

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

United States of America,

No. 18-CR-20408

Plaintiff,

Hon. Thomas L. Ludington

v.

Charles Whitebear Merrill,

COUNT ONE:

Attempted Sexual Abuse

18 U.S.C. § 2242(2)

Defendant.

Maximum Penalty:

Up to life or any term of years

Maximum Fine:

Not to exceed \$250,000

Mandatory Supervised Release:

5 years to life

Rule 11 Plea Agreement

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant Charles Whitebear Merrill and the government agree as follows:

1. **Guilty Plea**

A. **Count of Conviction**

Defendant will enter a plea of guilty to Count One of the Indictment, which charges him with Attempted Sexual Abuse, in violation of 18 U.S.C. §§ 2242(2) & 1153.

B. Elements of Offenses

The elements of Count One are as follows:

1. defendant knowingly engaged in a sexual act with the named victim, for this count, "sexual act" means contact between the penis and the vulva and/or anus or penetration of the genital opening with a finger or hand;
2. at the time, the victim was incapable of appraising the nature of the conduct or was physically incapable of declining participation or was physically incapable of communicating unwillingness to engage in the sexual act;
3. the act occurred within Indian country; and
4. defendant is an Indian.

C. Factual Basis for Guilty Plea

The following facts are a sufficient and accurate basis for defendant's guilty plea:

In March of 2018, Merrill was with A.R. At that time, A.R. fell asleep. Merrill got into bed with her, pulled down her pants and underwear and pulled down his pants and attempted to penetrate her vagina with his penis. A.R. woke up and yelled for him to get away from her.

This all happened on the Isabella Reservation in Indian country. The parties stipulate that Merrill is a repeat and dangerous sex offender.

2. **Sentencing Guidelines**

A. **Standard of Proof**

The Court will find sentencing factors by a preponderance of the evidence.

B. **Agreed Guideline Range**

There are no sentencing guideline disputes. Except as provided below, the defendant's guideline range is **151-188 months**, as set forth on the attached worksheets. If the Court finds:

1. That defendant's criminal history category is higher than reflected on the attached worksheets, or
2. that the offense level should be higher because, after pleading guilty, defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offense; or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than the 151-188, the higher guideline range becomes the **agreed range**. However, if the Court finds that defendant is a career offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does not authorize a corresponding increase in the agreed range.

Neither party may take a position concerning the applicable guidelines that is different than any position of that party as reflected in the attached worksheets, except as necessary to the Court's determination regarding subsections 1) and 2), above.

3. **Sentence**

The Court will impose a sentence pursuant to 18 U.S.C. § 3553, and in doing so must consider the sentencing guideline range.

A. **Imprisonment**

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) the sentence of imprisonment in this case may not exceed the top of the sentencing guideline range as determined by Paragraph 2B. Additionally, the government agrees to recommend, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) that defendant's sentence not exceed the bottom of the sentencing guideline range as determined by paragraph 2B of the agreement. The court is not bound by this sentence recommendation and defendant understands that he will not have a right to withdraw his guilty plea if the court does not grant the request.

B. **Supervised Release**

A term of supervised release follows the term of imprisonment. The Court must impose a term of supervised release, which in this case is **5 years to life**. The agreement concerning imprisonment described above in Paragraph 3A does not

apply to any term of imprisonment that result from any later revocation of supervised release.

C. Special Assessment

Defendant will pay a special assessment of \$100 and must provide the government with a receipt for the payment before sentence is imposed.

D. Fine

There is no agreement as to fines.

E. Restitution

The Court shall order restitution to every identifiable victim of defendant's offense. There is no agreement on restitution. The Court will determine who the victims are and the amounts of restitution they are owed.

4. SORNA/Adam Walsh Act

Defendant understands that by pleading guilty in this case, he will be required to register as a sex offender, under both federal and state registration requirements. As a condition of his release from prison on supervised release in this case, defendant will be obligated to promptly register under the federal sex offender registry. Defendant may also be required to register under the law of the state in which he resides, as well as any state where he has significant contacts (including any state where he resides, works, attends school or otherwise has significant contacts). Defendant further understands that he will be required to

maintain and update his registration for at least twenty years, and potentially for the rest of his life.

