

SENTENCING SCENARIOS

Scenario 1: Sentencing Liability

Defendant Smith has pled guilty to one count of possession with intent to distribute 150 grams of methamphetamine (actual) on June 18, 2018. The June 18 transaction was a controlled-buy using a government informant and was audio-recorded. Smith was arrested after driving away from the sale and had the buy money in the glove compartment.

The discovery given to the defense and the probation officer contains a report that details the informant's statement upon his own arrest for drug trafficking. During this interview, the informant claims he met with Smith on four previous occasions (before the June 18 transaction) to buy drugs from Smith. When asked what quantity of drugs he bought from Smith, the informant estimated that he bought 150 grams of meth on each occasion, for a total of 600 grams. The informant has never testified in any hearing and his identity has not been revealed.

Probation Officers: What would you do with this information?

Defense Attorneys: What arguments would you make to keep this information out of the PSR?

Prosecutors: Do you need to do further investigation to confirm the additional amounts? What steps would you take?

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SCENARIO 2: A Presentence Interview with Sensitive Topics

Defendant Andrea Cross pleaded guilty to one count of possession with intent to distribute crack under 21 U.S.C. §§ 841(a) and (b)(1)(B). She is facing a five-year mandatory minimum and is not eligible for safety valve because of her criminal history. All of her prior convictions involve either simple possession of drugs or distributing small amounts of drugs. After her guilty plea, Ms. Smith meets with her attorney and a probation officer for the presentence interview. The interview is going fine until the subject of sexual abuse comes up. At that time, she clams up and refuses to talk. While her attorney does his best to help, Cross gets more and more agitated until she stops the interview altogether.

Probation officers and defense attorneys: Has this happened to you? How can you salvage this interview? What are other ways you can get this information? Why is this information important?

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Scenario 3: Acceptance of Responsibility

Defendant Jones pled guilty to mail fraud. The applicable guideline is §2B1.1. Jones falsely represented that her husband was still living in order to continue collecting his veteran's benefits after his death. This continued for three years, and the total loss to the government is just above \$30,000.

Jones pled guilty one month after arraignment and remained on bond. She is 50 years old and lives with three of her grandchildren whom she supports. Jones works as a cashier at a large grocery-store chain – a job she obtained after being arrested on the mail fraud offense.

The probation officer initially awarded a two-level reduction for acceptance of responsibility based on her plea of guilty and a signed statement that she accepted responsibility for the offense. Two weeks before sentencing, however, Jones tested positive for marijuana. When confronted by the supervising officer, Jones admitted the drug use and said the stress of the upcoming sentencing caused her to lapse into reuse. She had begun smoking marijuana when her husband began purchasing it from a dispensary to calm his PTSD symptoms. Jones also told the supervising officer that she does not feel it's fair that she is in federal court over "money the government owed me anyway."

Probation Officers: What would you do with this information? Do you revise the report to take away the acceptance of responsibility reduction?

Defense Attorneys: What arguments would you make to keep the acceptance of responsibility reduction?

Prosecutors: Would you argue against granting the acceptance of responsibility reduction? Why?

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Scenario 4: Departures and Variances

Defendants, the Browns, are husband and wife. They each pleaded guilty to one count of conspiracy to distribute methamphetamine (actual) and each faces a ten-year mandatory minimum penalty due to drug quantity. The case arose when Ms. Brown was pulled over on the highway while driving a truck with a hidden compartment and a kilogram of meth (actual) hidden inside. Mr. Brown was in the passenger seat. Both admitted to knowingly transporting meth from their home in Texas to Denver, Colorado on multiple occasions.

The Browns have worked at Houston-area oil refineries for more than ten years. Two years ago, for their eldest son's 16th birthday, they bought him a motorbike. Within 4 months, he crashed and was left a quadriplegic. Through internet searches, the Browns sought treatment all over the world but could not afford an experimental \$50,000 treatment in Germany. They started a GoFundMe page but only collected \$5,000. Delaying the treatment would render it less effective, according to doctors, so the Browns accepted a friend's offer to introduce them to someone who could help them make money in a hurry. The Browns met with the meth supplier and agreed to drive for him in exchange for cash payments of \$5,000 per trip.

Both have cooperated with the government pursuant to cooperation agreements. Pursuant to a different investigation, the supplier was arrested. The Browns were scheduled to testify against him, but on the morning of the trial, the supplier pled guilty. The government has filed motions under §5K1.1 and § 3553(e).

Mr. Brown has one prior assault conviction that is too old to count toward his criminal history, therefore, he is eligible for safety valve relief. Ms. Brown has a prior conviction for embezzlement, for which she was sentenced to 18 months in prison. Because she has three criminal history points, she is not eligible for safety valve relief under the guidelines or the First Step Act.

The guidelines range for Mr. Brown is 120-135 months. Because of her criminal history, Ms. Brown's range is 121-151 months.

Attorneys: What sentence will you seek and what factors will you point to justify it?

Probation Officers: What, if any, additional investigation would you conduct regarding possibly mitigating factors? What sentence would you recommend to the court?