

**SUFFICIENCY OF THE EVIDENCE  
PRETRIAL AND POSTTRIAL MOTIONS  
ERROR AT TRIAL OR HEARING  
SENTENCING  
DEPENDENCY CASES  
HABEAS PROCEEDINGS  
MISCELLANEOUS**

**SUFFICIENCY OF THE EVIDENCE**

People v. Joel Gonzales (H034436)

Staff attorney: Lori Quick

Date: December 6, 2010

When appellant made a threat directed at two women, there was insufficient evidence he also threatened a third woman who was with him. The court of appeal noted there appeared to be insufficient evidence the alleged third victim perceived a threat, as she suffered from cerebral palsy and did not understand language.

People v. Domingo Cruz (H035183)

Panel attorney: David Annicchiarico

Date: November 30, 2010

Appellant was charged with felony driving under the influence. In a “slow plea” arrangement, it was agreed there would be a court trial consisting of the court reviewing police reports. However, the police reports submitted were from a different incident than the one charged. Because there was no evidence concerning the charged incident, there was insufficient evidence to support the conviction. (Staff attorney Jonathan Grossman)

In re Victor R. (H035255)

Panel attorney: Randall Conner

Date: October 21, 2010

Appellant was a passenger in a stolen car. The driver started it with a screwdriver and drove two blocks before the police stopped them. The court of appeal held there was insufficient evidence appellant was culpable of auto theft as an aider and abettor. The court also modified certain conditions of probation to avoid constitutional problems. (Staff attorney Jonathan Grossman)

People v. Anthony Lugo (H033764)

Panel attorney: Emry Allen

Date: October 20, 2010

Appellant threatened to beat up the victim and was convicted of making a criminal threat. The court held there was insufficient evidence because there was no evidence the victim was in fear. The conviction was reduced to making an attempted threat. (Staff attorney Vicki Firstman)

People v. Biniam Gebrezgi (H034603)  
Panel attorney: Jennifer Sheetz  
Date: September 21, 2010

A juvenile adjudication for attempted robbery is not listed in Welfare and Institutions Code section 707(b), so it could not qualify as a prior strike conviction. (Staff attorney William Robinson)

People v. Robin Bailey (H034382)  
Panel attorney: Jonathan Berger  
Date: August 26, 2010

In an effort to escape from prison, appellant left the area where he was supposed to be but failed to leave the prison grounds before being caught. In a published decision, the court of appeal held that there was insufficient evidence of escape because he had not actually escaped from the prison. (Staff attorney William Robinson)

People v. Michael Vousden (H033046)  
Panel attorney: Gerald Clausen  
Date: July 26, 2010

Appellant was convicted by jury of a large number of white collar crimes. Among other things, appellant presented people with certificates of insurance when he was not authorized to sell insurance. The court of appeal held there was insufficient evidence to convict him of forgery. Forgery requires a document not to be something it purports to be. Appellant was selling insurance, which was what the documents purported to be. Though he was not legally allowed to do so, the documents themselves were genuine. (Staff attorney Jonathan Grossman)

People v. Cuong Manh Nguyen (H033762)  
Panel attorney: Ellise Nicholson  
Date: July 2, 2010

The jury convicted appellant of assault with a deadly weapon. A prior conviction for a violation of Penal Code section 245 was found to be a strike. The court of appeal held that there was insufficient evidence to support the finding the prior conviction was a strike. The prosecution introduced a document from the county computerized criminal records which stated appellant had been convicted of violating section 245 "AADW." The court of appeal agreed this information was

to sparse for a rational trier of fact to conclude the violation was committed by using a deadly weapon. (Staff attorney William Robinson)

People v. Jesse Yates (H033798)

Panel attorney: Ron Boyer

Date: June 28, 2010

The court held there was insufficient evidence he suffered a prior strike conviction. His prior conviction was for kidnapping during a bank robbery in federal court. Because the federal crime did not require asportation, there was insufficient evidence it qualified as a strike under state law. (Staff attorney Dallas Sacher)

People v. Luis Loza (H032679)

Panel attorney: Jill Fordyce

Date: January 28, 2010

The court held there was insufficient evidence to support the gang crime and the gang enhancement because there was insufficient evidence of the gang's primary activities and insufficient evidence appellant's gang committed the predicate crimes because the records of the predicate crimes that were admitted were committed from people from other gangs. (Staff attorney Jonathan Grossman)

### **PRETRIAL AND POSTTRIAL MOTIONS**

People v. Puentes (H034546)

Panel attorney: Syda Kosofsky

Date: December 20, 2010

Appellant was charged with misdemeanor contributing to the delinquency of a minor and felony statutory rape. The jury convicted him of the misdemeanor and hung on the felony. The prosecution dismissed the felony, stating that it discussed the case with the jury, learned that conviction on the felony was unlikely, and determined that misdemeanor punishment was appropriate for the case. The misdemeanor conviction was reversed on appeal for instructional error. The prosecution refiled, alleging both charges again. The magistrate dismissed the misdemeanor for failure to prove an element at the preliminary hearing but refused to dismiss the felony. After a jury convicted him, he appealed. The court of appeal reversed, holding in a published decision that prosecuting him for the felony was vindictive. (Staff attorney Dallas Sacher)

People v. Richard Lucero (H032250)

Panel attorney: Eric Multhaup

Date: December 16, 2010

The court failed to consider the defendant's own written motion for a new trial in which he complained about trial counsel's representation. The court of appeal found this was error and ordered the trial court to consider the motion on remand. (Staff attorney William Robinson)

People v. Luis Rios et al. (H034481)

Panel attorneys: Philip Brooks, Gordon Scott, Carl Gonser

Date: October 7, 2010

The defendants were tried for murder, but the jury found them guilty only of involuntary manslaughter. They were sentenced to prison and ordered to pay about \$90,000 in victim restitution. The conviction was reversed on appeal for instructional error. On remand, two codefendants pled guilty to being accessories after the fact. Rios was tried again for involuntary manslaughter. The jury convicted him, but the court of appeal reversed the finding he personally used a firearm because of instructional error. This time, the court ordered \$270,000 in victim restitution for which all three defendants would be liable. The increased award reflected amounts claimed by the families as lost future earnings. The court of appeal held there was insufficient evidence to support the increased amount requested. (Staff attorney Michael Kresser)

