

SCENARIOS: DETERMINING THE OFFENSE LEVEL FOR MULTIPLE COUNTS OF CONVICTION

USING THE DECISION TREE, PLEASE ANALYZE THE APPROPRIATE GROUPING DECISION FOR EACH SCENARIO.

1. The defendant pled guilty to one indictment that charged him with violating two counts of 18 U.S.C. § 922(u) (theft of firearm from firearms dealer). The guideline applicable to both counts is §2K2.1. Count one occurred in May 2016. The defendant rammed his vehicle into the gun store, broke in, and stole several firearms. Count two occurred in June 2016. The defendant again rammed his vehicle into the same gun store, broke in, and stole several firearms.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

2. The defendant is charged in two separate indictments. He pled guilty to both indictments. The first indictment is from the Eastern District of Pennsylvania. This indictment charges that the defendant committed both wire fraud and mail fraud from 2006 through 2008. The wire fraud and mail fraud scheme involved the defrauding of federal student loan programs. The applicable guideline is §2B1.1. The second indictment is from the Western District of North Carolina and charges the defendant with access device fraud. This scheme occurred from 2014 through 2015. The defendant fraudulently used stolen credit cards. The applicable guideline in this case is also §2B1.1.

The cases involve different victims and completely separate fraudulent schemes. However, they are being consolidated for sentencing.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

3. The defendant has pled guilty to two counts of robbery (§2B3.1). Count one describes the robbery of the First National Bank on March 11, 2016. The second count describes the robbery of Main Street Bank on June 20, 2016.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

4. Defendant is convicted of one count of possession with intent to distribute marijuana (§2D1.1) and one count of re-entry of a removed alien (§2L1.2). Defendant was part of a marijuana conspiracy involving several other participants. Upon his arrest, agents discovered he was previously deported for aggravated assault and therefore was unlawfully in the United States.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

5. Defendant is convicted of transportation of aliens (§2L1.1) and illegal reentry (§2L1.2). Defendant was arrested after crossing the border with three other aliens. Defendant served as a brush guide through the New Mexico desert. While being processed by Border Patrol Agents, it was discovered that the defendant had previously been deported after a conviction for drug trafficking.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

6. Defendant is convicted of possession with intent to distribute meth (§2D1.1) and false statements (§2B1.1). Defendant is convicted of distribution of 50 grams of methamphetamine (actual). The defendant negotiated several sales of meth with a confidential informant. After arrest, the defendant obstructed justice by providing materially false information to DEA agents. The defendant provided the names of co-defendants who were not, in fact, involved in the drug trafficking.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

7. Defendant is convicted of robbery (§2B3.1) and felon in possession (§2K2.1). The defendant robbed a bank in March, 2016. During the robbery, he possessed a Glock pistol and pointed it at the teller as he demanded the money from her drawer. The defendant was arrested months later after finally being identified by authorities. It was during his arrest at his home that agents discovered three handguns, two 9mm pistols, and a .44 Magnum revolver. The Glock pistol possessed during the robbery was never recovered. The conviction for felon in possession names only the guns found during the search of the defendant's residence.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

8. Defendant is convicted of three counts of sexual exploitation of a child (§2G2.1). The counts involve the same victim, who is 13 years of age. The defendant engaged in sexual contact with the child over the course of a weekend on three occasions: May 1, 2 and 3, 2016. On each occasion, the defendant photographed the victim.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

9. Defendant is convicted of two counts: possession with intent to distribute cocaine (§2D1.1) and carjacking (§2B3.1). The defendant, over the course of several months, distributed approximately 3 kilos of cocaine. In October 2016, the defendant carjacked the vehicle of a gang rival with the intent to rob his competition's supply of drugs – the rival gang member stored his drugs in his car. The defendant was armed, although no one was injured. The robbery guideline contains a one-level increase if the object of the offense was to take a controlled substance.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

10. The defendant pled guilty to one count of bank fraud (§2B1.1) and one count of money laundering (§2S1.1). The defendant was a bank branch manager who used his position to process fraudulent loans that the defendant deposited into his own account for personal gain.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?

11. The defendant pleaded guilty to three counts of felon in possession (§2K2.1), one count of distribution of oxycodone (§2D1.1), one count of distribution of heroin (§2D1.1), and one count of using a firearm in connection with a drug trafficking offense, a violation of 18 U.S.C. § 924(c). The three firearms that are the subject of the felon in possession counts were carried by the defendant during various drug sales.

Do these multiple counts group under §3D1.2? If so, under which rule? Or, should units be assigned under §3D1.4?
