

Staff Issue Paper

Clarification of Guidelines § 2.B.1.h (Prior Felony Resulting in Non-Felony Sentence)

May 23, 2019

Earlier this year, in *State v. Stewart*, 923 N.W.2d 668, 677–80 (Minn. Ct. App. 2019), *review denied* (Minn. Apr. 16, 2019), the Minnesota Court of Appeals found ambiguity in the following language, found in Guidelines § 2.B.1.h:

2. Determining Presumptive Sentences * * *

B. Criminal History * * *

1. Prior Felonies. * * *

h. Non-Felony Sentence. Except when a monetary threshold determines the offense classification of the prior offense (see section 2.B.7), when a prior felony conviction resulted in a non-felony sentence (misdemeanor or gross misdemeanor), the conviction must be counted in the criminal history score as a misdemeanor or gross misdemeanor conviction as indicated in section 2.B.3.

Stewart did not disturb this section’s main thrust, which is that if a prior felony sentence was within misdemeanor or gross misdemeanor limits—and is therefore considered to be a misdemeanor or gross misdemeanor by operation of law*—the Sentencing Guidelines will include that prior offense within the misdemeanor component of the criminal history score, rather than the felony component. In other words, the Guidelines will treat a prior felony sentenced within misdemeanor limits as a misdemeanor.

Instead, *Stewart* addressed the reach of the first clause of Section 2.B.1.h: “Except when a monetary threshold determines the offense classification of the prior offense (see section 2.B.7)” The case held that this clause was subject to two reasonable, but contrary, interpretations:

* Minn. Stat. § 609.13, subd. 1(1).

- The clause broadly excludes from misdemeanor treatment any felony classified as a felony because of monetary limits (e.g., thefts sentenced as felonies due to monetary thresholds).
- The parenthetical reference to section 2.B.7—which explains that the monetary threshold in effect when a prior offense was committed, rather than the current threshold, determines the offense’s classification—converts the clause into an essentially superfluous clarification.

The Court of Appeals resolved this ambiguity by reviewing the history of Section 2.B.1.h. It found that the clause was introduced during the 2012 Guidelines rewrite project, whose changes were intended to be primarily stylistic rather than substantive. Thus, the court adopted the second interpretation.

Question for Discussion: Does the Commission wish to revise Guidelines § 2.B.1.h to remove the ambiguity found in *Stewart*?

Staff Recommendation: Staff recommends deleting the first clause of Guidelines § 2.B.1.h, effective August 1, 2019.

The staff-drafted change language is below, followed by the current language of Guidelines §§ 2.B.1.h, 2.B.7, and associated commentary. Minn. Stat. § 609.13 and the *Stewart* case are also attached.

Staff-Drafted Change Language – Guidelines § 2.B.1.h

2. Determining Presumptive Sentences

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B. Criminal History

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2. Determining Presumptive Sentences

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Comment

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2.B.111. *When an offender was convicted of a felony but was given a misdemeanor or gross misdemeanor sentence, the offense will be counted as a misdemeanor or gross misdemeanor for purposes of computing the criminal history score. The Commission also recognized that where such sentences were given, it was the opinion of the court that the offending behavior did not merit felonious punishment, or other circumstances existed that justified a limit on the severity of the sanction.*

2.B.112. *The decision to stay execution of sentence rather than to stay imposition of sentence as a means to a probationary term following a felony conviction is discretionary with the court. Considerable disparity appears to exist in the use of these options. In the case of two similar offenders it is not uncommon for one to receive a stay of execution and another to receive the benefit of a stay of imposition. There may also be geographical disparities. As a result of the disparity that exists in the use of stays of imposition, the Commission determined to treat stays of execution and stays of imposition the same with respect to*

criminal history point accrual. Similar treatment has the additional advantage of a simplified procedure for computing criminal history scores.

* * *

7. Determining Offense Levels for Prior Offenses.

- a. Classification of Prior Offense. The classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota offense definitions (see Minn. Stat. § 609.02, subds. 2-4a) and sentencing policies. Offenses that are petty misdemeanors by statute, or that are certified as or deemed to be petty misdemeanors under Minn. R. Crim. P. 23, must not be used to compute the criminal history score.
- b. Monetary Threshold. When a monetary threshold determines the offense classification, the monetary threshold in effect when the prior offense was committed, not the current threshold, determines the offense classification in calculating the criminal history score.

Comment

2.B.701. *The Commission recognized that the classification of criminal conduct as a felony, gross misdemeanor, misdemeanor, or petty misdemeanor is determined legally by the sentence given rather than the conviction offense.*

2.B.702. *A monetary threshold determines the offense classification when the value of property or services is an element of the offense. Punishment for the offense typically increases as the dollar amount increases.*

2.B.703. *When the offense severity level is determined by a monetary threshold, the threshold in effect when the prior offense was committed determines the offense classification in criminal history. For example, beginning August 1, 2007, the monetary threshold for a felony level Theft of Moveable Property offense under Minn. Stat. § 609.52.2(a)(1) was divided between Severity Level 2 and Severity Level 3 by the dollar amount of \$5,000. Prior to that, this offense would have been assigned a severity level based on a dollar amount of \$2,500. Because this was a change by the Legislature for inflation and no change was made by the Commission to the severity levels, a Theft of Moveable Property offense over \$2,500 which previously received a Severity Level of 3 and a weight of 1 point in criminal history would continue to receive that same weight.*

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