



Criminal History: Recurring Issues

Wednesday, May 30, 2018

1:30 pm – 3:00 pm

3:15 pm – 4:45 pm



Krista Rubin

Education Program Specialist

Office of Education and Sentencing Practice



www.ussc.gov



(202) 502-4545



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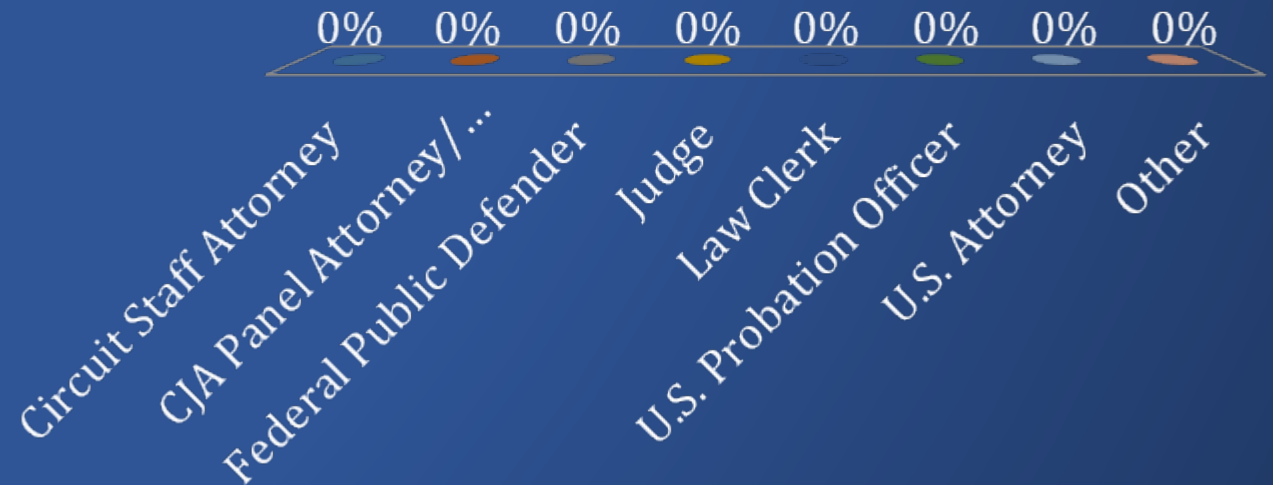
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Who's in the audience?

- A. Circuit Staff Attorney
- B. CJA Panel Attorney/
Private Defense Attorney
- C. Federal Public Defender
- D. Judge
- E. Law Clerk
- F. U.S. Probation Officer
- G. U.S. Attorney
- H. Other



Years of experience with federal sentencing?

- A. Less than 2 years
- B. 2 to 5 years
- C. 5 to 10 years
- D. More than 10 years



Today's Objectives:

- **Identify** and **analyze** common recurring issues in the calculation of criminal history points, including:
 - Relevant conduct vs. criminal history
 - “Status” – under a “criminal justice sentence”
 - Prior sentences and revocation
 - Single vs. separate sentences





Quick Review of General Rules



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Criminal History (§4A1.1)

Measures the seriousness of a defendant's prior record and the likelihood of recidivism

- “Prior Sentences” ((a), (b), and (c))
 - (1, 2, or 3 points each)
- “Status” ((d))
 - (2 points)
- Crimes of violence ((e))
 - (up to 3 points)



Criminal History Points

Prior Offense Committed at 18 or Older

Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	>13 months	Within 15 yrs. of prior sentence imposition or release
2	≥60 days	Within 10 yrs. of prior sentence imposition
1 (max of 4)	All others**	Within 10 yrs. of prior sentence imposition

* If otherwise countable

** Exceptions may apply



Criminal History Points

Prior Offense Committed Before 18

Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	Only if convicted as an adult and >13 months	Within 15 yrs. of prior sentence imposition or release
2	≥ 60 days	Within 5 yrs. of prior sentence imposition or release
1 (max of 4)	All others**	Within 5 yrs. of prior sentence imposition

