

SUFFICIENCY OF THE EVIDENCE
PRETRIAL AND POSTTRIAL MOTIONS
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SENTENCING
DEPENDENCY CASES
HABEAS PROCEEDINGS
MISCELLANEOUS

SUFFICIENCY OF THE EVIDENCE

In re Jesse H. (H026624)

Panel attorney: Jeanine Strong

Date: February 23, 2005

The minor was placed on probation with gang conditions. It was suspected he was in violation of the conditions of probation, and a warrant was issued for his arrest. Officers entered his home and found him asleep in his bedroom. Inside his bedroom, officers found a concealed gun and ammunition in a red pouch. After a contested jurisdictional hearing, the court found appellant had possessed a loaded and concealed firearm and the gang allegations true, it also found him guilty of the substantive gang crime of assisting a gang. The court of appeal agreed there was insufficient evidence that appellant was furthering a gang by sleeping with a gun. (Staff attorney Vicki Firstman)

People v. Jose Roman (H026462)

Panel attorney: Sandra Uribe

Date: February 25, 2005

Appellant was convicted of four counts of forcible lewd conduct. For two of the counts, however, there was no evidence of force. The prosecution argued there was duress because appellant lived in the household for a year and was older than the victims. The court of appeal found this was insufficient, but appellant was guilty of the lesser included offense of nonforcible lewd conduct. (Staff attorney Dallas Sacher)

People v. Frank Ramirez (H026832)

Panel attorney: George Schraer

Date: March 3, 2005

Appellant was convicted of felony attempted false imprisonment in counts one, assault in count two, child molestation in count three, and attempted false imprisonment in count four. Because he had two prior strike convictions, he was sentenced to serve 27 years to life in prison. Appellant had driven up and down a street, watching a 16 year-old girl who was walking to school. Later, as she left from school, she noticed appellant parked near her bus stop. Appellant struck up a conversation with her and offered several times to provide her a ride. At one point, he opened the

car door and put his hand on her arm, offering her a seat in the car, but she refused. Eventually, a witness intervened and showed a flyer indicating that appellant was a sex offender. The court of appeal found there was sufficient evidence for the felony, but it held there was insufficient evidence for an assault. It also reversed the conviction for molestation, which requires a sexual motive, because the court also instructed the jury that motive is not an element to an offense. (Staff attorney Dallas Sacher)

People v. Darian Powell (H026934)
Panel attorney: Robert Derham
Date: April 25, 2005

Appellant represented himself at trial and was found not guilty of all felonies except for making criminal threats. Appellant and his wife were arguing. They have had arguments before but no actual domestic violence. During their arguments, they commonly called each other names and made idle threats. In this occasion, appellant said he would kill the man he accused of having an affair with her. The court of appeal agreed there was insufficient evidence he intended his remark to be taken as a threat or that she was in sustained fear. (Staff attorney Michael Kresser)

People v. Antonio Borquez (H027314)
Panel attorney: Rachel Lederman
Date: July 1, 2005

Appellant was observed by store security taking some property, and leaving the store without paying for it. As he prepared to mount his bicycle, store security confronted him. He dropped the merchandise, threw the bicycle at the security guards, and ran. A jury convicted him of robbery. The court of appeal held there was insufficient evidence of a robbery because he abandoned the property before inflicting force or fear on the store security. (Staff attorney Paul Couenhoven)

PRETRIAL AND POSTTRIAL MOTIONS

People v. Rodney Che Williams (H027403)
Panel attorney: Jeffrey Schafer
Date: May 15, 2005

Appellant was held to answer for crimes in resisting arrest. He filed a motion to dismiss the information pursuant to Penal Code section 995 on the ground that the officers were not lawfully arresting him under the Fourth Amendment. The motion was denied, but the court promised he could appeal the denial of the motion if he pled. He pled. However, the denial of a section 995 motion cannot be raised on appeal even with a certificate of probable cause. The court of appeal reversed due to the illusory promise. (Staff attorney Jonathan Grossman)

People v. Tyrone Owens (H027124)
Panel attorney: Joan Isserlis
Date: June 15, 2005

After losing a jury trial, appellant moved to represent himself at sentencing for purposes of bringing a new trial motion. The trial court ordered a psychological evaluation. The evaluators said he was competent but paranoid and thus prone to defend himself in a manner that could not be successful. The trial court denied the motion for self-representation. The court of appeal agreed the trial court used the wrong standard, but remanded the matter for the court to reconsider the motion. (Staff attorney Lori Quick)

People v. Jure Dragos (H027410)
Panel attorney: David Martin
Date: July 14, 2005

Appellant pled to a series of crimes after trial counsel advised him the offer was for a no more than 90 years in prison. In fact, the offer was for no less than 90 years to life in prison. He moved to withdraw his plea in the trial court. The court found he was misadvised, but there was no prejudice because he was likely to lose the trial. The court of appeal reversed. Prejudice is established if it were reasonably likely appellant would not have pled if he were properly advised. Because this was established, he was entitled to withdraw his plea. (Staff attorney Dallas Sacher)

ERROR AT TRIAL OR HEARING

People v. James Jernigan (H026655)
Panel attorney: Jean Matulis
Date: January 26, 2005

Appellant was charged with failing to register. He represented himself and contended that there was a conspiracy by law enforcement agencies to violate parole which led him to flee the state. The prosecution successfully moved in limine to exclude the evidence. The court told him that the evidence was inadmissible though appellant could say a little about it only if there were a court trial. Appellant then waived his right to a jury. The court found him guilty. The court of appeal reversed, agreeing that the waiver of the right to jury was coerced based on a false promise that there would be a benefit to having a court trial. (Staff attorney Bill Robinson)

People v. Gregory Wilks (H026559)
Panel attorney: Eileen Kotler
Date: February 2, 2005

A jury convicted appellant of commercial burglary. With two prior strikes, he was sentenced to serve life in prison. The evidence in the case was that appellant was employed by a temporary

agency to work at Cisco Systems. Various computer equipment was missing, and it was determined from the use of a card key system and video cameras that the equipment was taken when appellant was in the buildings. At the beginning of the trial, during voir dire, one potential juror disclosed she had a job shipping material to computer companies, such as Cisco Systems. She also disclosed that sometimes thefts occurred. The judge responded that this was because companies such as hers tended to hire people without doing background checks, and many of the employees were just out of prison. The court of appeal agreed that the judge's comments revealed bias against the defendant and a rational jury would conclude that the judge's comments, which correlated with the facts of the case, demonstrated that he had inside information of appellant's guilt. Despite instructions designed to cure the problem, the court of appeal concluded appellant was prejudiced and entitled to a new trial. (Staff attorney Lori Quick)

People v. Bill Smith (H027180)
Panel attorney: Douglas Kane
Date: February 18, 2005

The court reversed an order that appellant be tested for HIV because there was insufficient evidence justifying such a search. (Staff attorney Bill Robinson)

In re Francisco M. (H027572)
Panel attorney: Janet Gilger
Date: February 22, 2005

Appellant was charged with assault with a deadly weapon. After a contested jurisdictional hearing, the court found this not to be true but found him guilty of the lesser offense of brandishing a weapon. The court reversed this finding, because the juvenile court lacked the discretion to amend the petition to allege a lesser related offense. (Staff attorney Dallas Sacher)

People v. Harry Terry (H026576)
Panel attorney: Randi Covin
Date: March 17, 2005

A complaint was filed on October 21, 2002, alleging appellant committed three acts of and the complaint was filed within one year of the complaining witness disclosing the allegations (which was on April 12, 2002). After the preliminary hearing, the prosecution alleged in the information, filed on July 3, 2003, six additional acts of molestation occurring more than six years ago. It did not allege the charges were filed within a year of the complaining witness disclosing the crimes. In a court trial, he was found guilty of all charges. In a published opinion, the court of appeal reversed. Filing the complaint was insufficient, and there was no allegation counts four through nine were filed within the statute of limitations. The remedy was to remand the matter to determine if they were truly time barred.

People v. Fidel Ruiz (H027120)

Panel attorney: Rex Williams

Date: March 22, 2005

Appellant was charged with possession of marijuana for sale, among other things. The jury found him not guilty of the charge but guilty of the lesser offense of possession of more than an ounce of marijuana. The court of appeal agreed that possession of more than an ounce of marijuana was not a lesser included offense of possession for sale, but the court of appeal could reduce the charge to possession of less than an ounce of marijuana. (Staff attorney Paul Couenhoven)

People v. Armando Gutierrez (H026690)

Panel attorney: Irma Castillo

Date: April 13, 2005

A jury convicted appellant of four counts of assault with a deadly weapon and possession for sale of drugs. He had been involved in a fight with four partying college students and possessed drugs in his car. He claimed self-defense. The prosecution introduced evidence that appellant had been a gang member, though there was no evidence this case was gang-related. The prosecution argued that appellant's gang history made his claim of self-defense less likely. The evidence was irrelevant. Trial counsel objected on various grounds, including hearsay, non-responsive, leading, and assumes facts not in evidence, but not grounds the evidence was irrelevant or should have been excluded under Evidence Code section 1101. The court of appeal found trial counsel's failure to present the proper objection was on its face not strategic and reversed the conviction. (Staff attorney Dallas Sacher)

People v. Salvador Garcia, Daniel Rios and Jesus Salazar (H026159)

