

CASE LAW UPDATE SCENARIOS

1. The defendant was found guilty by jury of two counts of robbery (§2B3.1), two counts of felon in possession (§2K2.1), and two counts of possession of a firearm in furtherance of a crime of violence under 18 U.S.C. § 924(c). On two separate occasions, the defendant and his brother robbed two individual methamphetamine dealers. On both occasions, the defendants threatened the victims with a modified semiautomatic firearm.

A violation of 18 U.S.C. § 924(c) provides a mandatory minimum penalty to be imposed consecutively “to any other term of imprisonment imposed on the person,” including any sentence for the predicate crime. The first count of 18 U.S.C. § 924(c) provides a mandatory consecutive penalty of 5 years. The second count of 18 U.S.C. § 924(c) carries an additional mandatory consecutive penalty of 25 years.

The court calculated the guideline range for the robbery and felon in possession counts to be 84 – 105 months. The defendant faced an additional mandatory consecutive penalty of 30 years in addition to the guideline sentence imposed on the robbery and felon in possession counts. At sentencing, the defendant urged the court to vary from the guideline range and impose one day for the robbery and felon in possession counts, considering his lengthy mandatory minimum sentences.

The judge stated that he would have agreed to the defendant’s request, but he understood that 18 U.S.C. § 924(c) precludes a sentence of one day of imprisonment for the predicate crimes to be followed by the 30-year consecutive penalty mandated by the statute.

Did the judge correctly state that he was prohibited from varying from the guidelines based on the mandatory consecutive minimum sentences required under 18 U.S.C. § 924(c)?

2. The defendant pleaded guilty to one count of felon-in-possession, under 18 U.S.C. § 922(g). The court applied a base offense level of 20 at §2K2.1 because it concluded that the defendant's prior Tennessee state conviction for aggravated burglary qualified as a crime of violence. The defendant's guideline range is 77-96 months.

The district court sentenced the defendant to 96 months. The judge emphasized that the offense was "extremely dangerous and egregious" and that "domestic violence is prevalent" throughout the defendant's criminal history. The court also stated that even if the aggravated burglary was not a crime of violence, it would have varied upward to 96 months.

The appellate court has concluded that Tennessee aggravated burglary is not a crime of violence and that the guideline range should have been 27-33 months, and the court determined the guideline range was error.

Must the appellate court remand the case for resentencing?

3. What if the judge instead stated that he would sentence the defendant to 96 months even if his guideline calculation was incorrect. The judge did not make any statement regarding why 96 months was appropriate but only said that he would sentence at the high end of the range.

If the appellate court determined that the guideline range was calculated incorrectly, will the appellate court remand the case for resentencing?

4. The defendant pleaded guilty to one count of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g). The defendant had a prior conviction for Massachusetts Armed Robbery (Mass. Gen. Laws Ann. Ch 265, § 17). The PSR stated that this offense qualifies as a crime of violence under the guidelines because the definition enumerates robbery as a crime of violence. The government stated this robbery contains an element of force because the defendant admitted in a plea agreement that he pointed a gun at the victim during the robbery. The defendant objected to the PSR, stating that the prior conviction was not a crime of violence.

Is this offense a crime of violence?

5. The defendant was convicted of a conspiracy to commit healthcare fraud, conspiracy to distribute controlled substances and conspiracy to receive kickbacks. The defendant, a doctor, and his co-doctors wrote false prescriptions that were filled by pharmacists. The indictment states that the dates of the conspiracy spanned from January 1, 2012 to December 31, 2016. The doctor joined the conspiracy in January 1, 2014.

The court concluded that the total amount of restitution for the entire five-year conspiracy was \$1,000,000,000. The court ordered the defendant to pay the full amount of restitution. The defendant has appealed the restitution amount ordered by the court.

Is the district court's order of restitution correct?

6. Defendant was convicted of Failing to Register as a Sex Offender under the Sex Offender Registration Act (SORNA) found at 18 U.S.C. § 2250(a). The defendant was required to register as a sex offender based on his 2009 Michigan conviction for sexual assault. In that case, defendant pleaded guilty to sexually assaulting his 12-year old niece when she was left in his care. He received a 7-year sentence for that offense. The defendant has no other prior sex offense convictions.

At sentencing, the probation officer has listed in the sentencing recommendation the following special condition during Lopez's supervised release term:

“Defendant must submit to computer filtering software to block sexually oriented websites for any computer the defendant uses or possesses.”

Is this an appropriate condition?
