

Relevant Conduct Exercises



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RELEVANT CONDUCT EXERCISES

Exercise #1

Defendant Sams is one of 12 defendants convicted of Conspiracy to Commit Health Care Fraud from February 14, 2014 to February 13, 2017; Applicable guideline §2B1.1 (Fraud)

The conspiracy involved the two owners of a patient care corporation (“the corporation”) and ten individuals who each owned a home health therapy staffing company (“staffing company”) from which the corporation obtained staff to provide their patient care. Defendant Sams was the owner of one of the staffing companies.

In the scheme, the corporation, in coordination with one of the staffing companies, would submit bills to Medicare for services that were medically unnecessary, not eligible for Medicare reimbursement, or were never provided. The conspiracy defrauded \$10 million annually from Medicare, for a three-year total of \$30 million.

The corporation was involved in each of the fraudulent billings, while each of the ten staffing companies was only involved in the fraudulent billings related to their respective company. Likewise, the two owners of the corporation got a share of the proceeds from every fraudulent billing, while the owners of the staffing companies only got a share of proceeds from the fraudulent billings in which their respective company was involved.

Defendant Sams became the owner of his staffing company at the start of the final year of the conspiracy. During that year, Sams was involved with the corporation in \$1 million of fraudulent billings, from which Sams received \$500,000 as his share of the proceeds. Sams was aware, however, that the corporation was engaged in similar fraudulent billings with the other staffing companies, both during and prior to Sams’ involvement in the conspiracy.

What is the “loss” amount for Defendant Sams in the application of the fraud guideline?

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Exercise #2

Defendant Guy is convicted of Conspiracy to Distribute Heroin during a cited two year period; Applicable guideline §2D1.1 (Drugs).

Defendant Guy was in the conspiracy during the entire two-year period, and in his function, he transported all the drugs distributed during the conspiracy from the main supply location to where needed.

Defendant Guy is not known to have possessed any firearm or other dangerous weapon during the conspiracy. However, on some of the occasions when Guy transported the drugs along with a co-participant, the co-participant had a firearm.

Does the Drug guideline specific offense characteristic for “firearm” at §2D1.1(b)(1) (shown below) apply for Defendant Guy?

(b) Specific Offense Characteristics

(1) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.

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Is Defendant Guy precluded from receiving the Drug guideline “safety valve” specific offense characteristic §2D1.1(b)(17) because of the criteria at §5C1.2(a)(2) for firearm (shown below)?

§2D1.1.

* * *

(b) Specific Offense Characteristics

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(17) If the defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by **2** levels.

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§5C1.2. Limitation on Applicability of Statutory Minimum Sentences in Certain Cases

(a) Except as provided in subsection (b), in the case of an offense under 21 U.S.C. § 841, § 844, § 846, § 960, or § 963, 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 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 offense;

(3) the 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 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

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(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.

Exercise #3

Defendant Corn’s instant federal offense of conviction is Distribution of 28 gm or More of Cocaine Base on November 15, 2017, in violation of 21 U.S.C. § 841(a)(1)&(b)(1)(B) (five-year statutory mandatory minimum); Applicable guideline §2D1.1.

The offense of conviction involved the distribution of 75 gm crack on November 15, 2017, by Defendant Corn and a co-participant. Neither Defendant Corn nor the co-participant had a firearm or dangerous weapon during that offense.

Defendant Corn also made three additional distributions of crack, 75 gm each, with the same co-participant on April 15, 2017, July 15, 2017, and September 15, 2017. On the July 15, 2017 distribution, the co-participant carried a firearm.

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What quantity of crack will be used in the application of the Drug Quantity Table at §2D1.1(c) for Defendant Corn?

Exercise #4

Same facts as #3, except:

Defendant Corn had been arrested by undercover city police narcotics officers when committing the April 15, 2017 distribution, which resulted in him being convicted and sentenced in state court on June 15, 2017 to 3 years' imprisonment, suspended upon 3 years' probation.

What quantity of crack will be used in the application of the Drug Quantity Table at §2D1.1(c) for Defendant Corn?

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Exercise #5

Defendant Corn’s instant federal offense of conviction is Conspiracy to Distribute 280 gm or More of Cocaine Base between April 15, 2017 and November 15, 2017, in violation of 21 U.S.C. §§ 846; Applicable guideline §2D1.1.

The offense of conviction of conspiracy expressly charges the substantive distributions of crack cocaine by Defendant Corn and his co-participant: those of 75 gm each on April 15, 2017, July 15, 2017, September 15, 2017, and November 15, 2017. Those four distributions, made by Defendant Corn and the co-participant, are the only acts within Defendant Corn's scope of undertaking in the conspiracy.

Defendant Corn had been arrested by undercover city police narcotics officers when committing the April 15, 2017 distribution, which resulted in him being convicted and sentenced in state court on June 15, 2017 to 3 years’ imprisonment, suspended upon 3 years’ probation.

What quantity of crack will be used in the application of the Drug Quantity Table at §2D1.1(c) for Defendant Corn?

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Exercise #6

Defendant Roberts is convicted of Count 2, Bank Robbery on November 7, 2017; in violation of 18 USC § 2113(a); Applicable guideline §2B3.1 (Robbery).

Defendant Roberts was indicted for two counts of bank robbery. Count 1 charges Roberts, as the sole defendant, with the armed robbery of the First National Bank on November 5, 2017. In that robbery, Roberts brandished a firearm and robbed \$3,000.

Count 2 charges Roberts, as the sole defendant, with the robbery of the TLC Bank on November 7, 2017. In that robbery Roberts was unarmed and robbed \$1,500.

Roberts pleaded guilty to Count 2, in exchange for which the government will move to dismiss Count 1.

Does the §2B3.1(b)(2)(C) specific offense characteristic, *“if a firearm was brandished or possessed, increase by 5 levels,”* apply for Defendant Roberts?