Panel attorney: C. Elliot Kessler, Philip Brooks, and Tara Mulay

Date: April 28, 2005

Appellants were charged with three counts of murder with special circumstances. The jury returned verdicts finding them guilty of the lesser included offenses of involuntary manslaughter. In this case, the defendants were previously attacked by gang members and then found themselves surrounded by about a dozen gang members. When one appeared to be reaching for a weapon, one of the defendants fired his gun several times. On appeal, they complained that the instruction on self-defense was flawed because it informed the jury that an overt act of aggression was necessary for the right to self-defense to arise. The court of appeal agreed and reversed. (Staff attorney Michael Kresser)

People v. Steven Pena, Gustavo Castenada, Andres Perez, Christopher Carrasco, Jerry Patlan

Panel attorneys: Sara Theiss, Eileen Kotler, Barbara Michel, John Schuck, Peter Gold

Date: April 29, 2005 (H023394)

The five codefendants were in the county jail and allegedly beat up another inmate, breaking his jaw. They were convicted of assault with force likely to cause great bodily injury and battery with serious bodily injury with a great bodily injury enhancement (except for Carrasco) and a gang enhancement. Perez testified he punched the victim for non-gang related reasons. Carrasco told an officer that the group beat up the victim because he disrespected the Nortenos. Carrasco refused to testify, and his statement was admitted at the jury trial only against him. In a published decision, the court of appeal held that admission of Carrasco's statement violated the *Aranda-Bruton* rule and the confrontation clause under *Crawford*; the error required reversal of the convictions as to Pena, Patlan, and Castenada as well as reversal of the gang enhancement as to Perez. The court also held that the instruction on the gang enhancement erroneously told the jury that the second predicate offenses could be shown if a codefendant aided and abetted in the defendant's crime, so the gang enhancement was reversed as to Carrasco. Finally, it held that the "group beating" instruction for great bodily injury was erroneous and reversed the enhancement as to Perez. (Staff attorney Jonathan Grossman)

People v. Juan Osio (H026953)

Panel attorney: David Stanley

Date: May 25, 2005

The jury found appellant guilty, and he was sentenced to serve life in prison. During the trial, the jury saw a videotaped interview between a police officer and the victim. The victim testified at the preliminary hearing retracted her allegations, and her statements to the police were not admitted at the hearing. She was unavailable to testify at trial. The court of appeal found that the introduction of her police interview violated the confrontation clause under *Crawford*. (Staff attorney Paul Couenhoven)

People v. Daniel Nagy (H026195)

Panel Attorney: Edward Mahler

Date: June 3, 2005

After appellant's motion for a new appointed attorney (*People v. Marsden* (1970) 2 Cal.3d 118) was denied, he moved to represent himself. (*Faretta v. California* (1975) 422 U.S. 806, 836.) In advising appellant of his right to counsel, the court said, "I've never been one to believe what the appellate courts say . . . I have to go over and try to convince you not to do this." The court also said: "I think it is in your best interest to do so. You'll feel better about yourself, You'll feel better about the case. You get to ask the questions you want to ask." The court of appeal held this advisement improperly encouraged appellant to waive his right to counsel and failed to adequately warn him of the hazards of self-representation. (Staff attorney Lori Quick)

People v. Monty Lopez (H026476)
Panel attorney: Danalynn Pritz
Date: June 8, 2005

A jury convicted appellant of disturbing the peace, felony resisting an officer and battery on a peace officer. Appellant and the defense witness were impeached by evidence that they had been arrested for certain misdemeanors in the past. In a published decision, the court of appeal agreed that trial counsel was ineffective for failing to object. Some of the prior misdemeanors were not crimes of moral turpitude and evidence only of arrest is inadmissible. Further, the prosecution introduced evidence that when appellant was questioned by the police, he said, "Fuck you. I want to talk to my lawyer." The prosecution argued this was an adopted admission. The court of appeal held admitting a defendant's invocation to silence and to an attorney constituted error under *Doyle v. Ohio* (1976) 426 U.S. 610, and trial counsel was ineffective for failing to object to the prosecution's argument. (Staff attorney Bill Robinson)

People v. David Bradford (H027528)
Panel attorney: Heather Mackay
Date: June 28, 2005

Appellant was convicted of two counts of dissuading a witness, among other things. The court of appeal agreed that one of the convictions must be stricken because the crime describes a continuing course of conduct. Thus, it cannot be fragmented into different crimes for every comment made by the defendant. (Staff attorney Bill Robinson)

People v. Frederico Cardenas (H026811)
Panel attorney: Victoria Stafford
Date: June 30, 2005

A jury found appellant guilty of felony assault with a gang enhancement. He was sentenced to serve 25 years to life in prison under the Three Strikes Law. The fight concerned a battle of six (including appellant) against two. Although the six approached the two shouting gang slogans, there was a reasonable inference the other two started the punching. Appellant contended the trial court erred in refusing to instruct on self-defense. The court of appeal agreed and reversed for a new trial. (Staff attorney Jonathan Grossman)

People v. Daniel Martinez (H026440)
Panel attorney: J. Wilder Lee
Date: July 13, 2005

Among other things, appellant admitted possessing methamphetamine and possessing drugs in jail. The court of appeal agreed he could not have been convicted of both crimes for the same

drugs in the same location. Further, the trial court erred in deciding he waived presentence credits. (Staff attorney William Robinson)

People v. Russell Martinez (H025896)

Panel attorney: Arthur Dudley

Date: July 18, 2005

A jury convicted appellant of second degree murder. Appellant had been harassed by the victim and said he killed the victim after similar provocation. The trial court refused to instruct the jury on voluntary manslaughter. The court of appeal reversed. (Staff attorney Paul Couenhoven)

People v. Robert Daniels (H026580)

Panel Attorney: Tutti Hacking

Date: August 5, 2005

Appellant was convicted of robbery and conspiracy to commit robbery. The court found true four prior strike convictions which consisted of three robberies and a juvenile adjudication. Appellant contended there was insufficient evidence he committed the two of the prior adult robberies because the abstract of judgment only listed one robbery conviction. There was a second page attached to the abstract which listed three robberies, but it was not clear from where this page came. It did not provide the defendant or the case number. The court of appeal agreed with this claim, but it disagreed with appellant's claim that the juvenile adjudication for assault with a deadly weapon did not qualify as a strike. Assault with force likely to cause great bodily injury is an offense listed by section 707 of the Welfare and Institutions Code, but assault with a deadly weapon is not. The court of appeal held that assault with a deadly weapon is an assault with force likely to cause great bodily injury. (Staff attorney Bill Robinson)

People v. Alexandra May (H026909)

Panel attorney: Edward Mahler

Date: August 17, 2005

The jury found appellant not guilty of corporal injury on a former spouse, but found her guilty of misdemeanor battery on a former spouse. The court refused to instruct the jury on the significance of antecedent threats by the victim, as there was a long history of the victim threatening the defendant and being at least emotionally abusive. The court of appeal agreed this was prejudicial error. (Staff attorney Bill Robinson)

People v. John Leitao (H025895)

Panel attorney: Jill Fordyce

Date: August 23, 2005

Appellant made a Marsden motion near the end of trial. The court denied the motion as untimely. The court of appeal reversed for a new hearing, stating the court did not provide appellant an adequate opportunity to address his concerns. Further, appellant's conviction for a prisoner in possession of a weapon needed to be dismissed because it was a lesser included offense to his conviction for assault with a deadly weapon by a prisoner. (Jonathan Grossman)

People v. Edgar Cortez (H025564)
Panel attorney: Robert Derham
Date: September 16, 2005

Appellant pled no contest to various charges and received a 17 year sentence. He was never advised of his *Boykin-Tahl* rights. The court of appeal, therefore, reversed. (Staff attorney Vicki Firstman)

People v. James Richard (H027456)
Panel attorney: Peggy Headley
Date: September 30, 2005

Appellant was charged with assault with a deadly weapon. He claimed self-defense. The court instructed the jury pursuant to CALJIC 5.54 about limits on an aggressor to claim self-defense. This instruction had been criticized in other cases, and the court of appeal found it constituted prejudicial error in this case. The court of appeal also noted that an instruction on consciousness of guilt on the theory that appellant did not tell the police his side of the story was error and it impermissibly allowed the prosecution to argue that his silence was evidence of guilt. (Staff attorney Jonathan Grossman)

People v. Leiva Leyla (H027360)
Attorneys: Jonathan Grossman and W. Richard Bailey
Date: September 30, 2005

The trial court denied appellant's *Pitchess* motion on the ground that trial counsel failed to provide a specific factual scenario establishing good cause. The Supreme Court has said that this standard was too high. The court of appeal remanded the matter for a new hearing on the motion. It also ordered that the punishment for one of the counts be stayed.

