$100, pursuant to §5E1.3 and 18 U.S.C. § 3013

Departure Considerations

- Pursuant to 18 U.S.C. § 3553(a)(5) the court must consider any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2). These policy statements include the Commission’s policy on departures from the applicable guideline range.

Variance Considerations

- 18 U.S.C. § 3553(a)(1)-(7) provides the factors a court must consider prior to imposing a sentence and can be the basis for a court giving a variance from the advisory guideline range
- Do these factors or the requirement of § 3553(a) that “the court shall impose a sentence sufficient but not greater than necessary” to comply with the purposes at § 3553(a)(2) (“the purposes of sentencing”: punishment, deterrence, protection of the public, and rehabilitation) lead to a variance from the guideline range in this case?

Discussion Questions

1. Do you think that the sentencing range as calculated per the guidelines is appropriate for this defendant? Why? Why not?
2. If you would not sentence the defendant within the otherwise applicable guideline range, what are some factors that would lead you to sentence either above or below the otherwise applicable guideline range?
3. What do you think is the appropriate sentence for this defendant?