

SENTENCING SCENARIOS

Scenario #1

Defendant Harris is convicted of drug trafficking under 21 U.S.C. § 841. The PSR notes that a 10-year mandatory minimum applies. Due to Harris' lengthy and substantial drug trafficking, as well as his criminal record, his guideline range is above the ten-year minimum - 188-235 months. The government has filed a §5K1.1 motion and a § 3553(e) motion based on the Harris' substantial assistance. Harris debriefed with DEA and ATF agents about sources of drugs and firearms. According to the government, the agents found Harris credible, though they have not been able to generate charges against others based on the information he provided.

Harris's attorney has presented information in mitigation and has requested a variance based on his criminal history category over-representing the seriousness of his criminal history. Harris has several theft convictions tied to his drug use, according to his attorney. Harris has a history of methamphetamine addiction and was using during the offense. Harris suffers from high blood pressure that is controlled by medication. While on bond on this offense, Harris began drug treatment and started taking classes to receive his GED.

Offense Level Computation

Count 1: Conspiracy to Possess with Intent to Distribute and Distribute Cocaine

Base Offense Level: Drug Trafficking (§2D1.1). **34**

Specific Offense Characteristics: None. **0**

Adjusted Offense Level (Subtotal): **34**

Acceptance of Responsibility: **-3**

Total Offense Level: **31**

Guideline Imprisonment Range: Total offense level 31, criminal history category VI = 188 to 235 months.

Mandatory Minimum: 120 months

What is your sentence, and why?

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Scenario # 2

Defendant Gonzalez was found guilty of Conspiracy to Possess with Intent to Distribute and Distribution of Heroin in violation of 21 U.S.C. § 846, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 851. He is facing a mandatory minimum sentence of 240 months' imprisonment. Defendant Gonzalez sold a significant amount of heroin in order to support his own drug addiction. He was not an organizer, leader, manager, or supervisor of others in the instant offense. He has previous convictions for possession of illegal drugs, but they were all too old to receive criminal history points under Chapter 4 of the Guidelines Manual. The defendant's criminal history computation resulted in a total of 1 point. According to the U.S. Attorney's Office, the defendant cooperated with the government, but his cooperation did not result in a recommendation to the Court for a reduction for substantial assistance.

History and Characteristics of the Defendant:

Defendant Gonzalez had a traumatic childhood. His father was not involved in his life on a consistent basis. His father did not live in the home, as he was a traveling musician, but he would stay with the defendant's family periodically when he came back into town. When his father was there, he was physically abusive toward the defendant's mother in front of the children. The defendant did not have a positive male role model throughout his childhood.

The defendant's family resided in Los Angeles, California, until he was 17 years old. The defendant's mother struggled to support her children throughout his childhood. The defendant often had to beg for money in the streets. The defendant recalled living in a one-room apartment in a bad neighborhood, where the children were exposed to violence and other criminal activity on the streets. He also recalled times when the children had to go without adequate food or clothing. Additionally, when he was 15 years old a gang member that resided in his neighborhood put a gun to his head and pulled the trigger. The gun jammed and the assailant started kicking the defendant, at which time he fled. The assailant then started firing the gun toward the defendant but missed him. Additionally, when the defendant was 17 years old he was riding in a car when another gang member started shooting at the car. The bullets went through the car and struck him in the lower back on the right side. The defendant reported that everyone who resided in the neighborhood was either a gang member, a drug dealer, or both.

Offense Level Computation

Count 1: Conspiracy to Possess with Intent to Distribute and Distribution of Heroin

Base Offense Level: §2D1.1

36

Specific Offense Characteristics: Pursuant to USSG §5C1.2, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds that the defendant meets the criteria in 18 U.S.C. § 3553(f)(1)-(5) set forth below: (1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines before application of

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subsection (b) of §4A1.3 (Departures Based on Inadequacy of Criminal History Category); (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the instant offense; (3) the instant offense did not result in death or serious bodily injury to any person; (4) the defendant was not an organizer, leader, manager, or supervisor of others in the instant offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848; and (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement. Therefore, the Offense Level is decreased by 2 levels.

Acceptance of Responsibility:

-2

Total Offense Level:

-3

31

Guideline Imprisonment Range: Total offense level 31, criminal history category I = 108 to 135 months.

Identify any possible grounds for departures or variances, and provide justification for those departures or variances.

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Scenario # 3

Defendant Small was found guilty of three counts of Receiving Child Pornography and one count of Possession of Child Pornography. His offenses of conviction involved a more than 3,700 images involving sexual exploitation of a minor, some of which involved material that portrayed sadistic or masochistic conduct.

History and Characteristics of the Defendant:

Defendant Small has no history of involvement with the criminal justice system and has no history of substance abuse issues. He has significant physical health issues including suffering from Type I diabetes for approximately 30 years, with complications resulting in retinopathy, neuropathy, frequent severe hypoglycemia, and seizures. He also suffers from osteoporosis and Meniere's Disease, which results in severe vertigo. Defendant Small suffers from hypercholesterolemia, and he has a history of bronchiectasis. Finally, he was diagnosed with coronary artery disease during the past year. He had two stents placed in his heart during the past year after suffering a heart attack. He uses an insulin pump and is prescribed numerous medications.

Defendant Small was sexually abused by three older males from the time that he was 12 years old until he was 15 years old. He was first exposed to pornography by the three men, which led to them exposing themselves to each other. He was eventually exposed to anal intercourse by one of the men. At the time of the presentence investigation, Defendant Small was being treated for obsessive compulsive disorder and an addiction to internet pornography.

During the presentence investigation, the probation officer learned that Defendant Small molested a child more than 20 years ago on one occasion.

