

SCENARIOS: ADVANCED GUIDELINE ISSUES

1. Defendant owns a medical supply company. Defendant was indicted for healthcare fraud for submitting \$200,000 in fraudulent bills from January 2015 through June 2015. Defendant has records to show that \$75,000 of the bills were for legitimate medical supplies. The PSR reveals that defendant also submitted \$100,000 in fraudulent bills in 2014.

What is the loss amount under 2B1.1? _____

What is the amount of restitution? _____

2. Between August 2015 and February 2016, the defendant fraudulently obtained money from Federal Credit Union (FCU) by submitting fraudulent automobile and personal loan applications in the name of third parties, some of them deceased. As result of this scheme, the defendant obtained a total of \$500,000 from FCU. The FCU discovered the fraud and filed a civil suit against the defendant. The defendant settled the suit and agreed to pay FCU \$300,000. The defendant was then indicted for the fraudulent loans shortly after the settlement.

What is the loss amount under 2B1.1? _____

What is the amount of restitution? _____

3. Defendant received a mortgage note for \$500,000 from Wells Fargo in 2014. In 2015, Wells Fargo sold the note to First Union for \$200,000. The defendant made no payments on the note; and foreclosure on the property netted \$100,000.

What is the amount of restitution? _____

What is the loss amount under 2B1.1? _____

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4. Defendant pled guilty to one count of armed bank robbery of the First National Bank on April 29, 2016. In exchange for the defendant's plea of guilty to the robbery, the government agrees to drop the other two robberies the defendant committed. The defendant also robbed the First Mariner Bank on March 20, 2016 and the State Credit Union on April 6, 2016.

How many times should the robbery guideline be applied? _____

5. Defendant pled guilty to one count of conspiracy for committing three robberies. The charging document listed 3 robberies which occurred on March 1, March 3, and March 5. (§2X1.1). How many times should the robbery guideline be applied?

6. Defendant is convicted of a drug conspiracy. The conspiracy lasted from December 2015 through April 2016. The indictment cites three deliveries of cocaine: 500 grams on December 28, 2015, 200 grams on February 8, 2016, and 100 grams on March 22, 2016. On November 27, 2015, the defendant was sentenced in state court for distribution of 50 grams of cocaine. This distribution occurred on October 15, 2015.

For what amount of drugs will the defendant be held accountable? _____

7. Defendant is convicted of a drug conspiracy. The conspiracy lasted from December 2015 through April 2016. The indictment cites three deliveries of cocaine: 500 grams on December 28, 2015, 200 grams on February 8, 2016, and 100 grams on March 22, 2016. On August 1, 2016, the defendant was sentenced in state court for distribution of 50 grams of cocaine. This distribution occurred on July 15, 2016.

For what amount of drugs will the defendant be held accountable? _____

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8. Defendant pled guilty to one count of possession of child pornography. During the course of the presentence investigation, the defendant's 35-year old daughter came forward and revealed that she was sexually abused by her father beginning at age 10 and continuing until she approximately the age of 15. She had never reported the abuse to authorities, and the defendant was never charged or convicted of the sexual abuse.

Can the five-level increase for "pattern of activity" at §2G2.2 apply? _____

9. Defendant is convicted of two counts of bank robbery (§2B3.1) and one count of 18 U.S.C. § 924(c) (Possession of a Firearm During a Crime of Violence). The gun cited in the § 924(c) count was the gun possessed during the first count of robbery. The defendant also possessed a gun during the second robbery.

Will the SOC for possession of a firearm at §2B3.1 apply? _____

10. The defendant is convicted of one count of possession with intent to distribute methamphetamine and one count of 18 U.S.C. § 924(c) (Possession of a Firearm During a Drug Trafficking Offense). The gun cited in the § 924(c) count is a sawed-off shotgun, which he possessed during a sale to an undercover agent. The defendant also possessed an AK-47 in connection with the drug offense.