5. Use of Withdrawn Guilty Plea

If the Court allows defendant to withdraw his guilty plea for a “fair and just reason” pursuant to Fed. R. Crim. P. 11(d)(2)(B), defendant waives his rights under Fed. R. Evid. 410, and the government may use his guilty plea, any statement made under oath at the change-of-plea hearing, and the factual basis statement in this plea agreement, against him in any proceeding.

6. Other Charges

If the court accepts this agreement, the government will dismiss counts Two and Three and agrees to not bring additional charges against defendant based on any conduct reflected in the attached worksheets.

7. Each Party’s Right to Withdraw from This Agreement

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B.

Defendant may withdraw from this agreement, and may withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Paragraph 3. This is the only reason for which defendant may withdraw from this agreement. The Court shall advise defendant that if he does not withdraw his

guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Paragraph 3.

8. Appeal Waiver

The defendant waives any right he may have to appeal his conviction on any grounds. If the defendant's sentence of imprisonment does not exceed the top of the applicable guidelines and determined by paragraph 2B, the defendant also waives any right he may have to appeal his sentence on any grounds. If the defendant's sentence of imprisonment is at least the bottom of the applicable guidelines and determined by paragraph 2B, the government waives any right it may have to appeal the defendant's sentence.

9. Collateral Consequences of Conviction

The defendant understands that his conviction here may carry additional consequences under federal or state law. The defendant understands that, if he is not a United States citizen, his convictions here may require him to be removed from the United States, denied citizenship, and denied admission to the United States in the future. The defendant further understands that the additional consequences of his convictions here may include, but are not limited to, adverse effects on the defendant's immigration status, naturalized citizenship, right to vote, right to carry a firearm, right to serve on a jury, and ability to hold certain licenses or to be employed in certain fields. The defendant understands that no one,

including the defendant's attorney or the Court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. The defendant nevertheless affirms that the defendant chooses to plead guilty regardless of any immigration consequences or other collateral consequences of his conviction.

10. Consequences of Withdrawal of Guilty Plea or Vacation of Conviction

If defendant is allowed to withdraw his guilty plea or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against defendant within six months after the date the order vacating defendant's conviction or allowing him to withdraw his guilty plea becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

11. Parties to Plea Agreement

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

12. Scope of Plea Agreement


This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for the defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

Notwithstanding the previous paragraph, if defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

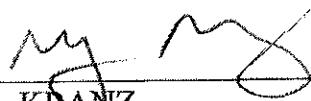
13. **Acceptance of Agreement by Defendant**

This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by 5:00 P.M. on 8/29/2018. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.

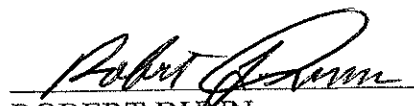

ANTHONY P. VANCE
Assistant U.S. Attorney

Date: 8-21-18

MATTHEW SCHNEIDER
United States Attorney


ROY R. KRANZ
Assistant U.S. Attorney

By signing below, defendant acknowledges having read (or been read) this entire document, understanding it, and agreeing to its terms. Defendant also acknowledges being satisfied with defense attorney's advice and representation. Defendant acknowledges having had a full and complete opportunity to confer with counsel, and that all of defendant's questions have been answered by counsel.


ROBERT DUNN
Attorney for Defendant

Date: 8-23-18


CHARLES MERRILL
Defendant

WORKSHEET A OFFENSE LEVEL

Defendant Charles Whitebear Merrill District/Office Eastern District of Michigan

Docket Number 18-CR-20408

Count Number(s) 1 U.S. Code Title & Section 18 USC 2242(2)

Guidelines Manual Edition Used: 2016 (Note: The Worksheets are keyed to the November 1, 2016 Guidelines Manual)

INSTRUCTIONS

Complete a separate Worksheet A for each count of conviction or as required in a situation listed at the bottom of Worksheet B.*
Exceptions: Use only a single Worksheet A where the offense level for a group of closely related counts is based primarily on aggregate value or quantity (see §3D1.2(d)) or where a count of conspiracy, solicitation, or attempt is grouped with a substantive count that was the sole object of the conspiracy, solicitation, or attempt (see §3D1.2(a) & (b)).

1. Offense Level (See Chapter Two)

Enter the applicable base offense level and any specific offense characteristics from Chapter Two and explain the bases for these determinations. Enter the sum in the box provided.