People v. Julio Geronimo (H034331)

Staff attorney: Paul Carroll

Date: October 7, 2010

The conviction was reversed due to juror misconduct. A juror noticed appellant had a teardrop tattoo and they discussed during deliberations that this could mean he had killed someone. (Staff attorney Michael Kresser)

People v. Raelene Jahansson (H034446)

Panel attorney: Scott Handleman

Date: September 30, 2010

The police heard that a probationer was selling methamphetamine. During surveillance of the probationer's house, they noticed Jahansson drive up and enter the house and then leave. Later, the probationer left. The officers stopped the probationer some distance away, and he admitted there was methamphetamine in the house. As the officers were about to search the house, defendant returned. She was stopped in front of the house and handcuffed. An officer stood guard. Other officers conducted a protective sweep of the house. They returned to defendant and noticed she was under the influence. She was arrested, and the officers asked for permission to search her car. She consented, where drugs were found. She moved to suppress the evidence, and the court granted the motion. The prosecution appealed. The court of appeal affirmed the suppression of the evidence. While the initial detention was justified as part of the probation search, the officers had a duty to immediately ascertain whether she was an occupant of the house. They did not. Her detention was

unduly prolonged, and the resulting evidence was the fruit of the illegal detention. (Staff attorney Jonathan Grossman)

People v. Lance Purcell (H033795)

Panel attorney: Jill Fordyce

Date: August 30, 2010

The court of appeal reversed an SVP commitment because the indeterminate term might violate the equal protection clause. (Staff attorney Jonathan Grossman)

People v. Anguiano (H034365)

Attorney: Jamie Harley

Date: August 30, 2010

The court of appeal held the trial court should have granted appellant's motion to withdraw his plea because he was misadvised by trial counsel about significant aspects of the plea bargain. (SDAP did not participate in the case)

People v. Ramiro Gonzales (H032866)

Panel attorney: Jean Matulis

Date: August 19, 2010

The court reversed an SVP commitment for a determination of whether an indeterminate term violated the equal protection clause. (Staff attorney Jonathan Grossman)

People v. Richard Lucero (H032250)

Panel attorney: Eric Multhaup

Date: July 28, 2010

After losing a jury trial, appellant himself asked for a new trial, where he complained about trial counsel's performance. After sentencing appellant, the trial court effectively denied the new trial motion. The court of appeal held the trial court was required to give it a closer examination before sentencing appellant and remanded the case for such a consideration. (Staff attorney William Robinson)

People v. Richard Garcia (H033732)

Panel attorney: Gene Vorobyov

Date: July 9, 2010

The court remanded the SVP case for a hearing pursuant to *People v. McKee* (2010) 47 Cal.4th 1172. (Staff attorney Jonathan Grossman)

People v. Schuler (H033090)  
Panel attorney: Jill Fordyce  
Date: April 20, 2010

Appellant was committed as a sexually violent predator. He objected to the imposition of an indeterminate term as being unconstitutional. The court of appeal, following *People v. McKee* (2010) 47 Cal.4th 1172, remanded the matter for a hearing concerning the claim that the indeterminate commitment violates the equal protection clause. (Staff attorney William Robinson)

G.C. v. Superior Court (H034808)  
Staff attorney: Dallas Sacher  
Date: March 30, 2010

The minor was placed on deferred entry of judgment for vandalism. He was placed in a graffiti abatement program pursuant to Welfare and Institutions Code section 742.16. He completed all of his requirements, except fully pay the victim restitution. The juvenile court refused to dismiss the case unless he paid all of the restitution. He filed a motion to reconsider, stating that restitution should be required under section 742.16 only if he had the ability to pay. The prosecution argued the statute did not apply to deferred entry of judgment. The minor filed a petition for writ of mandate. In a published decision, the court of appeal held the ability to pay requirement did apply.

People v. Michael Bettencourt (H033594)  
Staff attorney: William Robinson  
Date: March 15, 2010

Appellant was charged with felony battery causing serious bodily injury. The district attorney wanted to add an enhancement for great bodily injury. Appellant indicated more than once he wanted to go to trial. The court said it wanted to settle the case and offered appellant that if he were to plead guilty to the charge before the amendment, it would place him on probation and permit him to request the charge be reduced to a misdemeanor after one year. Appellant pled, but his request to withdraw his plea was denied. After a certificate of probable cause was issued, the court of appeal reversed. While the trial court can indicate a sentence, it cannot provide a promise of leniency in exchange for waiving a constitutional right.

People v. Tony Matthews (H033568)  
Panel attorney: Benjamin Owens  
Date: February 11, 2010

The police arrested appellant for being under the influence of drugs before he entered his motel room. The police entered the motel room and handcuffed the occupant. They then searched a beanie that was on the floor near where she was handcuffed. Inside the beanie was drugs. The court of appeal held that because she was securely handcuffed, the officers could not search the beanie incident to arrest under *Arizona v. Gant* (2009) 129 S.Ct. 1710. (Staff attorney Jonathan Grossman)

People v. Nicholas Seaberry (H034234)  
Panel attorney: E. Michael Linscheid  
Date: February 3, 2010

The police were looking for an Hispanic male suspect who was 20 to 25 years old, five foot five to seven inches tall and weighing 150 to 160 pounds. The officer arrested appellant who was six foot two inches tall and weighed 196 pounds. The court of appeal held there was not probable cause to arrest appellant. (Staff attorney Lori Quick)

People v. Alexander Skinner (H033532)  
Panel attorney: James Haworth  
Date: January 25, 2010

Appellant was sentenced to prison after violating probation. He filed from prison a pro per motion to receive presentence credits for the time he spent in a drug program. After the trial court summarily denied the motion, he appealed. The court of appeal reversed, ordering the superior court to hold a hearing whether the program qualifies as a custodial institution. (Staff attorney Vicki Firstman)

#### **ERROR AT TRIAL OR HEARING**

People v. Long (H033197)  
Panel attorney: John P. Dwyer  
Date: October 29, 2010

