

COA Opinion: A trial court may score five points on the prior record variable of the sentencing guidelines when the offender forfeited a bond and had charges pending at the time of the sentencing offense.

15. June 2011 By Kristina Araya

In *People v Johnson*, No. 295664, the Court of Appeals affirmed Johnson's conviction and sentence on charges of possession with intent to deliver marijuana and possession of a firearm during the commission of a felony. First, the court found there was sufficient evidence to support constructive possession of the firearms when they were found in the corner of the front room of the house and Johnson admitted he had been selling drugs out of the house. Second, the court did not find error in the trial court's scoring of five points on the prior record variable of the sentencing guidelines. The prior record variable measures the offender's relationship with the criminal justice system. Under the sentencing guidelines, five points may be scored on this variable if the offender was "on bond" at the time of the sentencing offense. In this case, Johnson was charged with a misdemeanor and granted bond, but the bond was subsequently revoked when he failed to appear in court. The charge was still pending when Johnson committed the sentencing offense. The court concluded that because Johnson could not be classified as having "no relationship" with the criminal justice system, the trial court did not commit an error by scoring the prior record variable at five points. Finally, the court held that Johnson's counsel's failure to object to the scoring of the pretrial variable did not amount to ineffective assistance of counsel. There is a strong presumption that defense counsel's actions were part of a sound trial strategy. Johnson did not overcome this presumption because there was a basis for counsel's not objecting to the score.

Judge Wilder [concurred](#), and disagreed with the majority's conclusion that Johnson was not "on bond" at the time of the sentencing offense. Judge Wilder reasoned that a "bond" is the obligation or contract between the defendant and the court, and although Johnson forfeited the monetary portion of the bond, the underlying obligation to appear in court remained.