* If otherwise countable

** Exceptions may apply



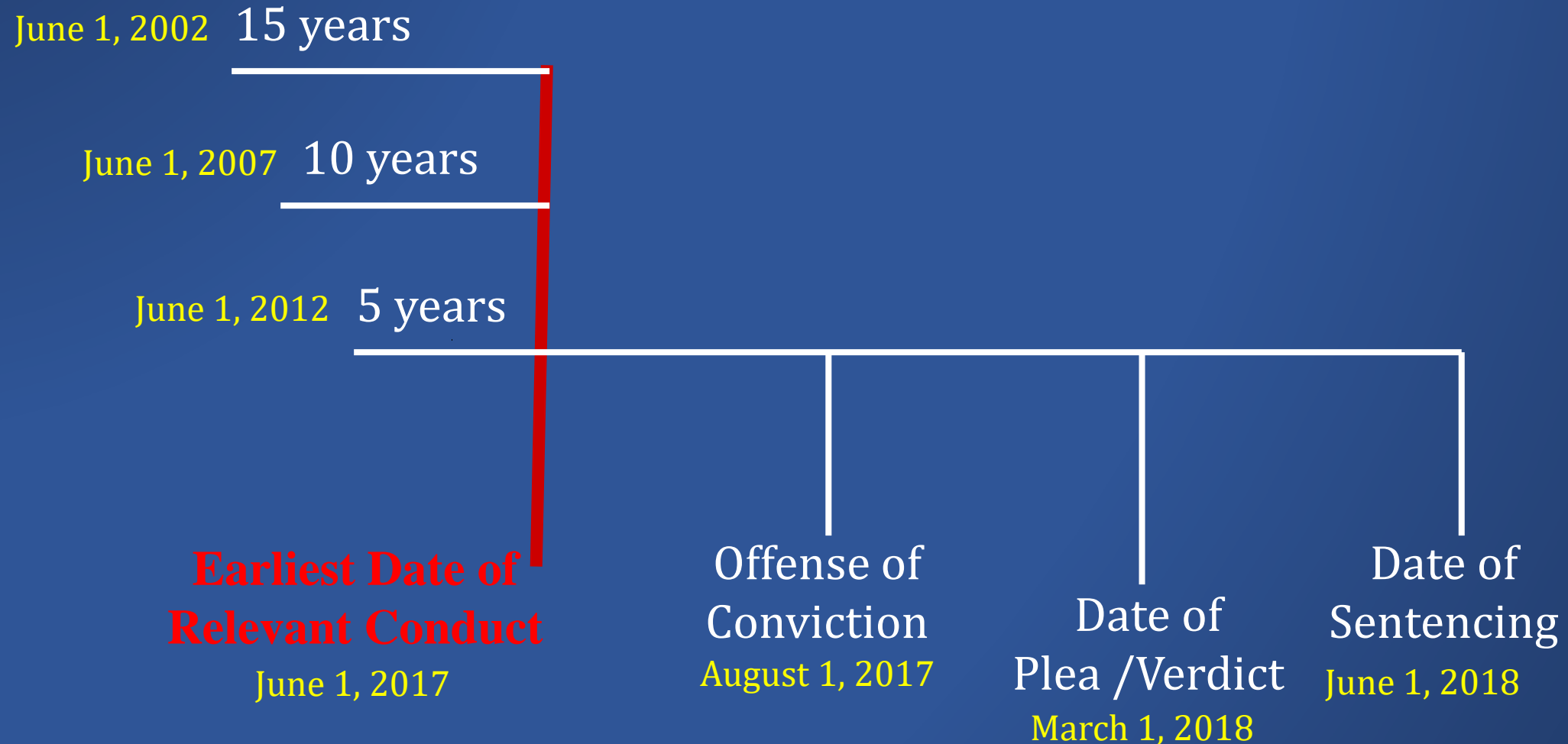
Length of Prior Sentences

§4A1.2(a) and App. Note 2

- Set by maximum sentence imposed
 - If sentence or any portion is suspended, the maximum is established by the unsuspended portion
- Unaffected by release
 - *E.g.*, release to parole or for “good time”



The Interplay Between Criminal History Time Frames and Relevant Conduct





Scenarios and Discussion



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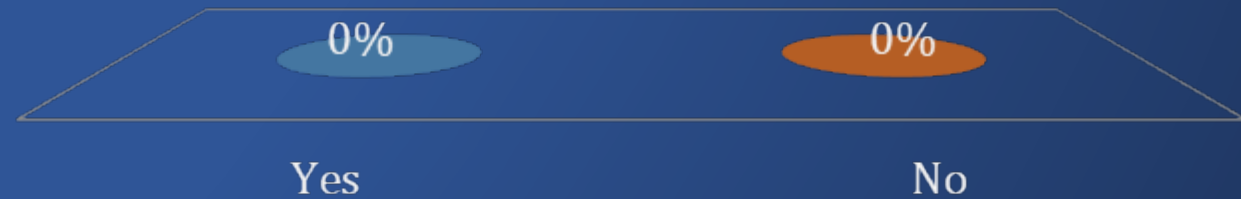
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Scenario 1: Is this defendant's criminal history scored correctly?