Appellant was convicted of various crimes and sentenced to serve 15 years in prison. The conviction was reversed because of *Wheeler-Batson* error. The main reason provided by the prosecution for removing a potential Vietnamese juror when there was a Vietnamese defendant was not supported by the record. (Staff attorney Dallas Sacher)

People v. Luis Rios (H034085)  
Panel attorney: Philip Brooks  
Date: September 2, 2010

Appellant was charged with first degree murder but convicted of involuntary manslaughter with an enhancement for personally using a firearm. The conviction was reversed on appeal. On remand, he was convicted again. The court of appeal reversed the finding of the enhancement because of instructional error. (Staff attorney Michael Kresser)

People v. Juan Perez (H033513)  
Panel attorney: Gordon Brownell  
Date: July 28, 2010

Under the facts of the case, the court committed reversible error for not instructing on attempt as a lesser included offense to making criminal threats. (Staff attorney Lori Quick)

People v. Hamm (H033927)  
Panel attorney: Stephen Bedrick  
Date: July 21, 2010

Appellant was convicted of two counts of violating Penal Code section 288.5, each with a one strike provision (Pen. Code, § 667.61). The incidents occurred between December 1994 and 2001. However, the one strike statute did not list section 288.5 as a predicate crime until 2006. Consequently, imposing the one strike provision violate ex post facto principles. (Staff attorney Lori Quick)

People v. Tony Garcia (H032501)  
Panel attorney: Lawrence Gibbs  
Date: May 25, 2010

Appellant was convicted of murder. At trial, he and his sister testified he acted in defense of others, or at least imperfect defense of others. The trial court believed the defense had not shown the decedent threatened immediate harm and refused to instruct on the defenses. The court of appeal reversed. There was substantial evidence to support the defense. Whether the threat of immediate harm existed was an issue for the jury to decide. (Staff attorney Dallas Sacher)

People v. O'Connell (H033012)  
Panel attorney: Randy Baker  
Date: May 20, 2010

Appellant was convicted in a court trial of a series of sex offenses. When the police first questioned him, he said he wanted a lawyer. The police continued to question him, and he confessed. The court denied the motion to suppress the confession. The court of appeal held the confession was inadmissible and admission of the evidence was prejudicial to all of the charges

except one. (Staff attorney William Robinson)

People v. Pete Guajardo (H034400)

Panel attorney: Brian Gurwitz

Date: April 30, 2010

Appellant agreed to a court trial on three counts. As for one of the counts, possessing methamphetamine, trial counsel entered into a stipulation appellant possessed it. The court of appeal agreed the stipulation was tantamount to a guilty plea. Because appellant was not advised of his constitutional rights, the conviction for possession must be reversed. (Staff attorney William Robinson)

People v. Steven Mohammady (H033353)

Panel attorney: Syda Kosofsky

Date: April 27, 2010

Appellant was convicted of using force to resist an officer when officers entered his home. The main issue is whether appellant impliedly consented to the officer's entry. The court instructed the jury that consent must be proven by a preponderance of the evidence and is determined by how an officer would view the defendant's actions. The instruction was erroneous because whether the officer was acting lawfully must be proven by proof beyond a reasonable doubt. The instruction also erroneously conveyed to the jury that the issue was whether the officer's claimed there was consent to enter, not whether consent was actually provided. (Staff attorney Dallas Sacher)

People v. Franklin Marshall (H033439)

Panel attorney: Leeor Neta

Date: April 22, 2010

Appellant leased a car a week and never returned it. He testified that he thought he was obtaining a month-to-month lease from the rental agency. He provided them with a debit card and how to reach them. He assumed they would charge him for as long as he had the car and would contact him if there were a problem. Witnesses from the rental agency confirmed it did provide month-to-month leases but said this was not one of them. He was convicted of auto theft. The court of appeal agreed that the trial court erred in not instructing on claim of right or mistake of fact. (Staff attorney Jonathan Grossman)

People v. Jose Resendez (H032537)

Panel attorney: Stephen Bedrick

Date: March 30, 2010

A jury found appellant committed first degree murder with the special circumstance that it was conducted to further a gang. The jury also found true a gang enhancement. The court reversed the gang findings because the court instructed the jury that one of the predicate offenses can include aggravated assault and possession of a firearm by a felon. The aggravated assault was not proven by competent evidence and possession of a firearm by a felon was not a predicate offense at the time of the crime. (Staff attorney Dallas Sacher)

People v. Frank Lazos (H030184)  
Staff attorney: Jean Matulis  
Date: March 10, 2010

The court of appeal agreed appellant could not be convicted both of petty theft and of robbery for the same act. (Staff attorney Paul Couenhoven)

People v. Jesse Carranco (H032412)  
Panel attorney: Victoria Stafford  
Date: February 24, 2010

Appellant was a codefendant in the case of *People v. Hernandez* (2009) 178 Cal.App4th 1510, review granted Feb. 24, 2010, S178823. The issue is whether reversal is required if information concerning a confederate testifying for the prosecution is released by the court on condition that trial counsel cannot share the information with the client. (Staff attorney Dallas Sacher)

People v. Rosemary Greenlaw (H032961, H034299)  
Panel attorney: R. Shanti O'Brien  
Date: February 18, 2010

Appellant falsely claimed to be an officer of a homeowner's association and withdrew some money from its account. The court of appeal agreed that minutes from a particular association meeting lacked trustworthiness to be admitted. Without the minutes, there was insufficient evidence appellant was not an officer for one of the counts. The court of appeal also ordered that the court reconsider the restitution order. (Staff attorney William Robinson)

People v. N.Z. (H030760)  
Panel attorney: Stephen Bedrick  
Date: January 14, 2010

Defense counsel retained a psychologist to examine the defendant. The psychologist wrote a report which included information obtained from the defendant. Trial counsel handed the

unredacted report to the prosecution, though he decided not to have the psychologist or defendant testify. The prosecution sought to introduce some of the information in the report. The defense objected on the ground the information was attorney-client and psychotherapist-patient privilege. The trial court overruled the objection and admitted the evidence. The court of appeal reversed, finding trial counsel was ineffective for providing the information when there was no duty to or advantage for doing so. (Staff attorney Lori Quick)