Offense Level Computation

Count Group 1: Three counts Receiving Child Pornography (Counts 1 - 3); Possession of Child Pornography (Count 4)

Base Offense Level: Possession and Receipt of Child Pornography (§2G2.2).	<u>18</u>
Specific Offense Characteristics: Prepubescent minor [§2G2.2(b)(2)].	<u>+2</u>
Specific Offense Characteristics: Sadistic or masochistic material [§2G2.2(b)(4)(A)].	<u>+4</u>
Specific Offense Characteristics: Use of a computer [§2G2.2(b)(6)].	<u>+2</u>
Specific Offense Characteristics: Number of images [§2G2.2(b)(7)(D)].	<u>+5</u>
Adjustment for Obstruction of Justice: Lied to investigators (§3C1.1).	<u>+2</u>
Total Offense Level:	<u>33</u>

Guideline Imprisonment Range: Total offense level 33, criminal history category I = 135 to 168 months.

Identify any possible grounds for departures or variances, and provide justification for those departures or variances.

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Scenario #4

Defendant Gall is a former professional sports player who was found guilty of one count Wire Fraud and one count False, Fictitious or Fraudulent Statements. He worked for a charitable organization, and over a period of four-and-a-half years he solicited and obtained donations to that charitable organization from numerous individuals and organizations. He used his status as a former professional sports player, and the relationships that he developed as a result of that status, in order to solicit and obtain those donations. He then used the money for his own financial needs, including to pay for personal expenses, including but not limited to his mortgage payments, entertainment, meals, travel, groceries, and dry cleaning. He also used the donations to gamble with (including paying to fly to Las Vegas to gamble) and to pay his gambling debts. The total amount of loss that Defendant Gall caused was between \$173,339.61 and \$200,954.61. During the investigation in the instant case, Defendant Gall lied to FBI agents about using the funds that had been donated to the non-profit organization for his own financial needs. He entered into a plea agreement with the government based on a lower loss amount, and his resulting guideline imprisonment range is 30 months to 37 months, although the presentence investigation report calculated it to be 41 months to 51 months.

History and Characteristics of the Defendant:

Defendant Gall had a tumultuous childhood. He reported that he has never met his father. His family did not have a stable home until he was a teenager. They resided with various friends and relatives, and they relied on their church and other families to feed them. There were also times when the defendant's family members went without food and adequate clothing. Defendant Gall recalled that at times his family had to stay in buildings that were condemned. The buildings did not have electricity or bathrooms, and they only had a wooden stove to cook on and to provide heat. He stated that they stayed in those buildings for up to three months at a time. He recalled being bitten by rats at times while they were in those buildings.

Defendant Gall suffers from frontal lobe brain damage as a result of repeated trauma to the head that he experienced during the thirteen years that he played in professional sports. He suffers from depression and anxiety as a result of this brain damage. Defendant Gall also suffers from a gambling addiction, and he has a history of abusing alcohol while he gambled. He has a consistent employment history. Finally, there is some question about whether or not Defendant Gall was suffering from diminished capacity throughout his involvement in the instant case because of his brain damage.

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Offense Level Computation

Count Group 1: Wire Fraud and False, Fictitious, or Fraudulent Statements

Base Offense Level: Wire Fraud (§2B5.1).	<u>7</u>
Specific Offense Characteristics: Loss of between \$95,000 and \$150,000 pursuant to Plea Agreement. [§2B1.1(b)(1)(E)].	<u>+8</u>
Specific Offense Characteristics: 10 or more victims. [§2B1.1(b)(2)(A)].	<u>+2</u>
Specific Offense Characteristics: Misrepresentation. [§2B1.1(b)(9)(A)].	<u>+2</u>
Adjustment for Role in the Offense: Abuse of Position of Trust (§3B1.3).	<u>+2</u>
Adjustment for Obstruction of Justice: False Statements (§3C1.1).	<u>+2</u>
Total Offense Level:	<u>23</u>

Guideline Imprisonment Range: Total offense level 23, criminal history category I = 46 to 57 months.

Identify any possible grounds for departures or variances, and provide justification for those departures or variances.

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Scenario #5

Defendant Schutter (age 23) was found guilty of two counts Threats to Another by Interstate Communications. During a period of approximately one year, he made numerous threats to his adoptive parents. He initially contacted them by telephone on several occasions and left explicitly heinous messages on their voicemail. In the messages he threatened to kill his adoptive parents in cruel and degrading manners. Additionally, on Defendant Schutter's Facebook page he posted a message asking if any of his friends wanted to travel with him to where his adoptive parents resided in order to take their lives. FBI agents spoke with Defendant Schutter after these initial incidents and he admitted to making the calls and leaving threatening messages from another state. Approximately four months later, he resumed his threatening actions toward his adoptive parents. He first drove to their house and yelled at them from the road until law enforcement officers arrived and asked him to leave. He subsequently left six messages on their voicemail in which he threatened to kill them in unspeakable manners.

History and Characteristics of the Defendant:

Defendant Schutter abused marijuana on a regular basis for at least three years before committing the instant offense. He graduated from high school and had a somewhat stable employment history. He suffered from mental health issues during his childhood.

Offense Level Computation

Count Group 1: Threats to Another by Interstate Communications

Base Offense Level: Threats to Another by Interstate Communications (§2A6.1).	<u>12</u>
Specific Offense Characteristics: More than two threats. [§2L1.2(b)(2)(A)].	<u>+2</u>
Adjusted Offense Level (Subtotal):	<u>14</u>
Acceptance of Responsibility:	<u>-2</u>
Total Offense Level:	<u>12</u>

Guideline Imprisonment Range: Total offense level 12, criminal history category I = 10 to 16 months (Zone C).

Identify any possible grounds for departures or variances, and provide justification for those departures or variances.