

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 pleaded guilty to two counts. The first count is distribution of fentanyl resulting in death of victim A. The second count is distribution of fentanyl resulting in death of victim B. The guideline applicable to both counts is §2D1.1. Each offense of conviction establishes that death resulted from the use of the fentanyl.

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 a pharmacist tech who used her position to generate and create fraudulent scripts for opioid medication. She had access through her position to use the computer to create fake prescriptions and then process them using either children's names or fake names to obtain the pills herself. The defendant pled guilty to five counts of acquiring a controlled substance by fraud, a violation of 21 U.S.C. § 843(a)(3). The guideline applicable to all counts is §2D2.2.

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

3. Defendant pleaded guilty to five counts of assault. The applicable guideline for all counts is §2A2.3. The defendant, a former prison guard, pepper sprayed five inmates without cause or justification. The five inmates were all sprayed on the same occasion at the same time.

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

4. The defendant has two counts of conviction. The first count of felon in possession occurred in January 2017. The defendant, a felon, was in possession of a handgun during a traffic stop. The second count is a violation of 18 U.S.C. § 922(o), unlawful possession of a

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machine gun. This offense occurred in April 2017. The machine gun was found by federal agents when they arrived at the defendant's residence to serve the defendant with an arrest warrant for count one. The guideline applicable to both counts is §2K2.1.

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 two counts: illegal reentry (§2L1.2) and alien in possession of a firearm (§2K2.1). The defendant was contacted by law enforcement to provide information about his cousin, who was under investigation for a drug offense. During the interview with law enforcement, it was revealed that the defendant had been residing in the United States illegally for almost 10 years. The defendant also revealed that he was asked by his cousin to "hold onto" his cousin's firearm for a while. The defendant kept the firearm in his closet until he turned it over to law enforcement during the interview.

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 robbery (§2B3.1) and felon in possession (§2K2.1). The defendant robbed a bank in November 2017. 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?

7. Defendant is convicted of one count of illegally reentering the United States (§2L1.2), and one count of possession of fraudulent naturalization documents (§2L2.2). The defendant

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had fraudulent identification documents that he used to obtain employment when he was, in fact, unlawfully remaining 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?

8. 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?

9. Defendant is convicted of one count of sexual exploitation of a child (§2G2.1), and one count of distribution of child pornography (§2G2.2). The counts involve the same victim, who is 13 years of age. The defendant persuaded the victim to produce explicit images of herself. The defendant then distributed the images over the dark web.

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

10. Defendant pleaded guilty to two counts: burglary of a post office (§2B2.1) and possession of stolen mail (§2B1.1). On December 10, 2017, the defendant unlawfully entered the post office and stole a bag of undelivered mail.

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