Guideline	Description	Level
2A3.1(a)(2)	Attempt to commit Criminal sexual abuse	30

If the Chapter Two guideline requires application of a cross reference or other reference, an additional Worksheet A may be needed for that analysis. See §1B1.5. Sum 30

2. Victim-Related Adjustments (See Chapter Three, Part A)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0". §

3. Role in the Offense Adjustments (See Chapter Three, Part B)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If the adjustment reduces the offense level, enter a minus (-) sign in front of the adjustment. If no adjustment is applicable, enter "0". §

4. Obstruction Adjustments (See Chapter Three, Part C)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0". §

5. Adjusted Offense Level

Enter the sum of Items 1-4. If this Worksheet A does not cover all counts of conviction or situations listed at the bottom of Worksheet B, complete Worksheet B. Otherwise, enter this result on Worksheet D, Item 1. 30

Check here if all counts (including situations listed at the bottom of Worksheet B)* are addressed on this one Worksheet A. If so, no Worksheet B is used.

If the defendant has no criminal history, enter "T" here and on Worksheet D, Item 4. No Worksheet C is used.

WORKSHEET B

MULTIPLE COUNTS*

Defendant Charles Whitebear Merrill

Docket Number 18-CR-20408

INSTRUCTIONS

STEP 1: Determine if any of the counts group under §3D1.2(a)-(d) ("the grouping rules"). All, some, or none of the counts may group. Some of the counts may have already been grouped in the application under Worksheet A, specifically: (1) counts grouped under §3D1.2(d); or (2) a count charging conspiracy, solicitation, or attempt that is grouped with the substantive count of conviction (see §3D1.2(a)). Explain the reasons for grouping:

STEP 2: Using the box(es) provided below, for each group of "closely related counts" (i.e., counts that group together under any of the four grouping rules), enter the highest adjusted offense level from Item 5 of the various Worksheets "A" that comprise the group. See §3D1.3. Note that a "group" may consist of a single count that has not grouped with any other count. In those instances, the offense level for the group will be the adjusted offense level for the single count.

STEP 3: Enter the number of units to be assigned to each group (see §3D1.4) as follows:

- One unit (1) for the group of counts with the highest offense level
- An additional unit (1) for each group that is equally serious or 1 to 4 levels less serious
- An additional half unit (1/2) for each group that is 5 to 8 levels less serious
- No increase in units for groups that are 9 or more levels less serious

1. Adjusted Offense Level for the First Group of Counts

Count number(s) _____

_____ Unit

2. Adjusted Offense Level for the Second Group of Counts

Count number(s) _____

_____ Unit

3. Adjusted Offense Level for the Third Group of Counts

Count number(s) _____

_____ Unit

4. Adjusted Offense Level for the Fourth Group of Counts

Count number(s) _____

_____ Unit

5. Adjusted Offense Level for the Fifth Group of Counts

Count number(s) _____

_____ Unit

6. Total Units

_____ Total Units

7. Increase in Offense Level Based on Total Units (See §3D1.4)

- | | | | |
|-----------|--------------|--------------------|--------------|
| 1 unit: | no increase | 2½ - 3 units: | add 3 levels |
| 1½ units: | add 1 level | 3½ - 5 units: | add 4 levels |
| 2 units: | add 2 levels | More than 5 units: | add 5 levels |

8. Highest of the Adjusted Offense Levels from Items 1-5 Above

9. Combined Adjusted Offense Level (See §3D1.4)

Enter the sum of Items 7 & 8 here and on Worksheet D, Item 1.

*Note: Worksheet B also includes applications that are done "as if there were multiple counts of convictions," including: multiple-object conspiracies (see §1B1.2(d)); offense guidelines that direct such application (e.g., §2G2.1(d)(1) (Child Porn Production)); and stipulations to additional offenses (see §1B1.2(c)). Note also that these situations typically require the use of multiple Worksheets A.

WORKSHEET C

CRIMINAL HISTORY

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Defendant Charles Whitebear MerrillDocket Number 18-CR-20408

Note: As an aid, some of the basic criminal history "rules" are listed below. However, there are numerous additional criminal history rules of §§4A1.1 and 4A1.2 that must be used with Worksheet C and for correct application.