People v. Phillip Rodriguez (H027362)
Panel attorney: C. Elliot Kessler
Date: October 17, 2005

Appellant was part of a group of people who beat a victim. He was found guilty of battery

with serious bodily injury, assault with force likely to cause great bodily injury, and robbery. The jury found true that he personally inflicted great bodily injury. The court of appeal reversed the verdict on the enhancement because the court instructed the jury on the invalid “group beating” theory. (Staff attorney Michael Kresser)

People v. Alex Price
Panel attorney: Carol Koenig
Date: November 3, 2005

Appellant was on Prop. 36 probation. It was alleged at one point that he violated his probation. When he was arrested on the warrant, the court sentenced him to prison for 25 years to life under the Three Strikes Law. Appellant claimed the court violated due process when it summarily revoked probation and sentenced him to prison without him admitting the violation and without a hearing to determine if he violated the conditions of probation. Respondent eventually conceded, and the court of appeal reversed. (Staff attorney Lori Quick)

People v. Robin Lammers (H025678)
Panel attorney: James Haworth
Date: November 14, 2005

The court of appeal reversed appellant's admission of an OR enhancement because there was insufficient evidence he waived his right to a jury trial before the admission. (Staff attorney Vicki Firstman)

People v. Lloyd Taylor (H027594)
Panel attorney: Robert Bryzman
Date: November 14, 2005

Appellant was convicted of a felony with five prior strike convictions and three prior prison commitments. At sentencing, the court struck all but one of the strikes and sentenced him to serve nine years in prison. He appealed, and the court of appeal reversed on instructional error. On remand, trial counsel urged him to accept a six year deal on advice that he could receive life in prison. After pleading, appellant made a Marsden motion, complaining about counsel coercing him to plead guilty on the threat he could receive a life sentence. The court denied the motion and eventually sentenced him to serve six years in prison. The court of appeal again reversed. The Marsden motion should have been granted due to trial counsel's deficient performance. (Staff attorney Dallas Sacher)

People v. Aldo Solorio (H028553)
Panel attorney: David Morse

Date: December 7, 2005

Appellant pled no contest to various charges and was sentenced to serve 17 years in prison. He appealed and obtained a certificate of probable cause. The court of appeal reversed and remanded to give him an opportunity to withdraw his pleas because the record showed he was never advised of his rights and he never waived them. (Staff attorney Vicki Firstman)

People v. Christopher Wardell (H027777)

Panel attorney: Douglas Kane

Date: December 15, 2005

In a jury trial, where identity was the issue, the prosecution admitted the extrajudicial statements of an accomplice over appellant's objection. The court of appeal agreed that admission of the hearsay evidence was testimonial and violated appellant's right to confrontation. (Staff attorney Bill Robinson)

People v. Pedro Cabrera (H028487)

Staff attorney: Dallas Sacher

Date: December 19, 2005

Appellant was convicted of a felony domestic violence and placed on formal probation for five years. After serving his jail sentence, he was deported to Mexico. Probation was summarily revoked and a bench warrant issued on the allegation that he failed to report to his probation officer within three days of completing his jail time. More than five years later, appellant was found in the county and arrested on the warrant. The petition to revoke probation was amended to allege he (1) made no attempts to contact the probation office, (2) failed to make himself available for searches or testing, (3) failed to provide proof of participating in a domestic violence program (4) or drug program, (5) failed to pay the restitution fine, (6) re-entered the country illegally, and (7) failed to stay away from the victim. Appellant told his probation officer that he was unable to comply with the probation conditions because he was deported. After staying there in four years, he returned to the United States to stay with his girlfriend. He did not contact probation because he knew he was in violation. The court found allegations (1), (5), (6), and (7) to be true and sentenced appellant to prison. The court of appeal reversed. Appellant did not willfully fail to see the probation officer because it was impossible; though he could have written to probation, he was not told to do this. Since the summary revocation of probation could not be sustained, the length of probation could not be tolled during the summary revocation. Since the subsequent amended revocation petition was filed more than five years after he was placed on probation, the court lacked jurisdiction.

People v. Hau Bi (H028376)

Panel attorney: Siromi Fernando-Santana

Date: December 20, 2005

In the early morning hours, a police officer was patrolling an area which was known for its narcotics activity. He noticed the back door of a music store was propped open; two cars were parked nearby. Michael Lee was walking out of the store toward one of the cars. The officer stopped Lee and asked what he was doing. Lee said he was helping a friend in the music store. He could not find his identification and he appeared he might be under the influence of drugs. He agreed to let the officer in the music store so that someone inside could vouch for him. The officer entered the store and saw appellant inside and near some drug paraphernalia. When appellant disobeyed a command, he was handcuffed and led outside. At this point, the office noticed that appellant appeared to be under the influence. The officer searched appellant and found some methamphetamine. A magistrate denied the motion to suppress evidence. The court of appeal reversed, holding that Lee did not have the apparent or actual authority to consent to the officer entering the store. He was merely a friend helping out. The court of appeal also held the officers did not have the authority to enter the store under the community caretaker exception. Although there was some concern that a burglary was occurring, there was insufficient evidence to permit a warrantless entry. (Staff attorney Vicki Firstman)

SENTENCING

People v. Jermaine Brown (H025981)

Panel attorney: Kim Malcheski

Date: January 10, 2005

The sentencing court imposed the upper term based on a juvenile adjudication and poor performance on probation, among other things. The court of appeal opined that *Blakely* applied to the imposition of the upper term. It concluded that appellant's performance on probation was a factor beyond the fact of a prior conviction which could not be found by the court. A divided court of appeal, however, found that a juvenile adjudication was a fact of a prior conviction which did not need to be found by a jury. Nonetheless, it remanded the matter for a new sentencing hearing because it could not conclude that *Blakely* error was harmless. (Staff attorney Bill Robinson)

People v. Pascual Orta (H027578)

Staff attorney: Dallas Sacher

Date: January 21, 2005

Appellant pleaded guilt to robbery and was sentenced to serve 11 years in prison. On appeal, he contended there was insufficient evidence he had an ability to pay \$500 in attorney fees. The court of appeal agreed.

People v. Robert Diaz (H027111)

Panel attorney: Lark Ritson

Date: January 26, 2005

Appellant was convicted of two counts of grand theft and two counts of commercial burglary stemming from two shoplifting incidents. The court of appeal agreed that the punishment for the theft counts should have been stayed pursuant to Penal Code section 654. (Staff attorney Paul Couenhoven)

People v. Mario Medina (H027071)

Panel attorney: Donn Ginoza

Date: January 27, 2005

The court of appeal reversed an order for attorney fees for appellant who was sentenced to prison when there was insufficient evidence of an ability to pay. (Staff attorney Dallas Sacher)

People v. Steven Percelle (H026115)

Panel attorney: Elisa Brandes

Date: January 31, 2005

A jury convicted appellant of several crimes but found him not guilty of an auto theft. He was also charged with a prison prior in which he was convicted of robbery and burglary. He was sentenced to prison, but the punishment for the robbery was stayed. The court imposed a prison prior for the prior robbery. It sentenced appellant to prison and ordered that he pay victim restitution for the auto theft. The court of appeal held that a defendant could not be ordered to pay victim restitution for a crime in which he was found not guilty. Although such restitution could be ordered as a condition of probation, probation was denied in this case. The court of appeal also held that a prison prior cannot be imposed when the prison sentence was stayed. Although it appeared appellant did go to prison on the burglary, the court did not sentence him on a prison prior stemming from the burglary. (Staff attorney Jonathan Grossman)

People v. Richard Carrasco (H026049)

Panel attorney: Kyle Gee

Date: February 1, 2005

The court of appeal agreed that imposing the upper term violated *Blakely v. Washington* (2004) 124 S.Ct. 2531. (Staff attorney Vicki Firstman)

People v. Jose Solorio (H025573)

Panel attorney: Cliff Gardner

Date: February 2, 2005

Among other things, appellant was convicted of five counts of attempted murder, and actively participating in a gang (Pen. Code, § 186.22, subd. (a)) with an enhancement for personally

inflicting great bodily injury under Penal Code section 12022.7. Appellant had shot at four rival gang members and a bystander was shot. The court effectively instructed the jury of the theory of transferred intent which does not apply to attempted murder. Thus, the conviction for attempted murder of the bystander was reversed. (Staff attorney Dallas Sacher)

People v. Zhi Xin Li (H025403)

Panel attorney: Tara Mulay

Date: February 4, 2005

Appellant was convicted of conspiracy and violating section 266h, subdivision (a). The probation department recommended probation, but the court believed he was ineligible for probation. Since then, the court of appeal held in *People v. Superior Court (Kirby)* (2003) 114 Cal.App.4th 102, 104-107 that probation can be granted. The court of appeal remanded the matter for reconsideration of the sentence. (Staff attorney Vicki Firstman)

People v. Jose Solorio (H025573)

Panel attorney: Cliff Gardner

Date: February 2, 2005

Among other things, appellant was convicted of five counts of attempted murder, and actively participating in a gang (Pen. Code, § 186.22, subd. (a)) with an enhancement for personally inflicting great bodily injury under Penal Code section 12022.7. The trial court imposed the middle term for the underlying offense, to be served concurrently, but ordered that the gbi enhancement be served consecutively to the rest of the sentence. The court of appeal ruled this was an illegal sentence: the enhancement cannot be separated from the underlying charge. (Staff attorney Dallas Sacher)

In re Daniel H. (H027225)

Panel attorney: Daniel Byrne

Date: February 8, 2005

Appellant was found culpable for driving with a blood alcohol level of 0.08% or higher, though the blood test results was that he had a level of 0.07% when he was tested. The juvenile court placed him on probation and ordered that he not associate with persons who use or traffic in narcotics or other controlled substances. The court of appeal held there was sufficient evidence to find appellant culpable of the DUI. It modified the probation condition to require knowledge. (Staff attorney Paul Couenhoven)

People v. Vu Pham (H027623)

Staff attorney: Lori Quick

Date: February 22, 2005

Appellant was sentenced to prison and assessed attorney fees. The court of appeal agreed he could not be punished for a gang enhancement that was never charged or admitted and that there was insufficient evidence he had the ability to pay attorney fees.