People v. Thomas Alcaraz (H031733)

Panel attorney: Danalynn Pritz

Date: January 14, 2010

Appellant and his brother were in a car when four men violently attacked them. When a police officer arrived, three of the assailants ran off, but appellant retrieved a gun and shot and killed the fourth who was trying to escape. The jury was instructed on murder and voluntary manslaughter under a heat of passion theory. The jury was erroneously instructed that the provocation would also have to cause an average person to do what appellant did—i.e., shoot and kill someone in front of the police. The court of appeal held this was reversible error. (Staff attorney William Robinson)

People v. Robert Sanchez and Jorge Ayala (H032296)

Panel attorneys: Richard Ruben and Solomon Wollack

Date: January 13, 2010

The defendants were found guilty of first degree murder as aiders and abettors. The prosecution's theory was that conspired or directly aided in the commission of the murder, or they conspired or aided in the commission of a lesser charge where murder was the natural and probable consequences. The court of appeal held the instruction was flawed because it required the jury only to find that murder was the natural and probable consequence and not murder in the first degree. The error was prejudicial under the facts of the case. (Staff attorney Dallas Sacher)

## **SENTENCING**

People v. Kenneth Love (H034581)

Panel attorney: Gordon Brownell

Date: December 30, 2010

Appellant committed two armed robberies within a few hours. He was convicted twice of being a felon in possession of a firearm and punished for both counts. The court of appeal agreed that the punishment for one of the counts must be stayed pursuant to Penal Code section 654. (Staff attorney William Robinson)

In re R.C. (H035524)

Panel attorney: Randall Conner  
Date: December 22, 2010

The matter was remanded because the juvenile court failed to declare whether the offenses were misdemeanors or felonies. (See *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.)

People v. Patricia Vasquez (H034811)  
Panel attorney: Elisa Nadeau  
Date: December 21, 2010

An order not to possess, use, or be where illegal drugs or alcohol is used or sold was modified to required knowledge. The court also ordered that she pay probation supervision fees in the written order of probation but did not orally pronounce it. Because she had no opportunity to object and there was no finding she had an ability to pay, the matter was remanded. (Staff attorney Vicki Firstman)

People v. Marco Villa (H034228b)  
Staff attorney: Paul Couenhoven  
Date: December 21, 2010

The court imposed a fully consecutive middle term of three years for dissuading a witness without force or a threat of force. Because the middle term for the crime is two years, the punishment was unauthorized.

People v. Mario Scott (H035414)  
Staff attorney: William Robinson  
Date: December 6, 2010

The court improperly increased the restitution fine when it revoked probation.

In re J.B. (H035250)  
Panel attorney: Elisa Nadeau  
Date: November 23, 2010

Some conditions of probation were modified to require knowledge. (Staff attorney Vicki Firstman)

People v. Mario Gabriel (H035329)  
Panel attorney: Thomas Hartnett

Date: November 4, 2010

In a published decision, the court held that the superior court's oral rendition of judgment controlled over the minute order. The condition of probation not to associate with individuals the probationer suspected to be a gang member, drug user, on probation, or on parole was unconstitutionally vague because it was not clear what suspected meant. (Staff attorney Dallas Sacher)

People v. Derick Hutchinson (H034771)

Panel attorney: Maureen Fox

Date: November 4, 2010

Appellant was sentenced in a case after serving another case. Although he was not entitled to dual credit, he was entitled to credit in the new case starting when the sentence for the old case ended. Because it appeared the court might have been mistaken when the old sentence ended, the matter was remanded to recalculate presentence credits. (Staff attorney William Robinson)

In re C.A. (H035106)

Panel attorney: Rachel Varnell

Date: October 29, 2010

A condition of probation not to be within 25 feet of a courthouse was unconstitutionally overbroad. (Staff attorney Dallas Sacher)

People v. Santoyo (H035358)

Panel attorney: Paul Carroll

Date: October 26, 2010

When appellant was placed on probation, the court set the restitution fine at \$200. When his probation was revoked, the amount increased to \$400. The court agreed this was error. (Staff attorney Vicki Firstman)

People v. Chris Pagan (H034918)

Panel attorney: Randy Baker

Date: October 21, 2010

Appellant was convicted of certain crimes and appealed. The court of appeal reversed the sentence. On remand, the court resentenced him and assessed the criminal conviction fee. The court of appeal agreed the fee could not be assessed because the statute did not exist when appellant was convicted of the crimes. Further, a fine should be reduced to reflect the correct amount at the time

of the conviction. Finally, the court rejected the Attorney General's argument that the court security fee should be increased. (Staff attorney Jonathan Grossman)

People v. Aaron Tran (H034678)  
Panel attorney: David Martin  
Date: October 12, 2010

Conditions of probation were modified to require knowledge. (Staff attorney Vicki Firstman)

People v. Ricky Kidd (H034496)  
Panel attorney: R. Shanti Brien  
Date: September 30, 2010

Appellant was convicted of transporting drugs and possession for sale. The court held that the punishment for possession for sale must be stayed pursuant to Penal Code section 654. Since the court used the formula under Penal Code section 1202.4 for setting the restitution fine, the restitution fine must be reduced. Finally, the abstract of judgment must be corrected to reflect that an enhancement had been stricken. (Staff attorney Lori Quick)

In re Shaun R. (H035112)  
Panel attorney: Morgan C. Taylor  
Date: September 29, 2010

The minor was placed back on probation under certain conditions and the court said that previous orders remained in effect to the extent they were not inconsistent with the new orders. In the published portion of the opinion, a divided court held that the minor could not attack the previous orders notwithstanding that the court was issuing a new order that they were still in effect. The court also rejected the claims it was not clear which previous orders were still in effect and that the language of the conditions were too difficult for a teenager to understand. In the unpublished portion of the opinion, the court modified certain gang conditions to avoid problems with vagueness and overbreadth. (Staff attorney Paul Couenhoven)

In re E.O. (H035462)  
Staff attorney: Jonathan Grossman  
Date: September 29, 2010

In a published opinion, the court held that the condition to stay out of courthouse if there was a gang-related case was overbroad. It also questioned whether a teenager could understand the complex language of the probation conditions.

