

SCENARIOS: CRIMINAL HISTORY: IMPLICATIONS

ARE THESE SCORED CORRECTLY?

1. On April 29, 2018, the defendant, armed with a Glock pistol, carjacked a vehicle. After the carjacking, he led police on a high-speed chase. After crashing the vehicle, the defendant exited the car and fired the Glock pistol at one of the officers. The officer was grazed in the arm by a bullet and required stitches. The defendant was arrested by state police on the scene. The state charged the defendant with aggravated assault for the assault on the police officer.

On May 15, 2018, the defendant was charged in federal court with carjacking (18 U.S.C. § 2119) and possession of a firearm in connection with a crime of violence (18 U.S.C. §924(c)). The defendant pleaded guilty to both counts. The guideline applicable to the carjacking is §2B3.1.

The defendant's criminal history is as follows:

Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
03/04/2012	Distribution of a Controlled Substance (felony) Wicomico County Circuit Court Salisbury, MD	04/07/2012: 6 months custody	§4A1.1(b)	2
04/29/2018	Aggravated Assault (felony) Anne Arundel County Circuit Court Annapolis, MD	06/13/2018: 18 months custody	§4A1.1(a)	3

Is the defendant's criminal history scored correctly? Why or why not? If so, the defendant is a career offender.

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2. The instant offense of conviction is possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841 (applicable guideline §2D1.1). The indictment alleges that the defendant, on December 17, 2018, distributed over 50 grams of methamphetamine.

The defendant's criminal history is as follows:

Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
11/15/2012	Distribution of crack cocaine (felony) Hennepin County District Court Minneapolis, MN CR-14-98484	01/07/2013: 60 days custody	§4A1.1(b)	2
11/15/2012	Distribution of crack cocaine (felony) Hennepin County District Court Minneapolis, MN CR-14-98652	01/07/2013: 60 days custody, to run concurrent with CR-14-98484	§4A1.2(a)(2)	0
12/12/2012	Possession with Intent to Distribute Crack Cocaine (felony) U.S. District Court District of Minnesota	05/22/2013: 30 months custody	§4A1.1(a)	3

In 2013, when the defendant was sentenced in federal court for possession with intent to distribute crack, the prior state convictions did not count for criminal history because they were relevant conduct to the federal offense. Therefore, the defense attorney argues that the prior state and federal cases should be treated as a single sentence so that his client is not a career offender.

Is the defendant's criminal history scored correctly? Why or why not? If so, the defendant is a career offender.

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3. Defendant pleaded guilty to one count of possession with intent to distribute fentanyl, in violation of 21 U.S.C. § 841 (applicable guideline §2D1.1). The indictment alleges that the defendant, from August 2018 through October 2018, distributed over 40 grams of fentanyl.

The defendant's criminal history is as follows:

Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
10/12/2011	Theft (felony) Miami-Dade Circuit Court Miami, FL	12/30/2011: 60 days custody	§4A1.1(b)	2
09/14/2013	Burglary (felony) Miami-Dade Circuit Court Miami, FL 2010-CR-34873	11/27/2013: 6 months custody	§4A1.1(b), §4A1.2(a)(2)	2
09/14/2013	Aggravated Assault (felony) Miami-Dade Circuit Court Miami, FL 2010-CR-37124	11/27/2013: 2 months custody consecutive to 2010-CR-34873	§4A1.2(a)(2), §4A1.1(e)	1

Is the defendant's criminal history scored correctly? Why or why not? If so, the defendant has five criminal history points and is automatically ineligible for relief under the statutory safety valve.

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4. The instant offense of conviction is possession with intent to distribute heroin, in violation of 21 U.S.C. § 841 (applicable guideline §2D1.1). The indictment alleges that the defendant, from on or about January 29, 2017 through May 30, 2017, distributed over 100 grams of heroin.

