

From: [Reitz, Nate \(MSGC\)](#)
To: [Larkin, Michelle](#)
Subject: RE: Recent opinion regarding sentencing issue
Date: Tuesday, January 21, 2020 10:47:00 AM

That's very interesting. My initial thought is that a rule like the following would coherently and comprehensively cover all situations, would be easier to administer, would be more uniform across states, and would be generally consistent with existing Guidelines principles regarding Minnesota's stays of imposition, stays of execution, and sentences within gross misdemeanor and misdemeanor limits, although the rule would be inconsistent with *Stewart*:

- [2.B.1.]h. Non-felony sentence. A prior offense punishable by more than one year of imprisonment is counted as a felony in criminal history, unless the initial sentence following the prior conviction eliminated the possibility of the offender ever serving more than one year of imprisonment for that offense.
- (1) If the initial sentence following the prior conviction eliminated the possibility of the offender ever serving more than 90 days of incarceration for the offense, the conviction is counted in criminal history as a misdemeanor, as indicated in section 2.B.3.
- (2) If the initial sentence following the prior conviction otherwise eliminated the possibility of the offender ever serving more than one year of imprisonment for the offense, the conviction is counted in criminal history as a gross misdemeanor, as indicated in section 2.B.3.

That would make Finley's prior a felony, because Finley's North Carolina stayed sentence was of an indeterminate range that included 19 months. On the other hand, that would also make Stewart's prior a felony, because Stewart initially got a stay of imposition of felony sentence.

I'm getting ahead of myself, however. The first question is whether the Commission wants to look at the issue of uniform treatment of prior felonies as felonies, gross misdemeanors, or misdemeanors in criminal history. Shall I ask the Chair about putting this on a future Commission agenda?

Respectfully,

- Nate

From: Larkin, Michelle <Michelle.Larkin@courts.state.mn.us>
Sent: Monday, January 20, 2020 2:43 PM
To: Reitz, Nate (MSGC)
Subject: Recent opinion regarding sentencing issue

Nate,

The opinion below was released last week and addresses how to count, for criminal-history-score purposes, an out-of-state conviction with a stayed sentence where the potential incarceration range would constitute a gross-misdemeanor sentence at the low end and a felony-sentence at the high end. The court of appeals held that the district court appropriately counted the prior conviction as a felony in the criminal history score, because a felony term of incarceration is possible (as it is for a stay of imposition). The guidelines do not appear to address this issue. Should they?

Judge Larkin

<http://mncourts.gov/mncourtsgov/media/Appellate/Court%20of%20Appeals/Standard%20opinions/OPa181597-011320.pdf>