People v. Martin Yanez (H07998)

Panel attorney: Alfons Wagner

Date: February 23, 2005

Appellant was placed on probation and assessed a \$200 restitution fine. When his probation was revoked, the court assessed a \$600 restitution fine. The second restitution fine was unauthorized. (Staff attorney Bill Robinson)

People v. Leonard Dunlap (H027996)

Panel attorney: Rex Williams

Date: February 25, 2005

When appellant was sentenced, the court imposed a \$200 restitution fine. The abstract of judgment, however, said it was \$1000. The court of appeal ordered that it be corrected. (Staff attorney Lori Quick)

People v. Vachon Anderson (H027348)

Panel attorney: Patricia Watkins

Date: February 25, 2005

The court of appeal decided that the imposition of the upper term violated *Blakely v. Washington*. (Staff attorney Lori Quick)

People v. Miguel Savalza (H027081)

Staff attorney: Lori Quick

Date: March 1, 2005

Appellant pled no contest to battery and was placed on probation. At sentencing, the court stated it was imposing “[t]he mandatory minimum restitution fine in this case [of] \$300.” The court of appeal held the trial court failed to properly exercise discretion by failing to properly understand the law and remanded the matter for a new hearing on the amount of the restitution fine.

People v. Frank Soto (H027186)

Panel attorney: Barry Morris
Date: March 8, 2005

The trial court erred in imposing a full consecutive subordinate term. (Staff attorney Michael Kresser)

People v. Sonia Ramirez (H027198)
Panel attorney: Janice Lagerlof
Date: March 9, 2005

Appellant pled no contest to some charges and was sentenced to serve eight years in prison. At sentencing, the court imposed a \$1600 restitution fine, stating “[b]ecause it's an eight-year term it requires a mandatory minimum restitution fine of \$200 per year, so the restitution fine is at \$1600.” The court of appeal held the record showed the trial court misunderstood the law. It reversed the restitution fine and ordered a new hearing for the court to properly exercise its discretion. (Staff attorney Michael Kresser)

People v. Edward Ray Bennett (H027736)
Panel attorney: Sandra Uribe
Date: March 3 2005

Appellant was convicted of possessing cocaine (a felony), being under the influence of cocaine, and possessing drug paraphernalia. Appellant was sentenced to prison on the felony and the court imposed a concurrent sentence for the two misdemeanors. Appellant argued the misdemeanor counts should be stayed under Penal Code section 654. The court of appeal held that one could possess cocaine for future use, so count two need not be stayed. The court agreed that possession of paraphernalia was to use the cocaine being possessed, so the punishment for this count should have been stayed. (Staff attorney Vicki Firstman)

People v. Antonio Birrey (H026596)
Staff attorney: Paul Couenhoven
Date: March 11, 2005

The court of appeal agreed that the upper term could not be imposed under *Blakely v. Washington*.

People v. Patrick Gard (H027790)
Panel attorney: Danalynn Pritz
Date: March 24, 2005

Appellant was sentenced to serve four years in prison. Records indicated he had no income or assets, yet he was ordered to pay \$500 in attorney fees. The court of appeal struck the order to pay attorney fees. (Staff attorney Lori Quick)

People v. Ralph Sova (H027006)

Panel attorney: Alan Stern

Date: March 24, 2005

Sova was convicted of two counts of child molestation. Count one occurred between 1996 and 1999. Count two occurred between 1973 and 1980. The court imposed a sentence of eight years, consisting of eight years for count one and the punishment for count two was imposed to be served concurrently. Subsequently, the United States Supreme Court decided *Stogner*. Sova filed a petition for writ of habeas corpus in the superior court, and the district attorney conceded that count two was time barred. Nonetheless, the court imposed the same 8 year sentence, holding that the conduct in count two was an aggravating factor. The United States Supreme Court then decided *Blakely* while Sova appealed. The court of appeal held that the imposition of the upper term due to a factor for which Sova had no right to a jury trial was invalid and the matter was remanded for a new sentencing hearing. (Staff attorney Jonathan Grossman)

People v. Van Nguyen (H026980)

Panel attorney: Art Dudley

Date: March 29, 2005

Appellant was convicted of assault with a deadly weapon with two prior strikes and sentenced to serve 25 years to life in prison. The court of appeal upheld the life sentence but agreed that he was entitled to additional presentence credits. It also agreed that the restitution fine must be reduced to \$200. Although appellant was advised he could receive a \$10,000 fine, he was not advised he could receive a restitution fine. (Staff attorney Paul Couenhoven)

People v. Robert Hands (H027219)

Panel attorney: Gene Vorobyov

Date: March 29, 2005

Appellant was charged with violating Penal Code sections 220 and 289. The jury instead found him guilty of the lesser included offenses of assault and sexual battery, both misdemeanors. On appeal, he argued that the conviction for assault must be dismissed because it is a lesser included offense of sexual battery. The court of appeal agreed. (Staff attorney Paul Couenhoven)

People v. Arthur Esquivel (H027380)

Panel attorney: James Haworth

Date: March 29, 2005

Appellant pled no contest to receiving stolen property, petty theft with a prior, forgery, and misdemeanor dissuading a witness. The court dismissed one of the prior strike convictions and imposed a 32 month sentence. The court of appeal agreed that the punishment for petty theft should have been stayed pursuant to Penal Code section 654. (Staff attorney Paul Couenhoven)

People v. Michael Parkinson (H026652)

Panel attorney: John Schuck

Date: March 29, 2005

The Attorney General conceded that the amount of victim restitution should be decreased by \$626 and a parole revocation restitution fine for one of the counts should be struck because the crime was committed before Penal Code section 1202.45 was enacted. (Staff attorney Lori Quick)

In re Luis F. (H027493)

Panel attorney: Ozro Childs

Date: April 20, 2005

In 1999, appellant was 13 years old and accused of child endangerment. He was placed on probation, but he never did admit the offense. In 2004, he violated probation and was sent to CYA. The court of appeal reversed. Although he was adjudicated for committing other offenses, the failure to admit the child endangerment was a jurisdictional flaw which could be raised at any time. With the child endangerment charge dismissed, it was questionable whether he would have been committed to CYA on the other offenses. (Panel attorney Lori Quick)

People v. Richard Diaz (H026161)

Staff attorney: Dallas Sacher

Date: April 21, 2005

Appellant used a fake police badge to rob a victim. He was convicted of robbery and unlawful use of a badge (Pen. Code, § 538d), a misdemeanor. He was sentenced to prison for the robbery, and the court imposed a one year concurrent term for the misdemeanor. Appellant complained this violated Penal Code section 654. The Attorney General's Office argued the additional punishment was permissible under Penal Code section 667.17 which provided a one year enhancement for using a badge to commit a felony. The court of appeal agreed with appellant. Since the enhancement was not pled, it was irrelevant. Punishment for using a badge to commit a robbery violated the prohibition against multiple punishment for the same act.

In re Oscar M. (H027882)

Panel attorney: Katera Rutledge
Date: April 25, 2005

The court remanded the matter for the juvenile court to determine if a wobbler offense was a misdemeanor or felony pursuant to *In re Manzy W.* (1997) 14 Cal.4th 1199. (Staff attorney Jonathan Grossman)

People v. John Prothro (H026931)
Panel attorney: Andrew Janecki
Date: April 28, 2005

The court of appeal agreed that the trial court erred in denying a defendant presentence credits when sentenced under the Three Strikes Law. (Staff attorney Jonathan Grossman)

People v. Robert Cruz (H027367)
Staff attorney: Bill Robinson
Date: April 28, 2005

The court of appeal agreed that the trial court erred in denying a defendant presentence credits when sentenced under the Three Strikes Law.

In re Kashif P. (H027987)
Staff attorney: Jonathan Grossman
Date: May 6, 2005

The court of appeal agreed that the 2004 amendments to Welfare and Institutions Code section 731 permitted the juvenile court to reduce the maximum period of physical imprisonment. Since the juvenile court was unaware it had this discretion, the matter must be remanded for a new dispositional hearing.

People v. Robert Styre (H028142)
Staff attorney: Dallas Sacher
Date: May 11, 2005

At sentencing, the court ordered appellant to pay a restitution fine, but it did not specify the amount. The court clerk wrote \$600 on the minute order and abstract of judgment, which was the amount recommended by the probation officer pursuant to the formula in section 1202.4. The court of appeal agreed that the court must set the amount.

People v. Ronald Rosales (H027747 et al.)
Panel attorney: Jeffrey Glick
Date: May 11, 2005

The court of appeal agreed that it was incorrect to use counts for which the punishment was stayed in calculating the amount of the restitution fines. (Staff attorney Vicki Firstman)

People v. Charles Hutchinson (H026627)
Staff attorney: William Robinson
Date: May 12, 2005

Appellant entered a bank for the second time in three days, both times wearing distinctive clothing. He acted suspiciously, and waited in the teller line. When he arrived at the counter, he said he wanted to cash a check but he forgot it in his car. The police were called and the manager followed appellant to his car. The police apprehended him and found a note with his fingerprints by the car door stating, "Teller, give me all your hundreds and fifty dollar bills..." The court of appeal found there was enough evidence for an attempted robbery conviction. However, it agreed there was insufficient evidence that a first degree burglary from 1973 qualified as a strike, that appellant should have had the commercial burglary conviction in this case stayed under Penal Code section 654, that the restitution fines should be reduced because one of the counts should have been stayed, and that the trial court erred in ordering appellant to give a DNA sample.

People v. Manuel S. Gutierrez (H027218)
Staff attorney: Paul Couenhoven
Date: May 13, 2005

Appellant pled guilty to four counts of molesting his daughters and allegations he came within the One Strike Law (Pen. Code, § 667.61.) Under the One Strike Law, he was not subject to a consecutive mandatory term 15 years to life for each count if he "qualified" for probation under Penal Code section 1203.066, subdivision (c). The trial court did not believe probation was appropriate, but thought that 60 years to life was too much. It believed it lacked discretion to impose a lesser prison sentence. Appellant argued that finding he "qualified" for probation meant the One Strike Law did not apply, even if the court eventually were to decide to deny probation. The court of appeal agreed and remanded the matter for a new sentencing hearing for the trial court to exercise its discretion to sentence appellant.