Will the SOC for possession of a weapon at §2D1.1 apply? _____

11. Defendant has a prior conviction for burglary. Eleven years ago, he received a sentence of 2 years' probation. Nine years ago, his probation was revoked and he received a sentence of one year in jail.

How many criminal history points will be assigned to this conviction? _____

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12. Defendant has three prior convictions that are counted separately. For the first conviction, he was sentenced to 45 days followed by 2 years' probation. On the second conviction, he received a sentence of 3 years' probation. On the third conviction, he was sentenced to a term of 2 years' probation. Due to the defendant's instant federal offense, the defendant's probation terms were revoked. The judge imposed one year imprisonment for the revocation.

How many criminal history points will be assigned to these prior convictions? _____

13. The defendant committed 3 robberies: one on 1/5/10, one on 1/8/10, and one on 1/9/10. He was arrested on January 9 in the parking lot of the third bank. On June 25, 2010, he was sentenced for the three robberies at the same time and received a sentence of 5 years' imprisonment on each count to run concurrently.

On March 15, 2016, the defendant was arrested for possession of a short barrel rifle and charged with violating 18 U.S.C. § 922(g).

How many criminal history points apply for the three robberies? _____

Assuming these robbery offenses which were sentenced on the same day would qualify as violent felonies because they have an element of force, does the defendant qualify as an Armed Career Criminal based on these convictions?

14. Defendant's instant offense of conviction is conspiracy to distribute heroin (§2D1.1). The defendant has a prior conviction for distribution of heroin for which he will receive three criminal history points. After pleading guilty to the instant offense, the defendant was charged and convicted in state court of aggravated assault which has an element of force. He will receive two criminal history points for the assault.

Is this defendant a career offender? _____

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15. Defendant's instant federal offense is possession with intent to distribute cocaine (guideline range 51 – 63 months). On three occasions, he sold 500 grams to an undercover agent. The defendant possessed a handgun on one of those occasions. During a routine traffic stop, the handgun was found and the defendant was arrested by the state for unlawful possession of a weapon. He was convicted by the state for the unlawful weapon charge and was sentenced to one-year imprisonment. The defendant is currently serving time on this state charge and has already served 6 months.

Which section of §5G1.3 is applicable? _____

16. Defendant's instant federal offense is possession of child pornography (guideline range 151 – 188 months). Defendant is currently serving a 10-year prison sentence for a prior state conviction for sexual abuse of a minor. The defendant sexually abused the victim on more than one occasion, which triggers the pattern of activity enhancement at §2G2.2(b)(5). The defendant has already served 12 months on his state sentence.

Which section of §5G1.3 is applicable? _____

17. Defendant pled guilty to one count of money laundering (§2S1.1), a violation of 18 U.S.C. § 1956. The defendant was the owner of a mortgage company. His business employed a real estate agent, a home inspector, two loan officers, an underwriter, and an administrative assistant. The defendant's business was engaged in a scheme to obtain inflated mortgage loans and resell them to other mortgage companies. The total loss involved in the mortgage fraud exceeded \$1.5 million. Defendant was the organizer/leader of the fraud. The defendant alone laundered the money.

When applying §2B1.1 to determine the BOL for the underlying offense from which the laundered funds are derived, is the BOL 6 or 7? _____

Will the defendant receive an increase for aggravating role (§3B1.1)? _____

18. Defendant is a former corrections officer who is convicted of one count of false statements. The defendant was interviewed by FBI agents regarding an assault of an

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inmate. The defendant did not participate in the assault, but he did witness two corrections officers assault the inmate. The assault of the inmate was unprovoked. The indictment states that the defendant lied to the FBI by stating that the inmate was unruly and attacked the officers first.

Will the cross reference at §2B1.1(c)(3) apply? _____

19. Defendant was convicted of 922(g), felon in possession. He has a prior offense of Massachusetts Armed Robbery. Section 2K2.1 provides for a base offense level of 20 if the defendant has a prior crime of violence which is defined at §4B1.2. Robbery is listed as a crime of violence at §4B1.2. Does the base offense level 20 apply in this case?