The defendant's criminal history is as follows:

Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
06/22/2000	Robbery (felony) Danville Circuit Court Danville, VA	08/03/2001: 20 years' probation	§4A1.2(e)(2)	0
05/29/2013	Theft (misdemeanor) Bibb County Superior Court Macon, GA	06/15/2013: 90 days custody; 15 days credit time served	§4A1.1(b)	2
02/18/2015	Sale of Methamphetamine (felony) Bibb County Superior Court Macon, GA	04/03/2015: 3 years' imprisonment, 2 years suspended	§4A1.1(b)	2

The defendant committed the instant offense while serving a term of probation for robbery. Therefore, two additional criminal history points were assigned under §4A1.1(d). The defendant has a total of six criminal history points.

Is the defendant's criminal history scored correctly? Why or why not? If so, the defendant has six criminal history points and is automatically ineligible for relief under the statutory safety valve.

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5. The instant offense of conviction is illegal reentry in violation of 8 U.S.C § 1326 (applicable guideline §2L1.2). The defendant illegally reentered the United States on July 28, 2018.

The defendant's criminal history is as follows:

Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
04/24/2005	Distribution of Marijuana (felony) Pima County Superior Court Tucson, AZ	07/30/2005: 3 years' probation 11/03/2007: Probation revoked, 180 days imprisonment	§4A1.1(b)	2

Is the defendant's criminal history scored correctly? Why or why not? If so, the defendant will receive a four-level increase at §2L1.2.

6. The defendant pleaded guilty to one count of distribution of 500 grams of methamphetamine that occurred on March 22, 2018.

The defendant's criminal history is as follows:

Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
04/16/2003	Burglary (felony) Superior Court of Connecticut; Hartford, CT	07/30/2003: 3 months' custody, 57 months' probation to follow 11/03/2005: Probation revoked, 6 months' custody 06/20/2006: Probation terminated, 6 months' custody	§4A1.1(a)	3

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Is the defendant's criminal history scored correctly? Why or why not? If so, the defendant will not be eligible for the safety valve.

7. The defendant was found guilty of armed robbery, in violation of 18 U.S.C. § 2113(a). The applicable guideline is §2B3.1. The robbery occurred on March 7, 2018.

The defendant's criminal history is as follows:

Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
12/05/2004	Distribution of Cocaine (felony) Kenton County Circuit Court Covington, KY Case number: 2004-CR-856	4/27/2005: 2 years' probation 01/12/2007: Probation revoked; 15 months custody	§4A1.1(a), §4A1.2(k)	3
1/29/2005	Distribution of Cocaine (felony) Kenton County Circuit Court Covington, KY Case number: 2005-CR-125	04/27/2005: 2 years' probation 01/12/2007: Probation revoked; 15 months custody concurrent with case number 2004-CR-856	§4A1.2(e)(2),	0
12/07/2006	Robbery (felony) Kenton County Circuit Court Covington, KY	01/12/2007: 15 months custody concurrent with revocation time imposed in case numbers 2004-CR-856 and 2005-CR-125	§4A1.1(a)	3

Is the defendant's criminal history scored correctly? Why or why not? If so, the defendant will be a career offender.

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8. The instant offense of conviction is felon in possession of a firearm, in violation of 18 U.S.C. § 922(g) (applicable guideline is §2K2.1). The instant offense occurred on July 19, 2017, when his state probation officer conducted a home visit and discovered the weapon. The defendant was arrested by federal law enforcement on August 1, 2017.

The defendant's criminal history is as follows:

Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
01/18/2017	Burglary (felony) Superior County Court of Los Angeles County Los Angeles, CA	04/11/2017: 2 years' probation 09/05/2017: probation revoked, 2 years' custody	§4A1.1(a), §4A1.2(k)	3

The defendant committed the instant offense while serving a term of probation for burglary. Therefore, two additional criminal history points were assigned under §4A1.1(d). The defendant has a total of five criminal history points.

The defense attorney argues that the revocation time imposed for the state burglary conviction should not be added to calculate the criminal history points for his client because the revocation time was imposed solely based upon the fact that the defendant committed the instant offense of felon in possession. The attorney argues that this is "triple counting" of criminal history is unwarranted – the state burglary conviction is counted; the revocation time is counted; and the fact that the defendant was serving a probation term at the time of the instant offense is also counted.

Is the defendant's criminal history scored correctly? Why or why not?