- A. Yes
- B. No



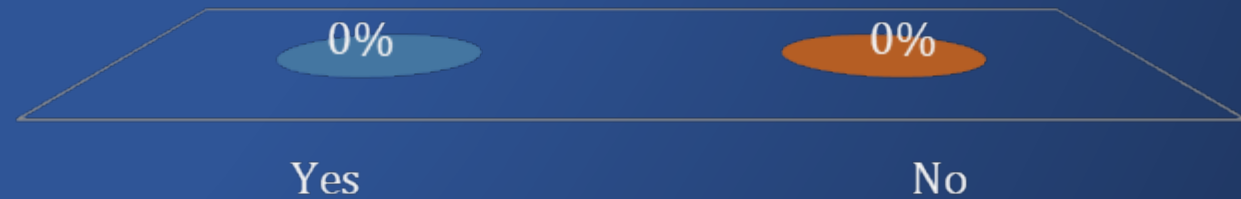
Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
03/04/2012	Distribution of a Controlled Substance (felony) Wicomico County Circuit Court Salisbury, MD	04/07/2012: 6 months custody	§4A1.1(b)	2
10/24/2016	Armed Robbery (felony) Anne Arundel County Circuit Court Annapolis, MD	01/13/2017: 18 months custody	§4A1.1(a)	3



Scenario 2: Is this defendant's criminal history scored correctly?

A. Yes

B. No



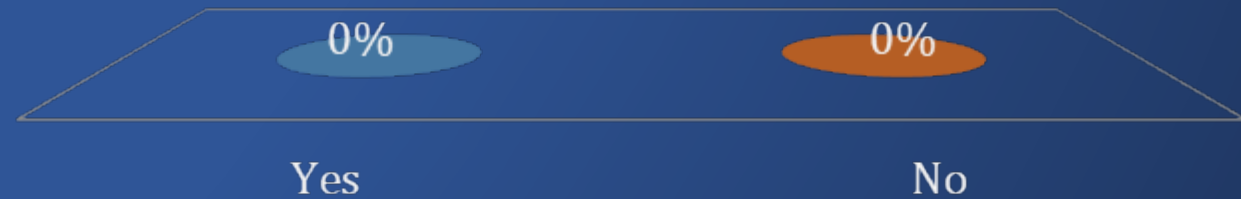
Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
07/10/2012	Driving Under the Influence (misdemeanor) Fort Smith District Court, Fort Smith, AR	7/15/2012: \$500 fine	§4A1.1(c)	1
8/22/2015	Reckless Driving (misdemeanor) Fort Smith District Court Fort Smith, AR	9/1/2015: 3 months ⁹ probation 12/1/2015: probation discharged	§4A1.2(c)(1)	0
02/17/2016	Sale of more than 5 grams of Heroin (felony) Oklahoma District Court for Muskogee County	03/27/2016: Time Served (30 days custody)	§4A1.2(a)(1)	0
01/22/2017	Sale of more than 5 grams of Heroin (felony) Oklahoma District Court for Muskogee County	01/24/2018: 90 days custody	§4A1.2(a)(1)	0



Scenario 3: Is this defendant's criminal history scored correctly?

A. Yes

B. No



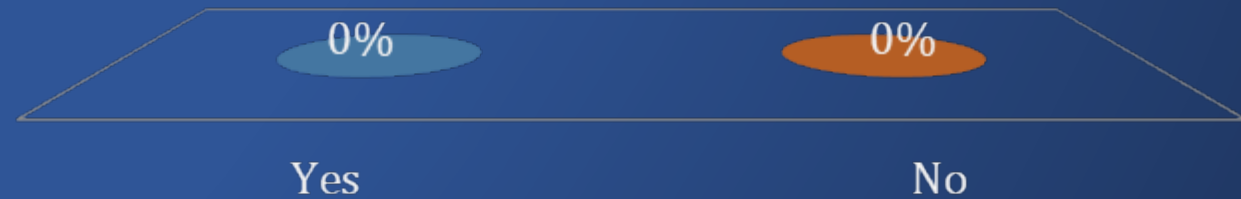
Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
04/16/2017	Theft (felony) Superior Court of Connecticut; Hartford, CT	07/30/2017: 3 months custody	§4A1.1(b)	2

Defendant was released on bond for the theft offense on April 18, 2017. The probation officer did not assign two criminal history points under §4A1.1(d) for committing the instant offense while under a criminal justice sentence.



