

## RECENT WINS!

In re B.M. (H046404)  
Panel attorney: Heather Shallenberger  
Date: April 29, 2019

A probation condition not to possess weapons was modified to avoid constitutional problems. (Staff attorney Lori Quick)

In re Q.M. (H045254)  
Panel attorney: Sylvia Ronnau  
Date: April 26, 2019

The punishment for assault with a deadly weapon and burglary should be stayed under Penal Code section 654 in lieu of the punishment for attempted murder with a weapon. (Staff attorney Paul Couenhoven)

In re L.D. (H045721)  
Panel attorneys: Carol Koenig, Daniel Rooney  
Date: April 26, 2019

The matter was remanded to comply with the Indian Child Welfare Act. (Staff attorney Patrick McKenna)

In re Michael Hostia (H046040)  
Panel attorney: Brian McComas  
Date: April 22, 2019

The defendant possessed 0.09 grams of methamphetamine. The defense presented an expert who said this was not a useable amount. The prosecution impeached the defense expert at trial with evidence from a police report that when he was a police officer he had arrested someone for possession 0.1 grams of methamphetamine. Also, the prosecution expert did a demonstration by taking a packet of sugar, which he said weighed one gram, and dividing it into ten parts, each purportedly being 0.1 grams. It was shown on habeas corpus, however, the full police report indicated the person the defense expert had arrested possessed much more than 0.1 grams. Further, the packet of sugar that the prosecution used in the demonstration weighed one ounce, not one gram, and thus the ten parts of the packet were much more than 0.1 grams. The court of appeal issued an order to show cause on claims of not providing material exculpatory evidence and for presenting false evidence. (Staff attorney Jonathan Grossman)

People v. Patagua (H046138)  
Panel attorney: Ronald Boyer

Date: April 18, 2019

The AIDS education fine was unauthorized. (Staff attorney Jonathan Grossman)

People v. Rozsa (H045520)

Panel attorney: John Dwyer

Date: April 18, 2019

The court was required to dismiss the counts that the defendant did not plead to as part of the plea bargain. (Staff attorney John Dwyer)

People v. Louis Bernabei (H045459)

Panel attorney: Heather Mackay

Date: April 16, 2019

A no contact order was unauthorized. (Staff attorney Lori Quick)

People v. Ernesto Contreras (H044218)

Panel attorney: Paul Carroll

Date: April 12, 2019

The abstract of judgment needed to be corrected to reflect the proper sentence. (Staff attorney Paul Couenhoven)

People v. Victor Reyes (H045457)

Panel attorney: Susannah McNamara

Date: April 9, 2019

A no alcohol condition of probation was unconstitutionally vague. (Staff attorney Paul Couenhoven)

In re A.Y. (H045197)

Panel attorneys: John Dodd and Jacob Olson

Date: April 5, 2019

After the Department and the parents presented their experts concerning whether the minor suffered from shaken baby syndrome, the Department was allowed over objection to present another expert in rebuttal. However, the court refused to allow the parents to present another expert in surrebuttal. The court of appeal reversed because the excluded evidence concerned the te critical issue of whether the minor suffered from shaken baby syndrome that was discussed by in rebuttal. (Staff attorney Jonathan Grossman)

People v. Aparicio (H045319)  
Panel attorney: Geoff Jones  
Date: April 3, 2019

The court was required to dismiss the counts that the defendant did not plead to as part of the plea bargain. (Staff attorney Patrick McKenna)

Wade v. Superior Court (H045813)  
Attorney: Jeanine G. Strong  
Date: March 28, 2019

In a published decision, it was held the court abused its discretion in denying military personnel diversion under Penal Code section 1001.80 solely because of the nature of the offense. (SDAP was not involved in the matter)

People v. Castellero (H044944)  
Panel attorney: Michael Sampson  
Date: March 25, 2019

