

RELEVANT CONDUCT IN DRUG AND FIREARMS CASES

Scenario #1

Defendant Marc Smith plead guilty to a heroin conspiracy that, according to the Indictment, began in February 15, 2017 and ended on December 15, 2017. The total amount of drugs for the conspiracy is 3 kilos of methamphetamine. Smith never sold drugs on the streets; rather, his role was to transport heroin from a supplier in New Jersey to street level dealers in Virginia so the street level dealers could sell the drugs. Smith was paid a flat fee for each trip. The Indictment lists three instances where Smith delivered drugs:

- April 1, 2017: 50 grams
- May 20, 2017: 50 grams
- September 2017: 50 grams

Smith knew that the conspiracy involved many other people but he didn't know who they were. After his last shipment, Smith heard that someone died of a drug overdose from heroin and Smith decided that he would stop transporting drugs. He was arrested for the instant federal offense on January 1, 2019.

1(a): What quantity of drugs will be attributed to Smith?

1(b): The probation officer reads through the discovery and learns that Smith actually made two other trips from New Jersey to Virginia on the following dates

January 19, 2017: 60 grams of heroin

June 3, 2017: 60 grams of heroin

These transactions are not listed in the indictment

After learning this information, what quantity of drugs would you assign to Smith?

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1(c): Upon further research, you learn that Mr. Smith was stopped by the New Jersey police during his trip on January 19, 2017. He was arrested after a search of his car turned up the drugs. On January 25, 2017, he pleaded guilty to possession of heroin and received a sentence of probation.

Does this information change the drug amount attributed to Smith?

1(d): Mr. Smith argues that he is eligible for safety valve. The government counters that he cannot get safety valve relief because there was a death that resulted as a part of this conspiracy. Specifically, the government has proof that three people died as a result of the drugs distributed during this conspiracy. Therefore, the third criteria; “the offense did not result in death or serious bodily injury”- has not been met.

Is Mr. Smith eligible for safety valve?

Scenario #2

Mr. Howard’s home was the subject of a search warrant where the law enforcement officers found two firearms and 35 grams of methamphetamine. The drugs and guns were found together in a locked box in the defendant’s closet. Defendant Howard plead guilty to the following offenses:

- Count 1: Conspiracy to distribute methamphetamine in violation of 18 USC § 841(a)(1) and (b)(1)(C) – Statutory maximum of 20 years
- Count 2: Felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) – Statutory maximum of 10 years
- Count 3: Possession of a firearm in connection with a drug trafficking offense in violation of § 18 U.S.C. 924(c) – mandatory minimum 5 years

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2(a): Does the specific offense characteristic for possession of a dangerous weapon at §2D1.1(b)(1) apply in this case?

2(b): Does the specific offense characteristic for possessing a firearm in connection with another felony offense at §2K2.1(b)(6)(B) apply in this case?

2(c): Do Counts 1 and 2 group?

Scenario #3

Defendant Washington was convicted of the one count Felon in Possession of a Firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

Mr. Washington was pulled over for drunk driving. Because he had an outstanding warrant, the officer searched his vehicle and found a .40 caliber pistol which is the pistol in the 18 U.S.C. §922(g) violation. A subsequent search of his home resulted in the discovery of six additional firearms. These firearms are not listed in the indictment. 2 of the firearms were stolen and one firearm had a obliterated serial number. One of the firearms found in the home was a sawed-off shotgun that the police were able to trace to a robbery where the security guard was shot and gravely wounded.

3(a): Will Washington get an increase under §2K2.1(b)(1) for number of firearms to include the weapons found at his home?

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3(b): Does the specific offense characteristic for stolen firearm and/or obliterated serial number apply pursuant to 2K2.1(b)(4) apply?

3(c): Will Washington get an increase for use of a firearm in connection with another offense under §2K2.1(b)(6)(B)?

3(d): Will the cross reference at §2K2.1(c) apply?