Scenario 4: Is this defendant's criminal history scored correctly?

- A. Yes
- B. No



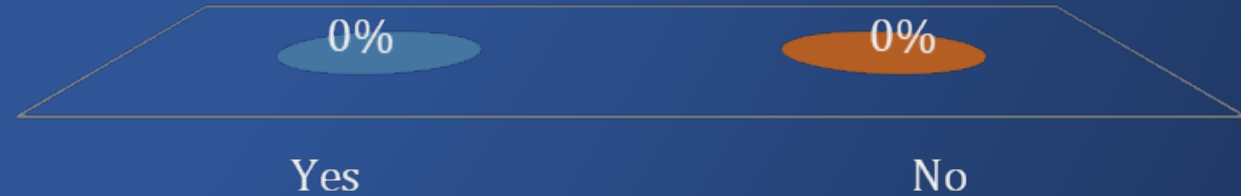
Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
05/30/2005	Driving While Intoxicated (misdemeanor) Chester County District Court West Chester, PA	06/01/2005: 2 years' probation 05/01/2007: Warrant issued for probation violation; warrant still outstanding	§4A1.1(d)	2



Scenario 5: Is this defendant's criminal history scored correctly?

A. Yes

B. No

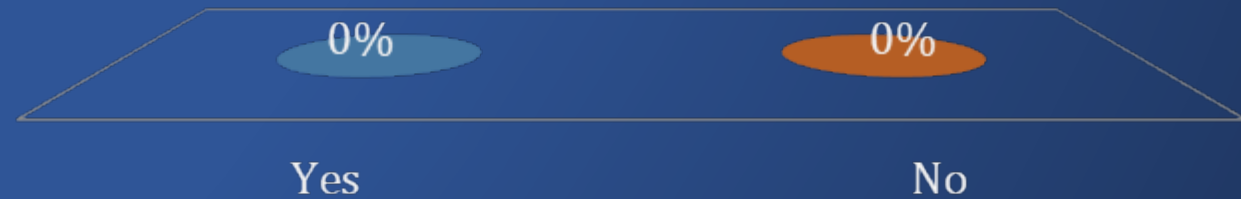


Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
11/18/1988	Second Degree Murder (felony) Superior County Court of Los Angeles County Los Angeles, CA	02/18/1989: 6 years to life imprisonment; 08/31/2001: Released on parole 11/30/2006: Parole revoked, 2 years custody	§4A1.1(a), §4A1.2(k)	3
09/11/2006	Burglary (felony) Superior County Court of Orange County Santa Ana, CA	11/24/2006: 3 years custody, 2 years suspended, probation to follow 6/20/2008: Probation revoked, re-imposition of 2 years suspended custody	§4A1.1(a), §4A1.2(k)	3
05/11/2017	Driving While License Suspended Superior County Court of San Diego County San Diego, CA	06/15/2017: \$200 fine	§4A1.2(c)(1)	0



Scenario 6: Is this defendant's criminal history scored correctly?

- A. Yes
- B. No

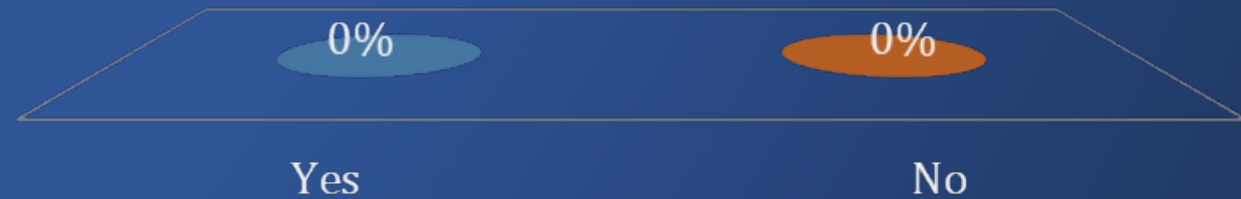


Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
04/24/2006	Illegal Entry (misdemeanor) U.S. District Court; District of New Mexico Las Cruces Division	4/27/2006: 30 days custody	§4A1.2(e)(2)	0
02/22/2007	Importation of Marijuana (felony) U.S. District Court; District of Arizona Tucson Division	04/29/2007: 8 months custody; 3 years supervised release 05/24/2010: supervised release revoked; 30 days custody	§4A1.1(b), §4A1.2(k)	2
05/22/2010	Illegal Reentry (felony) U.S. District Court; District of Arizona Tucson Division	05/24/2010: 15 months custody; 3 years supervised release	§4A1.1(a)	3



Scenario 7: Is this defendant's criminal history scored correctly?