The minor committed a set of crimes when he was 16 years old, one when he was 15, and one might have been when he was 15 or 16 years old. He entered into a plea bargain in adult court, and Proposition 57 became law during his appeal. For purposes of the appeal, it was assumed that the law prohibiting minors to be transferred to adult court was constitutional. In a published decision, the court held that when there is a remand under Proposition 57, the juvenile court shall hold a transfer hearing, and if the matter is not transferred to adult court, the minor is not able to withdraw his guilty pleas; instead, the court schedules a disposition hearing. The juvenile court shall determine if the minor was 15 or 16 when the crime was committed. If only some of the charges are transferred to adult court, then this does not undo the pleas, but the adult court might need to resentence him. (Staff attorney Williams Robinson)

In re A.E. (H046013)  
Panel attorney: Kelley Fleming  
Date: March 21, 2019

The minor entered another's car. The issue at the jurisdictional hearing was whether he took anything. The victim testified some things were recovered by the police, but he also said those items were never missing from the car. The court of appeal ruled there was insufficient evidence to find the minor committed theft. (Staff attorney Lori Quick)

People v. David Bennett (H045394)  
Staff attorney: Paul Couenhoven  
Date: March 21, 2019

An enhancement for committing a felony while released on a felony must be stricken because the predicate felony conviction had been reduced to a misdemeanor under Proposition 47.

People v. Rojas (H045848)  
Panel attorney: Gordon Brownell  
Date: February 28, 2019

Appellant pled to four counts but was erroneously sentenced on five counts. (Staff attorney Jonathan Grossman)

People v. Freddie Mendoza (H045134)  
Panel attorney: Alan Siraco  
Date: February 26, 2019

Appellant entered a plea bargain for a split sentence of three years in jail followed by six years on mandatory supervision. At sentencing, however, the court ordered he serve 3 years 69 days in jail. This violated the plea bargain. (Staff attorney Patrick McKenna)

People v. Campuzano (H045365)  
Panel attorney: Michael Sampson  
Date: February 26, 2019

A probation condition limiting with whom appellant can socialize was modified to avoid problems with vagueness. (Staff attorney Lori Quick)

In re M.B. (H045708)  
Panel attorneys: Linda Harvie and Daniel Rooney  
Date: February 25, 2019

The court remanded the matter for the county to comply with the notice requirement of the Indian Child Welfare Act. (Staff attorney Patrick McKenna)

People v. Chi Ung (H044599)  
Panel attorney: Lise Breakey  
Date: February 22, 2019

Officers were at a motel parking lot investigating possible crimes and running license plates of cars to determine if they were stolen. They saw appellant asleep in the driver's seat of a car parked in the lot. An officer opened the unlocked driver's door and noticed a gun under appellant's leg. The trial court denied the motion to suppress evidence based on the community caretaker exception. The court of appeal reversed. If there was truly a concern for his safety not

related to criminal investigations, the officer should have knocked on the window to ascertain if appellant was in need of assistance. (Staff attorney Paul Couenhoven)

People v. Raymond Garbin (H045938)

Panel attorney: Raymond Garbin

Date: February 21, 2019

Appellant's conviction for identity theft can be reduced to misdemeanor shoplifting under Proposition 47 if he can show the amount taken was not more than \$950. (Staff attorney Patrick McKenna)

People v. Jose Hernandez (H044870)

Panel attorney: Jonathan Roberts

Date: February 19, 2019

Appellant was convicted of felony cultivation of marijuana and misdemeanor possession for sale. The court erred in telling the jury it would instruct on the lesser included offense of simple possession but failing to do so. Further, his felony conviction must be a misdemeanor under Proposition 64. (Staff attorney Jonathan Grossman)

People v. Robert Bagwell (H044526)

Panel attorney: Renee Paradis

Date: February 14, 2019

Appellant was convicted of possession of controlled substances while armed with a firearm, possession of a firearm as a felon, possession of drugs, and possession of drug paraphernalia, among other things. The court of appeal decided the punishment for a felon in possession of a firearm and possession of paraphernalia must be stayed under Penal Code section 654. (Staff attorney Jonathan Grossman)

People v. Lee (H042909)

Attorney: David Reagan

Date: February 13, 2019

The trial court decided on habeas corpus that the defendant's conviction for first degree murder as an aider and abettor must be reduced to second degree under *People v. Chiu* (2014) 59 Cal.4th 155. The court of appeal agreed. (SDAP was not involved in this appeal)