Enter the Earliest Date of the Defendant's Relevant Conduct March 3, 2018
 (The date of the defendant's commencement of the instant offense(s))

1. Prior Sentences Resulting from Offenses Committed Prior to the Defendant's 18th Birthday

- (a) **3 Points** if convicted as an *adult*, for each prior sentence of imprisonment *exceeding one year and one month* imposed within 15 years of the defendant's earliest date of relevant conduct or resulting in incarceration during any part of that 15-year period. See §§4A1.1(a) and 4A1.2(d)(1) & (e)(1).
- (b) **2 Points** for each prior *adult or juvenile sentence* of confinement of *at least 60 days* not counted under §4A1.1(a) imposed within 5 years or from which the defendant was released from confinement within 5 years of the defendant's earliest date of relevant conduct. See §§4A1.1(b) and 4A1.2(d)(2)(A).
- (c) **1 Point** for each prior *adult or juvenile sentence* not counted under §4A1.1(a) or §4A1.1(b) imposed within 5 years of the defendant's earliest date of relevant conduct. See §§4A1.1(c) and 4A1.2(d)(2)(B).

Note: Identify as "adult" any sentence exceeding one year and one month that resulted from an adult conviction.

A **release date** is required in only two instances: (1) when a sentence covered under §4A1.1(a) was imposed more than 15 years prior to the defendant's earliest date of relevant conduct but resulted in the defendant being incarcerated during any part of such 15-year period; or (2) when a sentence counted under §4A1.1(b) was imposed more than 5 years prior to the defendant's earliest date of relevant conduct, but release from confinement occurred within such 5-year period.

Date of Imposition	Offense	Sentence	Release Date	Guideline Section	Criminal History Points
10/21/2008	Malicious Destruction Building	8 months jail			0
07/14/2009	Breaking & Entering	1 year jail			0

2. Prior Sentences Resulting from Offenses Committed On or After the Defendant's 18th Birthday

- (a) **3 Points** for each prior sentence of imprisonment *exceeding one year and one month* imposed within 15 years of the defendant's earliest date of relevant conduct or resulting in incarceration during any part of that 15-year period. See §§4A1.1(a) and 4A1.2(e)(1).
- (b) **2 Points** for each prior sentence of imprisonment of *at least 60 days* not counted under §4A1.1(a) imposed within 10 years of the defendant's earliest date of relevant conduct. See §§4A1.1(b) and 4A1.2(e)(2).
- (c) **1 Point** for each prior sentence not counted under §4A1.1(a) or §4A1.1(b) imposed within 10 years of the defendant's earliest date of relevant conduct. See §§4A1.1(c) and 4A1.2(e)(2).

Note: A **release date** is required when a sentence covered under §4A1.1(a) was imposed more than 15 years prior to the defendant's earliest date of relevant conduct but resulted in the defendant being incarcerated during any part of such 15-year period.

Date of Imposition	Offense	Sentence	Release Date	Guideline Section	Criminal History Points
07/14/2009	minor in possession	fine			0
03/11/2010	Illegal Entry	48 days jail			1
10/16/2014	disorderly conduct	?			0
12/15/2014	resist/obstruct police	2 years prison			3

Worksheet C — Criminal History [Page 2 of 2]

Defendant Charles Whitebear Merrill

Docket Number 18-CR-20408

(continued from *Sentences Resulting from Offenses Committed On or After the Defendant's 18th Birthday*)

Date of Imposition	Offense	Sentence	Release Date	Guideline Section	Criminal History Points

3. Sum of Criminal History Points for prior sentences under §4A1.1(a), (b), & (c) in Items 1 & 2

A total of 4 points can be added for all the 1-Point sentences counted in Items 1 & 2 combined.

4

4. "Status" of Defendant at Time of Instant Offense

2 Points for "status" if the defendant committed any part of the instant offense (i.e., any relevant conduct) while under any criminal justice sentence (e.g., probation, parole, supervised release, imprisonment, work release, or escape status) for a sentence counted in Items 1 or 2. See §4A1.1(d) and Application Note 4. List the type of control and identify the counted sentence that resulted in the control. Otherwise, enter 0 Points.

0

5. Crimes of Violence

1 Point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under §4A1.1(a), (b), or (c) because such sentence was counted as a single sentence which also included another sentence resulting from a conviction for a crime of violence. A total of 3 points can be added under this subsection. See §4A1.1(e) and Application Note 5, and §4A1.2(a)(2) & (p). Identify the crimes of violence and briefly explain why the cases are considered a single sentence. Otherwise, enter 0 Points.

