

论文

量刑情节单复数问题研究

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摘要:

量刑情节单复数的判断应当围绕具体案件进行,其要旨首先在于量刑情节的界定问题。派生的构成要件不应作为量刑情节;在综合性构成要件中,只能将其中之一选定为构成要件,其他剩余的要件则转换为量刑情节。当量刑情节之间呈现结合关系、包容关系或竞合关系时,应当按单一情节对待;在一人犯数罪时,行为人的立功只能视为一个量刑情节,而行为人的未成年人身份及累犯情节应当按复数量刑情节对待。

关键词: 量刑情节 单复数 量刑情节关系

A Study on the Singular and Plural of Circumstances for Sentencing

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Abstract:

The singular or the plural of circumstance for sentencing should be determined in the context of particular cases . The primary issue is to distinguish the circumstances for sentencing from the constituent elements of crime . The derivative constituent elements of crime should not become circumstance for sentencing . Among the comprehensive constituent elements of crime,only one will be taken as the constituent element,and the other elements will be converted into circumstances for sentencing . When there appears a combined relationship,an inclusive relationship or a competing relationship between circumstances for sentencing,we only regard one of them as the sentencing circumstance;and when the subject has committed several crimes,one Meritorious Service of this subject can only serve as a singular circumstance for sentencing while the minor identity and the circumstance of recidivism should serve as plural circumstances for sentencing .

Keywords: circumstance for sentencing singular and plural the relationship between circumstances for sentencing

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