People v. Gamino (H033042)  
Panel attorney: J. Frank McCabe  
Date: September 21, 2010

Code section 667.61. Further, there was insufficient evidence for the order of an AIDS test. (Staff attorney Jonathan Grossman)

People v. Justin Drake (H033331)  
Panel attorney: Patricia Lai  
Date: September 15, 2010

The court agreed appellant was entitled to two additional days of presentence credits and there was insufficient evidence he had the ability to pay probation supervision fees. The court also modified a stay away condition of probation to require knowledge and to provide a specific distance he was to stay away from the victim's residence. (Staff attorney Lori Quick)

People v. Paul Casey (H033860)  
Panel attorney: Tara Morrissey  
Date: September 15, 2010

Appellant was convicted of making criminal threats with a weapons enhancement and possession of an illegal weapon. Because the convictions came from the same act, the punishment for one of them needed to be stayed pursuant to Penal Code section 654. (Staff attorney Jonathan Grossman)

People v. Michael McAtee (H034732)  
Panel attorney: Meredith Fahn  
Date: September 14, 2010

Appellant was fined \$76, including penalty assessments. Since it was impossible to determine how much the underlying fine was or how the penalty assessments were calculated, the matter was remanded to the trial court. (Staff attorney William Robinson)

People v. Esequiel Barrajas (H034742)  
Panel attorney: Scott Peebles  
Date: September 10, 2010

The court modified a condition of probation concerning gang tattoos to require knowledge. (Staff attorney Paul Couenhoven)

People v. Seguin Pacheco (H034454)

Panel attorney: Danalynn Pritz

Date: August 31, 2010

In a published decision, the court held there was insufficient evidence appellant had the ability to pay attorney fees, a booking fee payable to the county, or monthly probation fees. Finally, payment of a court security fee cannot be a condition of probation. (Staff attorney Lori Quick)

People v. Bodily (H034763)

Panel attorney: Thomas Singman

Date: August 30, 2010

After appellant was convicted but before he was sentenced, the court security fee increased from \$20 to \$30. The court of appeal agreed that the \$20 security fee at the time of the conviction applied. The court of appeal also remanded the matter to determine the amount of penalty assessments. The court imposed a \$300 fine “plus penalty assessments,” and the court clerk wrote in \$795. The clerk did not have authority to determine the amount of assessments. (Staff attorney Dallas Sacher)

People v. Rafael Torres (H034300)

Panel attorney: Arthur Wong

Date: August 30, 2010

The court erred in using a stayed count in the calculation of the restitution fine. (Staff attorney Dallas Sacher)

People v. Lilly et al. (H033423)

Panel attorneys: Robert Derham, Elisa Nadeau

Date: August 20, 2010

The court agreed the punishment for possession of burglary tools should have been stayed when the defendants were also punished for burglary. (Staff attorney William Robinson)

People v. Pete Montoya (H034685)

Staff attorney: Paul Couenhoven

Date: August 19, 2010

Appellant pled no contest to voluntary manslaughter. The court erred in limiting presentence conduct credits because it is not a violent felony. Second the court promised when appellant pled

that it would set the restitution fine according to his ability to pay, but at sentencing it was set without considering his ability to pay. The court of appeal remanded the matter for the trial court to determine appellant's ability to pay.

People v. Millard (H034747)  
Staff attorney: Paul Couenhoven  
Date: August 18, 2010

There was insufficient evidence appellant had the ability to pay \$300 in attorney fees, though he was placed on probation, because he was ordered to enter a 6-month residential drug program and then live in transitional housing.

People v. Alejandro Cevallos (H034998)  
Panel attorney: Katharine Demgen  
Date: August 17, 2010

The court ordered appellant to pay for the victim's full loss in a burglary, plus the victim's insurance deductible. Since the deductible was part of the full loss, the restitution award was erroneous for double counting the amount of the deductible. (Staff attorney Lori Quick)

People v. Matthew Price (H035153)  
Panel attorney: E. Michael Linscheid  
Date: August 13, 2010

The court modified some conditions of probation to require knowledge. (Staff attorney Paul Couenhoven)

In re J.G. (H035103)  
Panel attorney: Dena Meierhenry  
Date: August 13, 2010

The court modified gang condition of probation to avoid constitutional problems with vagueness and overbreadth. (Staff attorney Paul Couenhoven)

People v. Harmon (H034463)  
Panel attorney: Candace Hale  
Date: August 5, 2010

The matter was remanded for the court to determine the correct amount of fines. (Staff

attorney Jonathan Grossman)

In re J.R. (H035055)  
Panel attorney: Heather Miller  
Date: July 28, 2010

The juvenile court committed the minor to DJJ and issues a no contact order. The court of appeal agreed the juvenile court lacked jurisdiction to provide conditions of the minor's behavior when he was at DJJ. (Staff attorney Lori Quick)

People v. Edward Kraus (H034684)  
Panel attorney: Joseph Shipp  
Date: July 27, 2010

The court of appeal held that a condition not to possess firearms or ammunition was unconstitutionally vague because it did not require knowledge. Second, the court erred in requiring him to pay the court security fee and criminal conviction fee as a condition of probation. Third, since the case is being remanded anyway, the court should hold a hearing concerning appellant's ability to pay probation supervision fees. Fourth, the court imposed a restitution fine of \$220 and a probation restitution fine of \$220 which was stayed if appellant violated probation. In actuality, the court set a \$200 restitution fine and added a statutory permissible 10 percent collection fee to the restitution fine. Since the actual amount of the restitution fine was \$200, the probation revocation restitution fine should be \$200. (Staff attorney Lori Quick)

People v. John Borra (H034806)  
Staff attorney: Lori Quick  
Date: July 26, 2010

Appellant pled no contest to counts one and five with the agreement that counts two through four would be dismissed. At sentencing, the court dismissed one of the three counts but not the other two. The court of appeal agreed appellant was entitled to enforcement of the plea bargain and dismissal of the other two counts.