0

4. Total Criminal History Points (Sum of Items 3-5)

4

5. Criminal History Category (Enter here and on Worksheet D, Item 4)

Total Points	Criminal History Category
0-1	I
2-3	II
4-6	III
7-9	IV
10-12	V
13 or more	VI

III

WORKSHEET D

DETERMINING THE SENTENCE

[Page 1 of 4]

Defendant Charles Whitebear Merrill

Docket Number 18-CR-20408

1. Adjusted Offense Level (From Worksheet A or B)
 If Worksheet B is required, enter the result from Worksheet B, Item 9. Otherwise, enter the result from Worksheet A, Item 5. 30

2. Acceptance of Responsibility (See Chapter Three, Part E)
 Enter the applicable reduction of 2 or 3 levels. If no adjustment is applicable, enter "0". -3

3. Offense Level Total (Item 1 less Item 2) 27

4. Criminal History Category (From Worksheet A or C)
 Enter the result from Worksheet C, Item 8, unless the defendant has no criminal history, and as directed at the bottom of Worksheet A, no Worksheet C is used and "I" is entered here. III

5. Terrorism, Career Offender, Criminal Livelihood, Armed Career Criminal, Repeat and Dangerous Sex Offender (See Chapter Three, Part A, and Chapter Four, Part B)

a. Offense Level Total
 If the provision for Career Offender (§4B1.1), Criminal Livelihood (§4B1.3), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in an offense level total higher than Item 3, enter the offense level total. Otherwise, enter "N/A". +5

b. Criminal History Category
 If the provision for Terrorism (§3A1.4), Career Offender (§4B1.1), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in a criminal history category higher than Item 4, enter the applicable criminal history category. Otherwise, enter "N/A". n/a

6. Guideline Range from Sentencing Table
 Enter the applicable guideline range from Chapter Five, Part A, in months. 151 to 188

7. Restricted Guideline Range (See Chapter Five, Part G)
 If the statutorily authorized maximum sentence or the statutorily required minimum sentence restricts the guideline range (Item 6) (see §§5G1.1 and 5G1.2), enter either the restricted guideline range or any statutory maximum or minimum penalty that would modify the guideline range. Otherwise, enter "N/A". to

Check here if §5C1.2 (Limitation on Applicability of Statutory Minimum Penalties in Certain Cases) and 18 U.S.C. § 3553(e) – "The Safety Valve" – are applicable.

8. Undischarged Term of Imprisonment; Anticipated State Term of Imprisonment (See §5G1.3)
 If the defendant is subject to an undischarged term of imprisonment, or an anticipated state term of imprisonment, check this box. Below list the undischarged/anticipated term(s), the applicable section of §5G1.3 and its direction or guidance as to whether the instant federal sentence is to be imposed to run concurrently or consecutively to the undischarged/anticipated term(s), and any sentence adjustment.

Worksheet D — Determining the Sentence [Page 2 of 4]

Defendant Charles Whitebear Merrill

Docket Number 18-CR-20408

9. Sentencing Options (See Chapter Five, Sentencing Table and §§5B1.1(a) and 5C1.1)

Check the applicable box that corresponds to the Guideline Range entered in Item 6 or Item 7, if applicable.

Zone A (See §§5B1.1(a)(1) & 5C1.1(a) & (b))

If checked, the following options are available:

- Fine (See §§5C1.1(b) & 5E1.2(a))
- “Straight” Probation (See §§5B1.1(a)(1) & 5C1.1(b))
- Imprisonment (See §5C1.1(a) & (c)(1))

Zone B (See §§5B1.1(a)(2) & 5C1.1(a) & (c))

If checked, the minimum term may be satisfied by:

- Imprisonment (See §5C1.1(a) & (c)(2))
- Imprisonment of **at least one month plus supervised release** with a condition that substitutes community confinement or home detention for imprisonment (See §5C1.1(c)(2))
- Probation with a condition that substitutes intermittent confinement, community confinement, or home detention for imprisonment (See §§5B1.1(a)(2) and 5C1.1(c)(3))

Zone C (See §5C1.1(a) & (d))

If checked, the minimum term may be satisfied by:

- Imprisonment (See §5C1.1(a) & (d)(1))
- Imprisonment of **at least one-half of the minimum term plus supervised release** with a condition that substitutes community confinement or home detention for imprisonment (See §5C1.1(d)(2))

Zone D (See §5C1.1(a) & (f))

If checked, the minimum term is to be satisfied by a sentence of imprisonment

10. Length of Term of Probation (See §5B1.2)

If probation is imposed, the guideline for the length of such term of probation is: (Check the applicable box)

At least one year, but not more than five years if the offense level total is 6 or greater.