People v. Joseph Ramirez (H027409)
Panel attorney: Steven Schorr
Date: May 26, 2005

The court of appeal found the upper term could not be imposed on the aggravating factors

which were not found true by the jury. It also held that appellant was entitled to receive presentence credits updated. In this case, the presentence credits were calculated for the sentencing hearing which was reversed on appeal. On remand, the trial court failed to change the presentence credits. (Staff attorney Dallas Sacher)

People v. Jeremy Payne (H027203)

Staff attorney: Vicki Firstman

Date: May 26, 2005

Appellant pled guilty but contested he had suffered a prior serious felony. At the trial on the prior, the court admitted appellant's statement to the probation officer when he suffered the prior conviction for recklessly discharging a firearm. In the statement, appellant admits personally firing the gun but says he is making this admission only because the probation officer promised him it would not be used against him in any other proceeding. In the this case, appellant argued that admitting his statement violated due process and his Fifth Amendment right against self-incrimination. The court of appeal agreed.

People v. Eddie Streeter (H026789)

Panel attorney: Carlo Anreani

Date: May 27, 2005

The court of appeal decided that there was insufficient evidence from the record of conviction that a prior conviction suffered in Delaware qualified as a strike. (Staff attorney Bill Robinson)

In re Timothy H. (H027982)

Panel attorney: James Duffy

Date: May 31, 2005

Appellant committed a couple of misdemeanors and then held a party in someone's house while the occupants were away. In making himself at home for three days, he trashed the house. The juvenile court committed him to the California Youth Authority. The court of appeal reversed, holding there was insufficient evidence local services were not sufficient. (Staff attorney Dallas Sacher)

People v. Hoan Nguyen (H027492)

Panel attorney: Janice Brickley

Date: June 8, 2005

The trial court sentenced appellant to an enhancement that was never charged or proved.

The court of appeal agreed the sentence was unauthorized. (Staff attorney Lori Quick)

People v. Patrick Chioni (H027861)

Staff attorney: Dallas Sacher

Date: June 7, 2005

The panel attorney notice the restitution fines were set at \$2000 but the abstract of judgment listed them at \$4400. The court of appeal ordered it be corrected.

People v. Javier Guardado (H027837)

Staff attorney: Lori Quick

Date: June 15, 2005

Appellant was convicted of possessing methamphetamine. He was placed on probation on condition that he not possess mobile communication devices and not contact anyone on probation or parole. The court of appeal agreed the conditions were overly broad. Mobile communications devices are so common now that a total ban on possessing them was unreasonable. The condition was modified to require not using mobile communication devices for illegal purposes. Further, the no contact order was modified to require no contact with people appellant knows to be on probation or parole.

People v. Jesus Mendoza (H027759)

Panel attorney: Tara Morrissey

Date: June 17, 2005

Appellant was placed on probation on condition that, among other things, to not frequent places where illegal drugs are used. The court of appeal agreed the provision was unconstitutionally vague, but it added the requirement that appellant must have knowledge to make the condition valid. Further, the court of appeal agreed there was insufficient evidence appellant had the ability to pay attorney fees. (Staff attorney Lori Quick)

People v. Ismail Lopez (H027590)

Panel attorney: Barbara Michel

Date: June 28, 2005

Appellant was convicted of felony DUI and sentenced to serve two years in prison. The court of appeal agreed there was insufficient evidence he had the ability to pay \$1000 in attorney fees. (Staff attorney Bill Robinson)

People v. James Bray (H027244)
Panel attorney: Maureen Fox
Date: June 29, 2005

Appellant was convicted of 17 counts covering theft, violation of the unemployment insurance law, violation of the workers' compensation law, tax evasion, and misuse of a contractor's license. Essentially, appellant worked as a roofer, using another's name and contractor's license number. He failed to make payments for his employees for payroll taxes and for contributions into the unemployment insurance fund and workers' compensation fund. The court of appeal agreed that the amount of restitution should be reduced by about \$70,000 and two of the counts should have been stayed pursuant to Penal Code section 654. (Staff attorney Bill Robinson)

People v. Robert Martinez (H027382)
Panel attorney: Randy Kravis
Date: June 30, 2005

Appellant was convicted of burglary and sentenced to prison. The court of appeal found there was substantial evidence, but it agreed the restitution fine must be reduced because it could not include the amount representing the punishment for a count that was stayed pursuant to Penal Code section 654. Also, there was insufficient evidence of an ability to pay attorney fees. (Staff attorney Jonathan Grossman)

People v. Clarence Hamel (H027583)
Panel attorney: Carl Gonser
Date: July 6, 2005

Appellant was convicted of petty theft with a prior conviction and forgery. He had no prior strike convictions. He appealed, and the court remanded for resentencing. Upon resentencing, the trial court limited conduct credits under Penal Code section 4019 up until the time of the second sentencing hearing. This was error. Section 4019 does not apply after the initial sentencing hearing. (Staff attorney Paul Couenhoven)

People v. Louis Soto (H027820)
Panel attorney: David Martin
Date: July 8, 2005

Appellant was convicted of a violent felony which occurred in 1993. The court imposed a parole revocation restitution fine under Penal Code section 1202.45 which was enacted in 1994. This violated the ex post facto clause, and the fine was stricken. (Bill Robinson)

People v. Wes Guidotti (H027892)

Panel attorney: Alfons Wagner
Date: July 8, 2005

When appellant was placed on probation, the court imposed a \$200 restitution fine. When he was eventually sentenced to prison on a violation of probation, the court imposed a \$600 restitution fine. The court of appeal agreed to reduce the fine to \$200, but it also imposed a parole revocation restitution fine. (Staff attorney Vicki Firstman)

In re Roberto M. (H028001)
Panel attorney: Rita Sweenor
Date: July 22, 2005

Appellant was found to have committed forcible rape and was committed to the California Youth Authority for a period not to exceed 18 months. He contended the court abused its discretion in sending him to CYA. The court rejected his claim. But it also rejected the Attorney General's claim that the juvenile court lacked authority to limit the commitment to 18 months. It argued that although amended Welfare and Institutions Code section 731 permits the juvenile court to reduce the maximum period of physical confinement, it was required to impose a lower or middle term as would be required by the determinate sentencing law. The court of appeal decided the juvenile court had the authority to impose any term up to the maximum term of confinement as defined by section 721. (Staff attorney Dallas Sacher)

People v. Thomas Gonzalez (H027978)
Staff attorney: Bill Robinson
Date: July 26, 2005

Appellant was convicted of possession of methamphetamine with a prison prior. The court stated it wanted to impose a two year sentence but could not find grounds to justify mitigating his sentence, so it imposed a sentence of 2 years 4 months. The court of appeal agreed the trial court misunderstood the scope of its discretion in that it could have struck the prison prior.

People v. William Ferris (H027806)
Panel attorney: Siromi Fernando-Santana
Date: August 2, 2005

Appellant entered into a plea bargain where he would plead guilty to robbery and admit he was personally armed with a deadly weapon. At the hearing to enter his plea, he pled guilty to the crime but the court never asked for him to admit the enhancement. He was placed on probation, but it was later revoked. The court sentenced him to serve four years in prison, including one year for the enhancement. The court of appeal agreed that he could not be punished for an enhancement he never admitted. (Staff attorney Jonathan Grossman)

People v. Jason White (H028398)

Staff attorney: Lori Quick

Date: August 5, 2005

In placing appellant on probation, the court imposed a restitution fine and a probation revocation restitution fine of the same amount pursuant to Penal Code section 1202.44. Because the crime was committed before section 1202.44 was enacted, the imposition of the second restitution fine violated the ex post facto clause.

People v. Jorge Figueroa

Panel attorney: Janet Gilger

Date: August 11, 2005

The jury found appellant not guilty of felony false imprisonment but guilty of misdemeanor battery. The charges resulted from an argument he had with his girlfriend. He had two children ages 11 and 14 years. The argument did not take place where children were present. The trial court placed him on probation on condition that he complete a parenting class, among other things. The court of appeal agreed there was insufficient evidence to support this order. (Staff attorney Jonathan Grossman)

In re David P. (H027845)

Panel attorney: Kathleen Novoa

Date: August 12, 2005

The court of appeal agreed the matter must be remanded for the juvenile court to exercise its discretion in setting the maximum period of physical confinement at the California Youth Authority. (Staff attorney Paul Couenhoven)

People v. Samuel Saldana (H027313)

Panel attorney: Joseph Shipp

Date: August 18, 2005

The court sentenced appellant to prison for 26 years and assessed \$2000 in attorney fees. The court of appeal agreed there was insufficient evidence of an ability to pay. (Staff attorney Vicki Firstman)

In re Alex N. (H027720)

Panel attorney: Laura Pedicini

Date: August 22, 2005

When the minor was 13 years old, he had a relationship with his 13 year old girlfriend which resulted in a juvenile adjudication for violating Penal Code section 288 and oral copulation with a minor. He was placed on probation, but when he committed a new residential burglary, the juvenile court felt compelled to commit him to CYA. It acknowledged that this committing appellant to CYA on the sex offenses would require him to register as a sex offender, which the court thought was unjust. When appellant specifically asked to be committed only on the new charges, the juvenile court said it believed it lacked authority to do so. In a published opinion, the court of appeal reversed. A juvenile court does have the discretion not to aggregate the maximum confinement time with previous adjudications. This would have eliminated the requirement for him to register as a sex offender. Further, the juvenile court failed to exercise its discretion whether to limit the maximum term of physical imprisonment under amended section 731, subdivision (b) of the Welfare and Institutions Code. (Staff attorney Bill Robinson)

People v. Adrianna Perez (H027844)

Panel attorney: Jereny Blank

Date: August 22, 2005

Appellant was sentenced to prison. The court imposed a restitution fine and a \$20 county collection fee pursuant to Penal Code section 1202.4, subdivision (J). The court of appeal agreed that the county administrative fee did not apply when the defendant was sentenced to prison. (Staff attorney Paul Couenhoven)

People v. Tony Lee (H028348)

Staff attorney: Paul Couenhoven

Date: September 29, 2005

The trial court stayed one of the counts but calculated the restitution fine using that conviction. The court of appeal agreed this, and other minor sentencing errors needed to be fixed.