People v. Henry Lias (H034894)  
Panel attorney: David Annicchiarico  
Date: July 22, 2010

Appellant was convicted of driving under the influence. At sentencing, the court announced his driver's license was revoked as prescribed by law. Under the Vehicle Code, the court does not have the authority to revoke or suspend one's driver's license for a DUI; this is done by the

Department of Motor Vehicles. The order was unauthorized to the extent it purported the court was making the order. (Staff attorney Dallas Sacher)

People v. Cris Moreno (H034816)  
Panel attorney: John Steinberg  
Date: July 21, 2010

When appellant pled, he was told he would be assessed a \$220 restitution fine. At sentencing, however, the court assessed a \$400 restitution fine. The court of appeal concluded this violated the terms of the plea bargain and ordered the restitution fine reduced to \$220. (Staff attorney Lori Quick)

People v. Omar Ramirez (H034609)  
Panel attorney: Heather McKay  
Date: July 20, 2010

Appellant was charged with possession of a loaded firearm for the benefit of a gang, the gang crime, and resisting arrest, among other things. At the conclusion of a court trial, the judge announced the verdict of guilty for all of the charges but did not mention the resisting arrest charge. The court of appeal agreed this amounted to an acquittal, notwithstanding the court clerk writing guilty on the minute order. Further, the punishment for the gang crime must be stayed under Penal Code section 654 in lieu of the punishment for possessing a loaded firearm for the benefit of a gang. Finally, the court miscalculated presentence credits. (Staff attorney William Robinson)

People v. Brown (H034057)  
Panel attorney: Mark Farbman  
Date: July 14, 2010

Appellant's previous conviction was reversed on appeal. After a new trial, he was convicted again. At sentencing, the court imposed generally the same sentence but it increased some fines. The court of appeal held the fines could not be increased on retrial. Further, the punishment for false imprisonment to commit the remaining offenses must be stayed pursuant to Penal Code section 654. (Staff attorney William Robinson)

People v. Giti Karimpour (H033312)  
Attorney: George Schraer  
Date: July 14, 2010

The court of appeal agreed the amount of victim restitution must be reduced to the amount the hospital was compensated by the insurance company, not the amount the hospital billed. (SDAP

did not participate in this appeal)

People v. Charris Mast (H035034)

Panel attorney: Vicki Firstman

Date: July 9, 2010

Appellant was ordered to pay a criminal justice administration fee, also known as a booking fee. She specifically requested a hearing to determine her ability to pay. The superior court instead said the county Department of Revenue can determine this. The court of appeal agreed the statute required the court to make the determination upon request and there was insufficient evidence of an ability to pay. (Staff attorney Vicki Firstman)

People v. Olivo Pina (H035002)

Panel attorney: Julie Schumer

Date: July 8, 2010

The court modified gang-related conditions of probation to avoid problems with vagueness and overbreadth. (Staff attorney Lori Quick)

In re E.R. (H034599)

Panel attorney: Benjamin Owns

Date: July 7, 2010

Appellant signed a contract to participate in the juvenile drug treatment court. It was agreed that if he successfully completed the program, the case would be dismissed. When he completed the program, the court refused to dismiss because he still owed restitution. The court of appeal held he was entitled to enforcement of the contract, and the case must be dismissed. (Staff attorney Lori Quick)

People v. Melvin Simmons (H034260)

Panel attorney: Rudy Craft

Date: July 7, 2010

Appellant was a prisoner and possessed a weapon. He pled no contest to the charge with the agreement he would serve one year consecutive to the sentence he was already serving. Subsequently, the conviction for the older case was reversed and dismissed. The court resentenced him on the weapons case to four years in prison. He appealed, stating the new sentence violated the terms of the plea bargain. The court of appeal agreed. (Staff attorney Vicki Firstman)

People v. Robert Levitt  
Panel attorney: Julia Spikes  
Date: July 1, 2010

The court of appeal agreed that a condition of probation restricting appellant from being in any residence where drugs are used or sold was unconstitutionally vague and overbroad. The condition would prohibit him from being in a residence where someone used lawfully prescription drugs or over-the-counter medication. The condition was modified to state he could not be where illegal or non-prescribed drugs were being used. (Staff attorney Jonathan Grossman)

People v. Nicholas Donofrio (H033606)  
Panel attorney: Stephanie Adraktas  
Date: June 30, 2010

The court agreed the imposition of an AIDS education fine was unauthorized. (Staff attorney Dallas Sacher)

People v. Vanvleck (H034785)  
Staff attorney: Paul Couenhoven  
Date: June 29, 2010

The court agreed there was insufficient evidence for the court to order an AIDS test as a consequence of conviction.

People v. Richard Timm (H033979)  
Panel attorney: David Brody  
Date: June 17, 2010

Appellant was placed on probation and the restitution fine was set at \$400. When he violated probation, the court sentenced him to prison and set the restitution fine at \$1200. The court of appeal agreed the court could not increase the restitution fine. (Staff attorney Lori Quick)

In re A.V. (H034746)  
Panel attorney: Jonathan Berger  
Date: June 11, 2010

The court of appeal modified some gang conditions of probation to avoid problems with vagueness and overbreadth. (Staff attorney Lori Quick)

People v. Christopher Freehart (H032967)  
Panel attorney: Gretchen Franklin  
Date: June 4, 2010

Appellant was placed on probation with a condition that he not associate with anyone who might lead to criminal activity. The court of appeal agreed the condition must be stricken as being unconstitutionally vague. (Staff attorney Jonathan Grossman)

People v. Mario Arce-Sanchez (H034367)  
Panel attorney: David Annichiarico  
Date: June 3, 2010

Gang conditions of probation were modified to avoid constitutional problems with overbreadth and vagueness. (Staff attorney (Vicki Firstman)

In re V.E. (H034936)  
Staff attorney: Lori Quick  
Date: May 28, 2010

When appellant was a minor, he was adjudicated a ward and ordered to pay victim restitution. After he turned 18, the juvenile court violated his probation for committing a new offense as an adult. Over objection, the juvenile court ordered that the restitution order be added to his adult conditions of probation of probation. The court of appeal agreed the juvenile court lacked authority to make the order.

