

## COA Opinion: A defendant's conspiracy to commit home invasions constitutes a crime against a person or property for purposes of scoring OV 13

18. February 2011 By Layla Kuhl

In *People v Jackson* the Court of Appeals held that a conspiracy offense should be classified based on the underlying offense for the scoring of offense variables (OVs) and prior record variables. Defendant pleaded guilty to two counts of second-degree home invasion and one count of conspiracy to commit second-degree home invasion. The trial court sentenced defendant as a habitual offender to concurrent prison terms of 106 months to 30 years for each conviction. Defendant filed a delayed application for leave to appeal alleging various sentencing errors. The Court quickly disposed of defendant's *Blakely* argument, noting that *People v Drohan*, 475 Mich. 140, 164; 715 N.W.2d 778 (2006) held that *Blakely* does not apply to Michigan's indeterminate sentencing scheme.

With regard to OV 13, defendant challenged the scoring of 10 points, arguing that he had not committed 3 or more crimes against a person or property as required by the then existing version of MCL 777.43. The Court of Appeals determined that defendant had indeed committed three crimes against a person or property, since he was convicted of two counts of home invasion and one count of conspiracy to commit home invasion. The Court reasoned that although conspiracy is designated as an offense against public safety in MCL 777.18, its offense class for sentencing purposes should be *based on the underlying offense* under MCL 777.21(4).