People v. Carrie Stalker (H028623)

Panel attorney: Jeffrey Kross

Date: September 29, 2005

The court of appeal agreed that a lab fee pursuant to Health and Safety Code section 11372.5 could not be imposed on a conviction for violating Health and Safety Code section 11370.1. Further, the trial court needed to clarify the amount and sources of the penalty assessments. (Staff attorney Dallas Sacher)

People v. Annie Steward (H027677)

Panel attorney: Edward Mahler

Date: September 30, 2005

The court of appeal agreed appellant could not be convicted of grand theft from a person because it was a lesser included offense of grand theft from an elder or dependent adult. (Staff attorney Dallas Sacher)

People v. Oscar Salgado (H028401)

Staff attorney: Paul Couenhoven

Date: October 7, 2005

The court of appeal agreed that there was insufficient evidence appellant had the ability to pay \$1000 in attorney fees when he was sentenced to serve 17 years in prison and there was no evidence he had any assets.

People v. Joseph Ramirez (H027409)

Panel attorney: Steven Schorr

Date: November 3, 2005

Appellant was sentenced to serve 45 years to life under the One Strike Law. In a previous appeal, one conviction was reversed and other convictions were reduced to misdemeanors. Upon resentencing, the court imposed a prison term of 16 years. In this appeal, the court agreed that the trial court erred in not recalculating his presentence credits and remanded for the trial court to update the presentence credits. (Staff attorney Dallas Sacher)

People v. Gregory Moore (H028247)

Panel attorney: Spencer Davis

Date: November 4, 2005

Appellant was convicted of possession drug paraphernalia (Health & Saf. Code, § 11364) and ordered to register as a drug offender. The court of appeal struck the registration requirement because a violation of section 11364 is not listed as an offense requiring registration. (Staff attorney Lori Quick)

In re Scott W. (H028459)

Panel attorney: Ann Vandepol

Date: November 7, 2005

The court of appeal remanded the matter for the juvenile court to exercise its discretion in determining the maximum term of physical confinement at the California Youth Authority under Welfare and Institutions Code section 731. (Staff attorney Lori Quick)

People v. Vincent Royball (H028315)

Panel attorney: Hilda Scheib

Date: November 16, 2005

The court reversed an order for attorney fees for appellant sentenced to prison. (Staff attorney Dallas Sacher)

People v. Charles Cook (H028371)

Staff attorney: Jonathan Grossman

Date: November 14, 2005

Appellant, while already serving a prison sentence, pled guilty to conspiracy to import drugs into prison with the agreement he would serve four years in prison. There was no mention the sentence would be served consecutively, at the court initially sentenced him to serve a concurrent term. When the sentence was virtually over, CDC wrote to the court stating the sentence was illegal because it was a second strike sentence, so it needed to be imposed to be served consecutively. In absentia, the court changed the sentence to a consecutive term. Appellant appealed. The court of appeal reversed for the trial court to determine what the plea bargain was. On remand, the court stated it relied on its notes and the notes of the prosecutor to determine that it contemplated a consecutive term, though it acknowledged it appeared no one told appellant this. It imposed the four year consecutive sentence. On the second appeal, the court reversed. The plea bargain is determined by what the defendant reasonably understood what the agreement was. The trial court could not rely on parol evidence to determine what it thought the agreement was. Because the government waited until the time appellant finished his sentence, he was entitled to specific performance. The court of appeal ordered that the trial court modify the sentence by dismissing the strike and imposing a concurrent term.

People v. Louis Oliveras (H027856)

Staff attorney: Vicki Firstman

Date: November 14, 2005

In sentencing appellant to prison, the court imposed attorney fees of \$1000. The fees were reversed because there was insufficient evidence of an ability to pay.

People v. Manuel Contreras (H027452)

Panel attorney: Diana Teran

Date: December 6, 2005

A jury convicted appellant of 20 felonies concerning identity theft to open credit card accounts, two auto thefts, and possession of drugs. The court of appeal agreed that the punishment

for four fraud charges related to the auto thefts must be stayed under Penal Code section 654. (Staff attorney Dallas Sacher)

People v. Daniel (H028581)
Panel attorney: Philip Brooks
Date: December 13, 2005

The trial court imposed an AIDS fine on a conviction for violating Penal Code section 288, subdivision (a). The statute does not authorize the fine for this crime. (Staff attorney Lori Quick)

In re Justin B. (H028563)
Panel attorney: Mark Demming
Date: December 13, 2005

The trial court found true that minor committed two crimes for the benefit of the gang. The court of appeal agreed to reduce the maximum confinement time because the trial court erroneously believed count one was a violent felony (when it was a serious felony) and count two was a serious felony (when it was not). (Staff attorney Jonathan Grossman)

People v. Carmelita Viray (H026515)
Panel attorney: Laretta Oravitz-Komlos
Date: December 14, 2005

Although the court of appeal affirmed the conviction, it reversed in a published decision the order that appellant pay almost ten thousand dollars in attorney fees. There was no objection to the amount, but the court held that no objection is necessary when the defendant is still being represented by the public defender's office because the office has a conflict of interest. Since there was no evidence supporting the amount, the order for attorney fees was reversed. (Staff attorney Michael Kresser)

People v. Antonio Birrey (H026596)
Staff attorney: Paul Couenhoven
Date: December 15, 2005

Appellant pled no contest to two counts of violating Penal Code section 288, subdivision (b)(1). The court imposed concurrent terms of eight years over appellant's objection that the factors in aggravation were not supported by the evidence. The court of appeal agreed. That force was used and the victim was young were elements of the offense; the argument that she was young for her age was not supported by the evidence. There was insufficient evidence appellant occupied a position of trust: he was a neighbor who knew the victim for a few months. Although there were two other

factors in aggravation which were proper, it could not be concluded the sentencing court would have imposed the same sentence.

People v. David Vasquez (H028914)

Panel attorney: Thomas Singman

Date: December 20, 2005

When appellant was placed on probation, the court imposed a \$200 restitution fine. When his probation was revoked, the court imposed an \$800 restitution fine. The court of appeal reduced the fine to the original \$200. (Staff attorney Bill Robinson)

People v. Ronn Ward (H028512)

Panel attorney: Joseph Shipp

Date: December 22, 2005

Appellant pled guilty to second degree robbery. At sentencing, the court ordered that he pay \$750 in attorney fees. The minute order of the sentencing hearing also said the probation department shall determine the amount of victim restitution, although the trial court did not verbally state this. The court of appeal reversed the order for attorney fees because there was insufficient evidence of an ability to pay. It reversed the order permitting the probation department determine the amount of restitution because the defendant must agree to delegating the duty to the probation department. Since it was never discussed at the sentencing hearing, it cannot be deemed there was even an implied agreement. (Staff attorney Bill Robinson)

People v. Shane Aguda (H028776)

Staff attorney: Lori Quick

Date: December 28, 2005

The court of appeal reversed an order for appellant to pay \$200 in attorney fees because there was insufficient evidence of an ability to pay.

People v. Timothy O'Brien (H028740)

Panel attorney: Alex Green

Date: December 29, 2005

Appellant pled guilty to receiving stolen property. He moved to dismiss the prior strike conviction. The prosecution filed papers in opposition in which it described a 2002 theft by appellant as an *Estes* robbery. The court relied on this in denying the motion. On appeal, the Attorney General's Office conceded the 2002 theft did not qualify as an *Estes* robbery. Although appellant wrestled with security guards, he no longer had the property, so there was no taking of

property by force or fear. The court of appeal found appellant's trial counsel was ineffective for not objecting to the trial court's characterization of the 2002 theft as a robbery. Because the court misapprehended the facts, it abused its discretion in deciding whether to dismiss the prior strike. The matter was remanded for a new sentencing hearing. (Staff attorney Dallas Sacher)

DEPENDENCY CASES

In re David W. (H027378)
Panel attorney: Sharon Rollo
Date: January 20, 2005

At the 6 month dependency review hearing, father was granted six more months of services. The county and the foster parents appealed. By the time the appeal was considered, the juvenile court terminated services at the 12 month review hearing. The court of appeal agreed with father that the appeal was moot and dismissed. (Staff attorney Jonathan Grossman)

In re Brian T. (H027988)
Panel attorney: Catherine Czar
Date: April 26, 2005

Attorney appropriately arranged for the stipulated reversal of an order terminating parental rights. (Staff attorney Jonathan Grossman)

In re M.T. (H028125)
Panel attorney: Linda Harvie
Date: April 26, 2005

The court of appeal reversed a dependency case for failure to provide adequate notice under the Indian Child Welfare Act. (Staff attorney Vicki Firstman)

In re Paul W. (H028475)
Panel attorneys: Carolyn Todd and Margaret Pendergast
Date: December 9, 2005

In a dependency case, the father was involved in a custody fight. The mother accused him of molesting their child in Colorado, and a petition was filed in the Santa Clara County Dependency Court to assume jurisdiction. CPS introduced evidence that the county CPS agency in Colorado found the allegation of molestation substantiated, but failed to present evidence that Colorado State agency overturned the finding based on the investigation of the police. The social worker report stated the mother's father overheard the father molesting one of the children, but trial counsel failed to interview the maternal grandfather who denied making such statements or hearing such evidence.