People v. Jamell Wood (H033514)  
Panel attorney: John Dwyer  
Date: May 28, 2010

The court orally awarded 538 days of presentence credits, the paperwork showed he received 530 days, but calculations show he should have received 546 days. The court ordered he receive the full presentence credits. (Staff attorney William Robinson)

People v. Mark Hurlibirt (H034142)  
Staff attorney: Vicki Firstman  
Date: May 25, 2010

The court modified certain conditions of probation to avoid problems with overbreadth and vagueness.

In re Jordan C. (H034662)  
Staff attorney: Lori Quick  
Date: May 24, 2010

Appellant entered a drug treatment program through the juvenile court with the agreement his probation would be dismissed upon completion of the program. When he completed the program, the court refused to dismiss probation because he failed to pay victim restitution. The court of appeal reversed and ordered that probation be dismissed.

People v. Nuuelua Sofara (H033652)  
Panel attorney: R. Shanti O'Brien  
Date: May 18, 2010

The court reversed a restitution order to reimburse the travel expenses of the victim's aunt and uncle because they are not victims under Penal Code section 1202.4. (Staff attorney Paul Couenhoven)

In re J.A. (H034505)  
Panel attorney: E. Michael Linsheid  
Date: May 18, 2010

The court modified gang conditions of probation to avoid problems with vagueness and overbreadth. (Staff attorney Jonathan Grossman)

People v. Gutierrez (H033213)  
Panel attorney: David Mann  
Date: May 12, 2010

The court agreed that an order to stay away from the victim was unconstitutionally vague. Further, the trial court erred in setting the amount of parole revocation restitution fine to an amount different from the restitution fine. (Staff attorney Vicki Firstman)

People v. David Melgoza (H032508)  
Panel attorney: Gene Vorobyov  
Date: May 12, 2010

Appellant was convicted of illegally selling a firearm and illegally possessing the same firearm. The court held that the punishment for the possession must be stayed pursuant to Penal Code section 654. (Staff attorney Paul Couenhoven)

In re J.J. (H034470)  
Panel attorney: Dena Meierhenry  
Date: May 10, 2010

Appellant involved in a gang assault, but he was not immediately charged. He later possessed a knife at school, committed auto theft, vandalism, and hit and run. He was placed on juvenile probation when he was charged from the gang assault incident with assault with a deadly weapon causing great bodily injury for the benefit of a gang. After the petition was sustained, the court committed him to the Division of Juvenile Justice on the ground that his crimes were of increasing seriousness. The court of appeal reversed because the juvenile court mistakenly believed the crimes were committed in the order they were adjudicated. Since the assault occurred before the other crimes, his crimes were of decreasing seriousness. (Staff attorney William Robinson)

People v. Chris Barrientos (H034588)  
Staff attorney: Jonathan Grossman  
Date: May 10, 2010

The court orally pronounced \$300 in drug program fines and the corresponding penalty assessments. The abstract of judgment stated it was \$450 and increased the penalty assessment accordingly. The court of appeal reduced the fine and penalty assessments to the amount the court orally pronounced.

People v. Adan Vasquez (H034462)  
Staff attorney: Lori Quick  
Date: May 10, 2010

The court of appeal agreed there was insufficient evidence appellant had the ability to pay attorney fees. Further, the minute order needed to be amended to strike a \$20 fine the trial court never actually imposed. Finally, one of the counts needed to be dismissed as agreed to in the plea bargain.

In re T.L. (H034671)  
Panel attorney: Marsanne Weese  
Date: May 3, 2010

The court modified a condition of probation that appellant stay away from court houses to require him not to attend court proceedings he knows involves gang members. (Staff attorney Vicki Firstman)

People v. Armando Duarte (H034071)

Panel attorney: Elisa Nadeau  
Date: April 28, 2010

The court stayed a couple of counts and set the restitution fine according to the formula found in Penal Code section 1202.4. Because the court erroneously included the stay counts in the calculation, the restitution fine needed to be reduced. (Staff attorney Paul Couenhoven)

In re E.A. (H034655)  
Staff attorney: Lori Quick  
Date: April 27, 2010

The minor admitted he committed a criminal offense and was placed in drug treatment court. He signed a contract with the court that stated that if he successfully completed the requirements of drug court, the wardship would be dismissed. He completed the requirements, but the wardship was not dismissed because he still owed victim restitution. The court of appeal held this was error.

People v. Jamie Saechao (H034456)  
Panel attorney: Alex Green  
Date: April 22, 2010

The superior court placed appellant on probation on condition that he serve nine months in jail. The court of appeal agreed there was insufficient evidence of an ability to pay attorney fees. (Staff attorney Dallas Sacher)

In re R.S. (H034600)  
Panel attorney: Eric Heffelfinger  
Date: April 22, 2010

The court modified a condition of probation to require knowledge. (Staff attorney Paul Couenhoven)

People v. Vito Mitchell (H033369)  
Panel attorney: Cliff Gardner  
Date: April 15, 2010

A jury convicted appellant of second degree murder and found the gang enhancement to be true. Because murder carried an indeterminate term, the court erred in adding ten years for the gang enhancement. (Staff attorney Dallas Sacher)

People v. Francisco Savinon (H034172)  
Staff attorney: William Robinson  
Date: April 14, 2010

Appellant pled guilty to attempted murder without premeditation, but the abstract of judgment said it was with premeditation. The court of appeal agreed the abstract judgment needed to be amended.

People v. Sophia Curenio (H034552)  
Panel attorney: Stephanie Adraktas  
Date: April 12, 2010

A condition of probation was modified to prevent a condition to stay away from a courthouse from being unconstitutionally overbroad. (Staff attorney Dallas Sacher)

People v. Anthony Negron (H034312)  
Staff attorney: Paul Couenhoven  
Date: April 6, 2010

Conditions of probation were modified to prevent constitutional problems with vagueness and overbreadth.

People v. Rafael Chubbs (H033510)  
Panel attorney: Mark Shusted  
Date: April 6, 2010

Appellant was placed on probation and assessed a \$200 restitution fine. When his probation was revoked, the court imposed a \$600 restitution fine. The amount was reduced to \$200 because the court cannot increase the restitution fine at a violation of probation. (Staff attorney William Robinson)

People v. Richard Price (H034293)  
Staff attorney: Jonathan Grossman  
Date: March 29, 2010

The court modified gang conditions of probation so that they would not be vague or overbroad. It also ordered stricken a requirement found in the minute order that he register as a gang member because the sentencing court did not orally order it.

