

Appendix D

Involved Federal Law

Document: 18 USCS Appx § 5G1.1

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Current through Public Law 116-56, approved August 23, 2019.

United States Code Service - Titles 1 through 54 TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 — 6005) 18 USCS appendix Sentencing Guidelines for United States Courts CHAPTER FIVE. Determining the Sentence Part G. Implementing the Total Sentence of Imprisonment

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§ 5G1.1. Sentencing on a Single Count of Conviction

(a) Where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence.

(b) Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence.

(c) In any other case, the sentence may be imposed at any point within the applicable guideline range, provided that the sentence—

(1) is not greater than the statutorily authorized maximum sentence, and

(2)

is not less than any statutorily required minimum sentence.

Commentary

This section describes how the statutorily authorized maximum sentence, or a statutorily required minimum sentence, may affect the determination of a sentence under the guidelines. For example, if the applicable guideline range is 51–63 months and the maximum sentence authorized by statute for the offense of conviction is 48 months, the sentence required by the guidelines under subsection (a) is 48 months; a sentence of less than 48 months would be a guideline departure. If the applicable guideline range is 41–51 months and there is a statutorily required minimum sentence of 60 months, the sentence required by the guidelines under subsection (b) is 60 months; a sentence of more than 60 months would be a guideline

departure. If the applicable guideline range is 51–63 months and the maximum sentence authorized by statute for the offense of conviction is 60 months, the guideline range is restricted to 51–60 months under subsection (c).

History

HISTORY:

Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendment 286).

▼ Annotations

NOTES TO DECISIONS

⚡ 1. Statutory maximum sentence less than minimum guideline range

⚡ 2. —Foreign sentence as statutory maximum

⚡ 3. Statutory minimum sentence greater than maximum guideline range

⚡ 4. —Foreign sentence as statutory minimum

⚡ 5. —Departure below statutory minimum

⚡ 6. —Plea agreements

⚡ 7. Miscellaneous

🔧 1. Statutory maximum sentence less than minimum guideline range

Sentence for possession of unregistered firearm cannot exceed 10 years regardless of status of offender and thus 150 month sentence imposed on defendant as career offender must be reduced to statutory maximum. *United States v. Dunn*, 935 F.2d 1053, 91 Cal. Daily Op. Service 4378, 91 D.A.R. 6733, 34 Fed. R. Serv. 3d (Callaghan) 52 (9th Cir.), sub. op., 946 F.2d 615, 34 Fed. R. Evid. Serv. (CBC) 52 (9th Cir. 1991), cert. denied, 502 U.S. 950, 112 S. Ct. 401, 116 L. Ed. 2d 350 (1991).

Sentence for possession of unregistered firearm cannot exceed statutory maximum of 10 years, regardless of defendant's career offender status. *United States v. Dunn*, 946 F.2d 615, 34 Fed. R. Evid. Serv. (CBC) 52 (9th Cir. 1991).

District court has discretion to reward defendant's acceptance of responsibility by departing downward when § 5G1.1(a) renders § 3E1.1 ineffectual in reducing defendant's actual sentence. *United States v. Rodriguez*, 64 F.3d 638, 9 Fla. L. Weekly Fed. C 529 (11th Cir. 1995).

In sentencing defendant on two RICO counts and one money laundering count, court correctly used base offense level of 29 for RICO counts, which was derived from money laundering guidelines pursuant to § 3D1.3, which directs court to use offense guideline that produces highest offense level to determine appropriate "total punishment" for all of defendant's criminal conduct, even though sentence was longer than statutory maximum that defendant received on money laundering count pursuant to § 5G1.1, which provides that where statutory maximum is less than minimum guideline range, statutory maximum shall be sentence. *United States v. Griffith*, 85 F.3d 284 (7th Cir.), cert. denied, 519 U.S. 909, 117 S. Ct. 272, 136 L. Ed. 2d 195 (1996).

Document: 18 USCS Appx § 5G1.2

18 USCS Appx § 5G1.2

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United States Code Service - Titles 1 through 54 TITLE 18. CRIMES AND CRIMINAL
PROCEDURE SENTENCING GUIDELINES FOR THE UNITED STATES COURTS. 18 USCS
APPENDIX CHAPTER FIVE. DETERMINING THE SENTENCE PART G. IMPLEMENTING
THE TOTAL SENTENCE OF IMPRISONMENT

§ 5G1.2. Sentencing on Multiple Counts of Conviction

- (a) Except as provided in subsection (e), the **sentence** to be imposed on a count for which the statute (1) specifies a term of imprisonment to be imposed; and (2) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment, shall be determined by that statute and imposed independently.
- (b) For all counts not covered by subsection (a), the court shall determine the total punishment and shall impose that total punishment on each such count, except to the extent otherwise required by law.
- (c) If the **sentence** imposed on the count carrying the highest statutory maximum is adequate to achieve the total punishment, then the **sentences** on all counts shall run concurrently, except to the extent otherwise required by law.
- (d) If the **sentence** imposed on the count carrying the highest statutory maximum is less than the total punishment, then the **sentence** imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined **sentence** equal to the total punishment. In all other respects, **sentences** on all counts shall run concurrently, except to the extent otherwise required by law.
- (e) In a case in which subsection (c) of § 4B1.1 (Career Offender) applies, to the extent possible, the total punishment is to be apportioned among the counts of conviction, except that (1) the **sentence** to be imposed on a count requiring a minimum term of imprisonment shall be at least the minimum required by statute; and (2) the **sentence** to be imposed on the 18 U.S.C. § 924(c) or § 929(a) count shall be imposed to run consecutively to any other count.

Commentary