The child recanted and the original allegations made by the child were made under conditions that she was under the influence of the mother. Thus, all of the allegations ultimately stemmed from the mother who was involved in the custody battle. The court of appeal issued an order to show cause on allegations of ineffective assistance of counsel for failing to adequately investigate the matter. At the OSC hearing, the superior court found that failure to investigate the allegations from Colorado or interview the investigating officers. Had there been a proper investigation, evidence would have been presented which would have been strong proof the molestation never happened. Since this was the central basis of the court assuming jurisdiction, the jurisdictional finding and all subsequent orders were vacated. (Staff attorney Vicki Firstman)

Juan M. v. Superior Court (H028600)
Panel attorney: Valerie Sopher
Date: June 13, 2005

During the dependency, the minor was placed with the father, but later removed because of failure of relapsing, among other things. At the section 366.26 hearing, no defense was presented, and the court terminated parental rights. A habeas corpus petition was filed in which the father alleged he speaks Spanish and his attorney simply gave him the social worker report which was in English. Trial counsel did not explain the contents of the report or any defenses that could be presented at the hearing. In fact, if asked he would have been able to present evidence concerning the parent-child exception. The court of appeal issued an order to show cause.

In re Vincent M. (H028980)
Panel attorneys: Janet Sherwood and Carol Koenig
Date: September 30, 2005

The court of appeal remanded the matter so that the juvenile court could provide adequate notice under ICWA. (Staff attorney Jonathan Grossman)

In re Cody D. (H028386)
Panel attorney: James Haworth
Date: October 20, 2005

The court of appeal reversed so that the juvenile court can comply with the requirements of the Indian Child Welfare Act. (Staff attorney Jonathan Grossman)

In re M.F. (H028610)
Staff attorney: Jonathan Grossman
Date: December 5, 2005

The court of appeal reversed because the county provided inadequate notice under ICWA.

In re J.W. (H028424)

Panel attorney: Carolyn Todd

Date: December 21, 2005

The juvenile court placed appellant's girls with the mother and continued the matter under family maintenance. At a review hearing, the juvenile court suspended his visits unless they were approved by a counselor. The court of appeal reversed, holding that the only issue at the family maintenance review hearing is whether the court should continue jurisdiction notwithstanding the children's placement with a parent. Thus, an order restricting appellant's access to the children could not be made without a section 388 petition to modify the visitation orders made at the dispositional hearing. Alternatively, appellant was not provided sufficient notice that restriction of visitation was to be considered at the hearing. (Staff attorney Vicki Firstman)

HABEAS PROCEEDINGS

In re Kailash Chaudhary (H027084)

Panel attorney: Keith Wattley

Date: January 20, 2005

Chaudhary was separating from his wife after five years of marriage. During one argument, she told him he was not the father of their child. Outraged, he reached for a revolver, lost control, and shot her five times. He called 911 and hysterically tried to obtain medical help for his wife, but she died after medical personnel arrived. He admitted shooting her, although he could not remember the actual event. He agreed to plead no contest to second degree murder in 1987. In 2002, the Board of Prison Terms found him suitable for parole, but the governor vetoed the decision. He filed a habeas corpus petition in the superior court which granted relief. The Attorney General appealed. The court of appeal affirmed the decision to grant relief. Although the decision to deny parole must be upheld if there was "some" evidence to support it, the reasons for denying parole were not supported by the record. (Staff attorney Michael Kresser)

In re Lynn Alvarade (H027090)

Staff attorney: Michael Kresser

Date: January 21, 2005

Alvarade was in an argument with an acquaintance. At one point, he pulled out a gun. The victim said, "Oh, shoot me." Alvarade obliged, fatally shooting him three times. He pled no contest to second degree murder. The Parole Board refused to set a parole release date. Alvarade filed a petition for writ of habeas corpus in the superior court which was granted. The Attorney General appealed. A divided court of appeal affirmed the granting of habeas relief. It concluded there was not "some evidence" that he was unsuitable for parole.

In re Darryl Jones (H027718)
Staff attorney: Paul Couenhoven
Date: February 2, 2005

Appellant was a prisoner who was medicated for schizophrenia. At one point, the prison officials decided appellant was just malingering and took him off his medication without monitoring him. Appellant became unstable and got in a fight with a guard. Defense counsel did not investigate an insanity defense, did not present any evidence of appellant's mental state at trial, and presented no mitigating evidence at the Romero motion. Defense counsel also did not object to appellant appearing before the jury in prison garb and shackles. The court of appeal issued an order to show cause.

In re Isidro DeLuna (H027086)
Panel attorney: Steven M. Defilippis
Date: February 4, 2005

DeLuna shot a person after a drunken argument. He pled guilty to second degree murder in 1985. The parole board found him unsuitable for parole. The court of appeal found that there was some evidence to support the finding that the crime was cruel and callous, but there was not some evidence to support the other findings of the parole board. Thus, the court remanded the matter for a new hearing. (Staff attorney Michael Kresser)

In re Moses C. (H028319)
Panel attorney: James Duffy
Date: February 28, 2004

A person was attacked by a gang of people near a housing project. A witness identified appellant and a couple of adults as the culprits. The minor admitted the allegations. Subsequently, the case fell apart at the preliminary hearing of the adult defendants. Counsel for the minor did nothing. The court of appeal issued an order to show cause on allegations of ineffective assistance of counsel for failing to adequately investigate the case. (Staff attorney Bill Robinson)

In re William Cousins (S122142)
In pro per
Date: March 23, 2005

Cousins was sentenced to a 25 to life term under the strikes law for violating the "change of location" provisions of section 290. Cousins had registered with the police by providing two addresses at which he could be contacted while he was homeless and lived in his car, but the clerk who wrote up his registration neglected to check the "Transient" box on the form. The jury hung

on the charge of fraudulent registration, but convicted Cousins on the “change of location” provisions because he moved his car a block away from one of the two addresses provided without notifying the police. After losing on direct appeal handled by panel attorney Jill Fordyce, he filed a petition for writ of habeas corpus in the Supreme Court on the ground that the requirement to register a new location was unconstitutionally vague under *People v. North* (2003) 112 Cal.App.4th 621, 624, a case decided after Cousins’s appeal was final. The Supreme Court issued an order to show cause returnable to the superior court. In the superior court, the district attorney's office conceded. The conviction was vacated and the case dismissed. Panel attorney Jill Fordyce prepared the habeas corpus petition for the petitioner. Allan Schwartz represented him on the habeas petition in the superior court. (Staff attorney Bill Robinson)

In re Mel Bichayada (H026837)
Panel attorney: Ozro Childs
Date: April 21, 2005

The defendant obtained trial counsel to move to withdraw the plea, but the motion, based on a failure to advise him that the duty to register would last a lifetime, was unsuccessful. On appeal, a new habeas petition was filed alleging the plea was not valid because he was never advised of the immigration consequences. The court of appeal issued an order to show cause. (Staff attorney Jonathan Grossman)

In re Melvin Simmons (H028137)
Panel attorney: Rudy Kraft
Date: April 21, 2005

The defendant was found guilty by a jury. During the trial, he was in shackles and prison attire, but trial counsel did not object. The court of appeal issued an order to show cause. (Staff attorney Vicki Firstman)

In re Salvador Tomas (H028318)
Panel attorney: Gerald Clausen
Date: July 14, 2005

Mr. Tomas pled guilty to hit and run with injury and admitted an enhancement for personally inflicting great bodily injury. At sentencing, the court stated it was not willing to sentence him according to the plea bargain. Under advice of new counsel, he chose not to withdraw his plea, but counsel argued the gbi enhancement should be stricken because he was factually innocent of the allegation. The court denied the motion. In a habeas corpus petition, he alleged trial counsel was incompetent for misadvising him not to withdraw his plea when given the opportunity. Contrary to trial counsel's advice, he received no benefit in going ahead with sentencing since he could not have been found to have committed gbi. The court of appeal issued an order to show cause. (Staff attorney Jonathan Grossman)

In re Earnest Ochoa (H028057)
Panel attorney: Sharon Flemming
Date: July 21, 2005

Ochoa was sentenced to serve 27 years to life in prison for possession of methamphetamine with two prior strike convictions. His sentence was upheld on appeal but the court of appeal issued an order to show cause returnable to the superior court in response to his habeas corpus claim that trial counsel was ineffective for not moving to suppress evidence. After an evidentiary hearing, the superior court denied relief. He filed a new habeas corpus petition in the court of appeal, and the court reversed. Officers stopped Ochoa in front of his home on a traffic violation. He led the officers inside his home to retrieve identification. There, they learned he was on parole. They asked him if they could search the room, but he said it was his roommate's room. The officers then asked the roommate, she initially refused consent. When they told her they could search anyway because he was on parole, she relented. The court of appeal disagreed with the superior court that there was substantial evidence of valid consent to the search. (Staff attorney Bill Robinson)

In re Dave Bautista (H024442)
Panel attorney: Meredith Fahn
Date: September 22, 2005