- A. Yes
- B. No

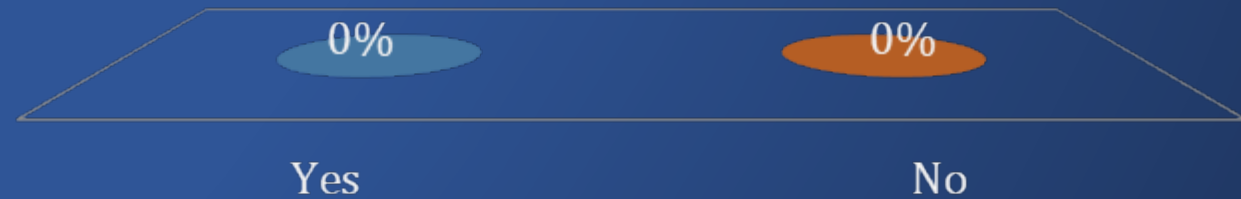


Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
12/05/2004	Theft (felony) Kenton County Circuit Court Covington, KY Case number: 2004-CR-856	4/27/2005: 2 years' probation 01/12/2007: Probation revoked; 15 months custody	§4A1.1(a), §4A1.2(k)	3
1/29/2005	Theft (felony) Kenton County Circuit Court Covington, KY Case number: 2005-CR-125	04/22/2005: 2 years' probation 01/12/2007: Probation revoked; 15 months custody concurrent with case number 2004-CR-856	§4A1.2(e)(2),	0
12/07/2006	Robbery (felony) Kenton County Circuit Court Covington, KY	01/12/2007: 15 months custody concurrent with revocation time imposed in case numbers 2004-CR-856 and 2005-CR-125	§4A1.1(a)	3



Scenario 8: Is this defendant's criminal history scored correctly?

- A. Yes
- B. No

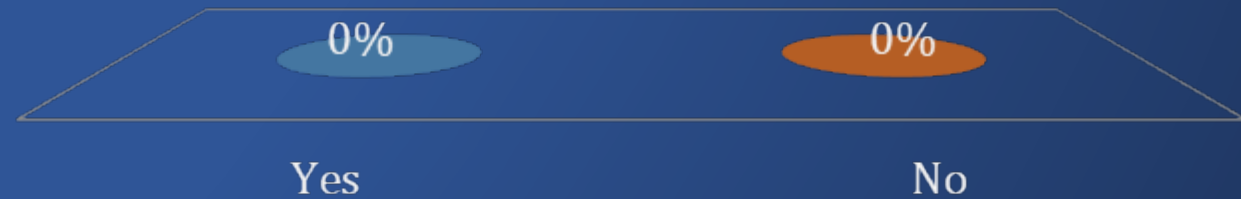


Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
10/15/2014	Second Degree Burglary (felony) Hennepin County District Court Minneapolis, MN CR-14-98484	03/07/2015: 15 months custody	§4A1.1(a)	3
10/15/2014	Aggravated Assault (felony) Hennepin County District Court Minneapolis, MN CR-14-98652	03/07/2015: 15 months custody, to run concurrent with CR-14-98484	§4A1.2(a)(2), §4A1.1(e)	1



Scenario 9: Is this defendant's criminal history scored correctly?

- A. Yes
- B. No



Arrest Date	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Points
09/14/2010	Aggravated Assault (felony) Miami-Dade Circuit Court Miami, FL 2010-CR-34873	11/27/2010: 8 months custody	§4A1.1(b), §4A1.2(a)(2)	3
09/14/2010	Aggravated Assault (felony) Miami-Dade Circuit Court Miami, FL 2010-CR-37124	11/27/2010: 6 months custody consecutive to 2010-CR-34873	§4A1.2(a)(2)	0



Thank You!



Please Submit an Evaluation.



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