

**SCENARIO NO. 10**  
**United States v. John Whitefish**

*Read the following materials, which are abbreviated from the presentence report. Then, view the accompanying video. After completing your review, you will be asked to determine an appropriate sentence for this defendant.*

**Offense(s) of Conviction/Penalty**

- Count 1: Crime on an Indian Reservation, Burglary, in violation of 18 U.S.C. §1153, a Class C felony.
- Count 2: Possession of Stolen Firearms, in violation of 18 U.S.C. § 922(j), a Class C felony.

**Plea Agreement Summary**

The parties presented a Fed. R. Crim. P. 11(c)(1)(C) plea agreement with a joint recommendation of 150 months incarceration. As part of the agreement, the government did not charge the defendant with felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), as the defendant would have been an Armed Career Criminal under 18 U.S.C. § 924(e)(1), and a 180-month sentence would have been mandatory.

**The Offense Conduct**

On May 25, 2013, tribal law enforcement responded to a residential burglary alarm. The deputy met with the victim, who advised that his residence had been burglarized and that he had video surveillance of the offense. The residence was within the boundaries of Tribal trust land. No one was home at the time of the burglary, but a review of the surveillance tape revealed an adult male, later identified as John Whitefish, moving through the house and removing firearms and other property. The defendant had gained entry to the residence through an unlocked kitchen window. None of the stolen property was recovered.

**Offense Level Computation**

Counts 1 and 2 are grouped. The defendant's possession of stolen firearms results in the higher offense level. The Base Offense Level is 24 (USSG §2K2.1(a)(2)) because the defendant has at least two prior felony convictions for crimes of violence and/or controlled substance offenses. The firearms were stolen, resulting in a 2-level increase per USSG §2K2.1(b)(4)(A). The defendant possessed the firearms in connection with the burglary, resulting in a 4-level increase (USSG §2K2.1(b)(6)). A 3-level reduction for timely acceptance of responsibility (USSG §3E1.1(a) and (b)) results in a Total Offense Level of 27.

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The defendant qualifies as a Career Offender pursuant to USSG § 4B1.1(a), based upon the instant burglary conviction and his prior convictions. However, the offense level for the underlying offense is greater. As a Career Offender, the Criminal History Category is VI regardless of his criminal history score.

**Criminal History & Category**

Mr. Whitefish criminal history dates back to age 13, and includes a third degree malicious mischief conviction for shooting a BB gun at a window. At age 16, he was convicted of third degree theft. Both offenses occurred on the Indian Reservation, as did a second degree burglary he committed at age 18. On that occasion he entered a church and stole food items and candy. Off-reservation criminal conduct resulted in Mr. Whitefish's conviction for second degree burglary at age 20, after he entered a residence through an unlocked window and stole clothing and jewelry, and was sentenced to 15 months (3 points). At age 21, he was convicted of delivery of a small amount of methamphetamine and was sentenced to 21 months (3 points). At age 22, he was convicted of attempted residential burglary after he entered a residence through an unlocked door, and received a sentence of 24 months (3 points). At age 25, he was convicted of attempting to elude a police vehicle and was sentenced to 16 months (3 points). He was under supervision when the instant offense occurred (2 points). He has four predicate offenses which qualify him as a Career Offender.

The defendant has 14 criminal history points, establishing a Criminal History Category VI.

**Offender Characteristics**

The defendant, John Whitefish, is 28 years old. Mr. Whitefish does not know the identity of his biological father. The defendant's mother, now deceased, was an alcoholic who had periodic short-term custody of the defendant. Mr. Whitefish primarily was raised by his grandmother, who died three years ago. Although the defendant has a half sister and several half brothers, he has no regular contact with them.

The defendant suffered severe abuse in childhood. He was regularly beaten, kicked, punched, and generally abused by various individuals. Mr. Whitefish also was forced to use drugs and alcohol, because friends and family thought it was amusing to observe its effects on him. The defendant became a regular user of marijuana and methamphetamine by age 11. He frequently ran away from home and lived on the streets in order to avoid the abuse.

Mr. Whitefish completed the 6<sup>th</sup> grade. He has never held employment. He has a serious substance abuse problem. Although he attended a residential substance abuse treatment program at age 20, he failed to comply with the aftercare portion of the treatment program.

**Sentencing Options**

<b>TOTAL OFFENSE LEVEL:</b>	<b>27</b>	<b>CRIMINAL HISTORY CATEGORY:</b>	<b>VI</b>
		<b>ZONE:</b>	<b>D</b>

	<b><u>Statutory Provisions</u></b>	<b><u>Guideline Provisions</u></b>
<b>CUSTODY:</b>	Cts. 1, 2: Up to 10 years, per count	130 to 162 months ( <i>see USSG §5G1.2 -- sentencing on multiple count convictions</i> )
<b>SUPERVISED RELEASE:</b>	Cts. 1, 2: Up to 3 years, per count, concurrent	Cts. 1, 2: 1 to 3 years, per count, concurrent
<b>PROBATION:</b>	Cts. 1, 2: 1 to 5 years, per count	Not Authorized (Zone D)

**Factors That May Warrant a Guideline Departure**

According to USSG §5H1.4, drug or alcohol dependence is ordinarily not a justification for a downward departure as it frequently is correlated with an increase in criminal conduct. Chemical dependency treatment can occur during supervision or while incarcerated with the Bureau of Prisons.

Lack of guidance as a youth and similar circumstances which are indicative of a disadvantaged upbringing are not relevant grounds for departure according to USSG §5H1.12.

The defendant's Criminal History Category substantially overstates the seriousness of his criminal history. Pursuant to USSG §4A1.3(b)(1), a departure may be granted. However, because the defendant is a Career Offender, the departure is limited to one Criminal History Category (USSG §4A1.3(b)(3)(A)).

**Factors That Relate to 18 U.S.C. § 3553(a) and/or May Warrant a Variance**

The defendant was subject to substantial abuse as a child and was forced to use drugs and alcohol. As his dependency on drugs and alcohol was not volitional, consideration should be given to this defendant in formulating an appropriate sentence.

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**Government's Recommendation**

<u>Imprisonment</u>	<u>Supervised Release</u>	<u>Probation</u>

**Defendant's Recommendation**

<u>Imprisonment</u>	<u>Supervised Release</u>	<u>Probation</u>

**Your Sentence**

<u>Imprisonment</u>	<u>Supervised Release</u>	<u>Probation</u>