Defendant pled to possession of marijuana for sale. He filed a habeas corpus petition alleging ineffective assistance of counsel in that he was not advised the conviction would automatically lead to his deportation. Further, trial counsel did not seek a plea bargain for transportation of marijuana, which would not have led automatically to deportation. The court of appeal had issued an order to show cause, returnable to the court of appeal, but it remanded the matter to the superior court for an evidentiary hearing. At the hearing, trial counsel refuted defendant's allegations and stated he did advise him that he would be deported. Trial counsel's testimony contradicted his affidavit that was attached to the habeas petition. The prosecutor testified he would not have agreed to a plea bargain where the defendant would plead to transporting marijuana. The referee and the court of appeal found that trial counsel did not properly advise the defendant of his immigration consequences and did not pursue an alternative plea bargain. Even if the prosecutor would have refused to negotiate, it was reasonably probable defendant then would have gone to trial. The court of appeal granted the petition. (Staff attorney Vicki Firstman)

In re Manuel Contreras (H029083)
Panel attorney: Diana Teran
Date: December 6, 2005

A jury convicted defendant of 20 felonies concerning identity theft to open credit card accounts, two auto thefts, and possession of drugs. It was alleged in a habeas petition that trial counsel was ineffective for not objecting to the amount of victim restitution. The sentencing court

ordered defendant to repay the automobile retailers the full value of the cars. But the cars were repossessed in new condition and will likely be resold. The court of appeal issued an order to show cause. (Staff attorney Dallas Sacher)

In re Paul Magnan (H028530)

Staff attorney: Dallas Sacher

Date: January 5, 2006

The court of appeal issued an order to show cause, returnable to the superior court on allegations that trial counsel rendered ineffective assistance of counsel. Magnan was convicted of possessing less than a gram of heroin and possessing methamphetamine for sale; he was sentenced to life under the Three Strikes Law. The meth was found in a cigarette box next to his girlfriend who was a meth user, Magnan used the same brand of cigarettes and possessed \$300. According to a police officer testifying as an expert, the amount of meth was just under an ounce and the difference between an ounce and the amount seized could be sold for about \$300. Magnan had told trial counsel that the \$300 he possessed was recently wired to him by his mother, a fact that was verifiable. Trial counsel, however, made no attempt to investigate the claim or otherwise explain the possession of the money. The superior court granted relief.

MISCELLANEOUS

People v. Daniel Lowe (H026889)

Attorney: Nancy Brewer and Brian Matthews

Date: January 24, 2005

The Santa Clara County District Attorney's office filed a felony complaint against Lowe, but it waited five months before arraigning him. In the meantime, he served a separate sentence in Alameda County. Lowe argued he was denied a speedy trial which prejudiced him because he was deprived of the possibility of a concurrent sentence. The superior court agreed and dismissed. The prosecution appealed. The court of appeal affirmed. Although he could have been charged with a prior strike conviction, which would have precluded a concurrent sentence, it was still possible he could have received a concurrent sentence. The prosecution failed to present justification for the delay. (Santa Clara County Public Defender's Office)

People v. Vincent DiLorenzo (H026921)

Staff attorney: Lori Quick

Date: April 19, 2005

The superior court expunged DiLorenzo's conviction for securities fraud, though he had not completed repaying the victim restitution. The prosecution appealed. The court of appeal found there was no abuse of discretion. He otherwise fulfilled the conditions of probation, there was no willful failure to complete the payments, and he remained liable for the restitution as a civil

judgment.

People v. Brew (H024607)

Attorney: Dennis Riordan

Date: May 31, 2005

Appellant was charged with murder in a case where he allegedly shook his girlfriend's baby. The court found he was indigent, but his family paid a little more than \$100,000 to retain counsel. The superior court rejected his request for investigation fees, citing the high fee. Retained counsel withdrew. The court appoint counsel, but discharged appointed counsel upon granting a Marsden motion. It did not appoint new counsel or obtain a waiver from appellant, but he found himself trying the case by himself. The trial involved the testimony of medical experts. The jury found him guilty, and the court sentenced him to life in prison. The court of appeal reversed. The trial court unlawfully deprived an indigent defendant of ancillary fees and deprived him of his right to counsel when it forced him to represent himself at trial.

Juan H. v. Allen (9th Cir. No. 04-15562)

Staff attorney: Jonathan Grossman

Date: June 2, 2005

Juan lived in a trailer park which was populated by members from a rival gang. One evening, there was a drive-by shooting at his home. He accompanied his older brother who explored the area outside his home. His brother confronted two people who lived at the trailer park. The brother then pulled out a shotgun and shot at both, fatally wounding one of them. Juan did not say anything or do anything to encourage his brother. The brother ran past Juan's home and drove away. Juan ran home. The juvenile court found Juan culpable for murder and attempted murder and the state court affirmed. In a published decision, the Ninth Circuit Court of Appeals held it was unreasonable for the state court to find there was sufficient evidence.

People v. Weibin Jiang (H026546)

Attorney: Gerald Uelmen

Date: June 16, 2005

Appellant was from China who was working for a computer company in California. He befriended another and this led to allegations of rape. Appellant was arrested and Mirandized. The interview was recorded, and the recording revealed that the translation of his Miranda rights were botched. The court of appeal held that his statements from the custodial interrogation should have been excluded because the prosecution failed to show he was properly advised of his Miranda warnings. Further, when appellant was accused of the crime, he started writing information for his attorney on his laptop computer that was issued by his company. The superior court ruled the information was not privileged because it was stored in a company-issued computer. The court of

appeal held they were confidential, and it suggested that on remand the district attorney's office might need to be recused since it possesses confidential attorney-client communications.

David Litmon v. Superior Court (H028725)

Attorney: Francis Richard Cole

Date: June 29, 2005

Litmon was the defendant in a proceeding to extend his SVP commitment. He moved to disqualify the trial judge pursuant to Code of Civil Procedure section 170.6. The judge rejected the motion on the ground that he presided over Litmon's previous SVP commitment and because he presided over a request for investigation funds for the pending SVP extension proceeding. The court of appeal issued a writ of mandate. The previous commitment was not the same proceeding, and a decision on investigation funds was not a decision on the merits of the case. Thus, the motion was still timely.

People v. Joseph Browning (H026716)

Attorney: James F. Tritt

Date: July 6, 2005

Appellant entered into an agreement to do some construction work. When he failed to complete the project, he was charged with grand theft and money laundering. The jury convicted him. The court of appeal reversed, holding there was insufficient evidence he had the intent to defraud when he received the money.

Timothy Parle v. Runnels (N.D. Cal. No. C01--03487 WHA)

Panel attorney: Marin Buchanan

Date: July 12, 2005

A jury convicted defendant in the murder of his wife. Evidence showed the two had been physically and emotionally abusive to each other. The court of appeal found that the trial court made numerous evidentiary errors but they were all harmless: (1) it should have excluded the testimony of defendant's psychiatrist because defendant invoked the psychotherapist privilege; (2) it should have permitted his expert witness testify as to the effects of a manic episode; (3) it should have admitted portions of the conditional examination of defendant's father who described defendant's mental condition on the night of the incident, (4) it should have admitted evidence of the victim's character for violence and threats against defendant, and (5) it should have excluded defendant's threats against the police five years after the incident. After the Supreme Court denied review, he filed a federal habeas petition. The district court initially granted relief on the ground that admission of the victim's diary was unreliable and violated his right of confrontation. The Ninth Circuit Court of Appeals reversed because the statements in the diary were not testimonial. On remand, the district court granted relief because the cumulative prejudice of the remaining errors

deprived him of a fair trial. (Staff attorney Michael Kresser)

In re Terry Carron (H027210)

Panel attorney: Keith Wattley

Date: September 26, 2005

Carron was granted parole. After the governor asked the Board of Prison Terms to reconsider the decision, a different panel reversed. The superior court granted Carron's habeas corpus petition. The government appealed. The court of appeal found that some of the findings were supported by "some evidence," but others were not. The court did not uphold the parole board's decision but instead remanded the matter for a new hearing. (Staff attorney Michael Kresser)

Martin Acosta v. Lewis (9th Cir. No. 04-17017)

Staff attorney: Lori Quick

Date: October 18, 2005

Acosta was convicted in 1997 of domestic violence, among other charges. The trial court read to the jury the 1997 version of CALJIC Nos. 2.50.02 and 2.50.1. In a decision that was later depublished, the court of appeal affirmed. A federal habeas corpus petition was filed. The Ninth Circuit reversed the denial of the habeas petition. It held that the old version of the pattern jury instructions permitted the jury to infer guilt without making the requisite findings beyond a reasonable doubt.

In re Jesse Duran (H028617)

Panel attorney: Deanna Lamb

Date: November 14, 2005

A jury convicted Duran of second degree murder in 1980. In 2003, the Parole Board denied parole. The superior court granted his petition for writ of habeas corpus, and the government appealed. The court of appeal held the superior court acted properly in finding there was not some evidence to support the Parole Board's decision, but the court could not preclude the Board on remand from reconsidering the facts of the prior conviction. (Staff attorney Michael Kresser)

Juan Valdez v. Castro (No. 04-15198)

Staff attorney: William Robinson

Date: November 23, 2005

Valdez was convicted of specific intent crimes, but the trial court failed to instruct on voluntary intoxication. The state court found error, but concluded it was harmless under *Watson*.

The United States District Court denied a federal petition for writ of habeas corpus. The Ninth Circuit reversed, finding that using the *Watson* standard on federal constitutional error was contrary to controlling law. Consequently, the federal court must independently determine if error was prejudicial under *Brecht v. Abrahamson*. It remanded the matter to the district court to determine prejudice.

In re Procopio Reyes (H028644)
Staff attorney: Michael Kresser
Date: December 28, 2005

The superior court granted Reyes's petition for writ of habeas corpus following the denial of parole. The government appealed. The court of appeal agreed with Reyes that there was not some evidence to support the Parole Board's denial of parole on some of the grounds but that there was some grounds for denial on other grounds. The matter was remanded to the Parole Board for a new hearing.