People v. Theodore Quezada (H044717)

Panel attorney: Elisa Brandes

Date: January 31, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Patrick McKenna)

People v. Frank Stephenson (H045719)

Panel attorney: Paul Kraus

Date: January 31, 2019

Mandatory supervision conditions prohibiting appellant from owning, possessing, or having access to “any weapon” and being “adjacent” to a school campus were unconstitutionally vague. The court modified the conditions. Further, the payment of the court operations assessment and the court facilities assessment could not be made a condition of his mandatory supervision. (Staff attorney Jonathan Grossman)

People v. Anthony Alvarez (H043234)

Panel attorney: Shaneen Porter

Date: January 31, 2019

A prison prior needed to be stricken because the conviction for the prior had been reduced to a misdemeanor under Proposition 47. (Staff attorney Lori Quick)

In re G.V. (H045895)

Panel attorney: Marc McKenna

Date: January 31, 2019

A probation condition to report all police contacts was unconstitutionally vague and modified to apply only if the probationer reasonably knows she is being investigated for illegal activity. (Staff attorney Dallas Sacher)

People v. Jesse Quiming (H043494)

Panel attorney: Alexis Haller

Date: January 31, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. On remand, the trial court should also consider whether appellant is entitled to mental health diversion under newly enacted Penal Code section 1001.36. (Staff attorney William Robinson)

People v. Justin Skannal (H044449)

Panel attorney: Joseph Shipp

Date: January 31, 2019

Appellant entered the victim's apartment and said he would kill everyone inside and later said not to play with him or he would kill her. He was convicted of making a criminal threat, among other things. The court of appeal decided the failure to give a unanimity instruction was prejudicial error. (Staff attorney William Robinson)

People v. Armando Canchola (H044154)

Panel attorney: Gordon Brownell

Date: January 31, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393 and whether to strike the gang enhancement pursuant to *People v. Fuentes* (2016) 1 Cal.5th 218. (Staff attorney Patrick McKenna)

People v. Randall Atkins (H044999)

Panel attorney: Brian McComas

Date: January 30, 2019

In a published decision, the court determined that to be guilty of threatening an executive officer under Penal Code section 69, the defendant must know the person being threatened is an executive officer. (Staff attorney Paul Couenhoven)

Todd Rochelle v. Superior Court (H045357)

Attorney: Elizabeth Caballero

Date: January 29, 2019

The court of appeal reversed the order holding the defendant to answer, ruling that a postal inspector was not a peace officer under California law and could not provide hearsay evidence at a preliminary hearing. (SDAP was not involved in this matter)

People v. David Lopez (H045177)

Panel attorney: Maggie Shrout

Date: January 25, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney Lori Quick)

People v. Wilder (H043486)

Panel attorney: Sara Coppin

Date: January 24, 2019

A jury convicted appellant of attempted possession of child pornography and attempting to use a minor for sex acts. A 16 year-old girl was sitting at a table in a public library. Appellant photographed her from under the table and behind her. She was fully clothed and not doing anything suggestive, and thus there was insufficient evidence to support the convictions. (Staff attorney William Robinson)

People v. Flores (H045080)  
Staff attorney: Anna Stuart  
Date: January 18, 2019

The court erred in refusing to expunge appellant's record for a misdemeanor conviction because he had successfully completed probation.

People v. Alonso Ruiz (H044308)  
Panel attorney: Rachel Varnell  
Date: January 14, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Paul Couenhoven)

People v. Gonzalez (H045206)  
Staff attorney: Lori Quick  
Date: January 14, 2019

There was insufficient evidence of committing continuance lewd acts with a minor for at least three months.

People v. Fowler (H044621)  
Panel attorney: Steven Schorr  
Date: January 11, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Jonathan Grossman)

People v. Alvarez (H044173)  
Panel attorney: Jeffrey Kross  
Date: January 8, 2019

There was insufficient evidence of an ability to pay attorney fees. (Staff attorney Lori Quick)