No more than three years if the offense level total is 5 or less.

Worksheet D — Determining the Sentence [Page 3 of 4]

Defendant Charles Whitebear Merrill

Docket Number 18-CR-20408

11. Supervised Release (See §§5D1.1 and 5D1.2)

a. Imposition of a Term of Supervised Release:

- Ordered because required by statute (See §5D1.1(a)(1)).
- Ordered because a sentence of imprisonment of more than one year is imposed (See §5D1.1(a)(2)).
- Is *not* ordered although a sentence of more than one year is imposed, because it is not required by statute *and* the defendant likely will be deported after imprisonment (See §5D1.1(c)).
- Ordered because it may be ordered in any other case (See §5D1.1(b)).

b. Length of Term of Supervised Release

Check the Class of the Offense:

- Class A or B Felony: Two to Five Year Term (See §5D1.2(a)(1))
- Class C or D Felony: One to Three Year Term (See §5D1.2(a)(2))
- Class E Felony or Class A Misdemeanor: One Year Term (See §5D1.2(a)(3))
- If a statutorily required mandatory minimum term of supervised release for the offense impacts the guideline range for the applicable Class of Offense above, also check this box, and list the statutory minimum term (See §5D1.2(c):
 _____ years mandatory minimum term of supervised release

- If an offense in 18 U.S.C. § 2332b(g)(5)(B) that resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or if a sex offense, the term of supervised release will not be less than the minimum term established above, and may be up to life (See §5D1.2(b)).
 Policy Statement: If a sex offense, the *statutory maximum term* of supervised release is recommended.

12. Restitution (See §5E1.1)

- a. If restitution is applicable, enter the amount. Otherwise enter "N/A" and the reason:
 to be determined by the court
-

- b. Enter whether restitution is statutorily mandatory or discretionary:
 mandatory
-

- c. Enter whether restitution is by an order of restitution, or *solely* as a condition of supervision. Enter the authorizing statute:
 Order of restitution
-

Worksheet D — Determining the Sentence [Page 4 of 4]

Defendant Charles Whitebear Merrill

Docket Number 18-CR-20408

13. Fines (The Guideline Range for Fines for Individual Defendants) (See §5E1.2)

a. Special Fine Provisions

Check box if any of the counts of conviction is for a statute with a special fine provision. (This *does not* include the general fine provisions of 18 USC § 3571(b)(2) & (d)).

Enter the sum of statutory maximum fines for all such counts.

Minimum

Maximum

\$250,000

b. Fine Table (§5E1.2(c)(3))

Enter the minimum and maximum fines.

\$35,000

\$350,000

c. Fine Guideline Range

(Determined by the minimum of the Fine Table (Item 15(b)) and the greater maximum above (Item 15(a) or 15(b))).

\$35,000

\$250,000

d. Ability to Pay

Check this box if the defendant does not have an ability to pay.

14. Special Assessments for Individual Defendants (See §5E1.3)

Enter the total amount of the statutory special assessments required for all counts of conviction:

- \$100 for each felony count of conviction.
- \$25 for each Class A misdemeanor count of conviction.
- While not subject to guideline sentencing, the special assessments for a Class B misdemeanor, and a Class C misdemeanor or infraction are \$10 and \$5 per count, respectively.

TOTAL:

\$100

15. Factors That May Warrant a Departure (See §1B1.1(b))

Consider Chapter Five, Part H (Specific Offender Characteristics) and Part K (Departures), and other policy statements and commentary in the *Guidelines Manual* that might warrant consideration in sentencing. (See also the "List of Departure Provisions" included in the *Guidelines Manual* after the Index).

16. Factors That May Warrant a Variance (See §1B1.1(e))

Consider the applicable factors in 18 U.S.C. § 3553(a) taken as a whole.

Completed by Roy Kranz

Date 7/30/2018