

Practitioner Guidance: State v. Strobel

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On August 14, 2019, the Minnesota Supreme Court released its opinion in [State v. Strobel](#), 932 N.W.2d 303 (Minn. 2019).

Interpreting the phrase “current Minnesota offense definitions” within Guidelines § 2.B.7.a, the case addressed the question of whether Strobel’s prior, a pre-Drug Sentencing Reform Act (DSRA) conviction for fifth-degree controlled substance crime should be counted in his current, post-DSRA criminal history as—

- A gross misdemeanor, because “current Minnesota offense definitions” refers to the drug statute setting forth the elements of the crime; or
- A felony, because “current Minnesota offense definitions” refers to the statutory classifications of a crime as a “felony” or a “gross misdemeanor.”

The Supreme Court adopted the first interpretation and rejected the second, holding that “current Minnesota offense definitions” in § 2.B.7.a refers to the elements-based definitions of crimes. The Supreme Court did not explicitly address whether or how the prosecution would be able to present evidence establishing that the weight of the prior drugs would place it in the category of a felony, but it did affirm the lower court’s decision to let the prosecutor develop the record regarding the underlying drug type and amount. MSGC staff therefore assumes that the prosecutor may attempt to establish that the prior fifth-degree possession offense would still qualify as a felony post-DSRA. MSGC staff also assumes that *Strobel* does not affect the *weight* given to prior felony, only to the *classification* of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony.

MSGC has created the following flow chart to aid practitioners in whether Strobel may apply. This flowchart only applies when a defendant has a prior Minnesota fifth-degree controlled substance offense in criminal history.