People v. Michael Wallin (H034304)  
Panel attorney: David Stanley  
Date: March 19, 2010

Appellant was convicted of auto theft and receiving a stolen auto. The court of appeal agreed the punishment for the second count must be stayed pursuant to Penal Code section 654. (Staff attorney Vicki Firstman)

People v. Manuel Urrea (H033949)  
Staff attorney: William Robinson  
Date: March 11, 2010

Appellant was convicted of recklessly evading and officer and resisting arrest. He was placed on probation on condition, among other things, to not possess or consume alcohol or be at a place where it is "a major item for sale." The court of appeal agreed the condition was not involved in his criminal behavior and there was insufficient evidence it was related to future rehabilitation.

People v. Blake Macierez (H033474)  
Staff attorney: Jonathan Grossman  
Date: March 11, 2010

The court agreed to offset the restitution award by \$30,000 to reflect the amount paid to the victim by appellant's insurance. It also agreed that he because he served four actual days in jail before sentencing, he was entitled to two days of presentence credits under former Penal Code section 4019.

People v. Donna Martinez (H033830)  
Staff attorney: Paul Couenhoven  
Date: March 1, 2010

There was evidence appellant suffered from mental illness. In imposing probation, the court ordered that she take all prescribed medication. The court of appeal agreed the condition was overly broad to the extent she was required to take medication not related to her mental illness.

People v. Ruben Cuevas (H034038)  
Panel attorney: Jeffrey Glick  
Date: February 26, 2010

Appellant was assessed \$795 in fines and unidentified penalty assessments. The court of

appeal remanded the matter for the trial court to identify the amounts. (Staff attorney Dallas Sacher)

In re Carlos J. (H034582)  
Panel attorney: Syda Kosofsky  
Date: February 26, 2010

The court modified gang-related conditions of probation to comply with due process. (Staff attorney Jonathan Grossman)

People v. Rosario Lopez (H034125)  
Panel attorney: Carl Gonser  
Date: February 25, 2010

Appellant was convicted of driving under the influence causing death to one and great bodily injury to another. As part of the victim restitution award, appellant was ordered to pay \$26,000 in attorney fees because most of the victim's attorney's time was spent trying to collect a civil judgment and the amount awarded was not reasonable to the victim restitution award. The court of appeal agreed the trial court abused its discretion. (Staff attorney Vicki Firstman)

In re C.C. (H034343)  
Staff attorney: Lori Quick  
Date: February 23, 2010

The minor committed a burglary. He was placed in the drug treatment court. He and the court signed a drug court contract which included the promise that if he successfully complete the program, the wardship would be dismissed. He also agreed to pay victim restitution. He successfully completed the program, but the court continued him on probation to pay the victim restitution. He objected, stating he completed his portion of the contract. The court of appeal agreed the juvenile court was bound by the contract it drafted and that the wardship must be dismissed.

In re F.A. (H034590)  
Panel attorney: Karli Sager  
Date: February 19, 2010

The court found the minor carried a concealed dirk or dagger in a public place. (Pen. Code, § 12020, subd. (a)(4).) The matter was remanded for the juvenile court to determine if the offense was a felony or a misdemeanor. (Staff attorney Lori Quick)

People v. Diego Legaspi (H033834)

Panel attorney: Randy Kravis  
Date: February 18, 2010

The court of appeal agreed the abstract of judgment failed to correctly reflect the sentence. One count was stayed, the restitution fine was purportedly \$6000 when it should have been \$1500, the amount of the drug program fines and lab fines were not clear, and appellant was entitled to an additional day of presentence credits. (Staff attorney Paul Couenhoven)

People v. Louis Ortiz (H034170)  
Panel attorney: Ozro Childs  
Date: February 18, 2010

Appellant was convicted of robbery with a gang enhancement. He was placed on probation on condition, among other things, that he possess no alcohol and be subject to drug and alcohol testing. The court of appeal agreed there was insufficient evidence to support these conditions. It also modified a condition to not be present in a courthouse so that the condition not be an overbroad. (Staff attorney Dallas Sacher)

In re A.M. (H034031)  
Panel attorney: Marsanne Weese  
Date: February 11, 2010

The minor touched another boy's penis with a hand. The court of appeal concluded there was insufficient evidence to order appellant to undergo AIDS testing. Further a probation condition not to associate with certain people needed to be modified to require knowledge. (Staff attorney Lori Quick)

In re J.M. (H034317)  
Staff Attorney: Lori Quick  
Date: February 10, 2010

The minor admitted committing a hit and run and possessing a concealed knife or dagger. He was placed in the drug treatment court. He and the court signed a drug court contract which included the promise that if he successfully complete the program, the wardship would be dismissed. He also agreed to pay victim restitution. He successfully completed the program, but the court continued him on probation to pay the victim restitution. He objected, stating he completed his portion of the contract. The court of appeal agreed the juvenile court was bound by the contract it drafted and that the wardship must be dismissed.

People v. Jesse Garcia (H034421)

Panel attorney: J. Frank McCabe  
Date: February 8, 2010

The court of appeal made clear that payment of attorney and probation fees cannot be a condition of probation, and some conditions of probation were modified to require knowledge. (Staff attorney Vicki Firstman)

In re R.G. (H034640)  
Panel attorney: Ronald Dehoff  
Date: February 5, 2010

A gang-related condition of probation was modified to require knowledge. (Staff attorney Paul Couenhoven)

People v. Anthony Castillo (H033859)  
Staff attorney: Vicki Firstman  
Date: February 4, 2010

Conditions of probation were modified to require knowledge. Further, the minute order stated he needed to register as a gang member when the court never required it. The court struck this condition.

People v. Joseph Leon (H034066)  
Panel attorney: Elisa Nadeau  
Date: February 2, 2010

In a published decision, the court of appeal held that certain constitutional challenges to conditions of probation were not forfeited without an objection. Conditions of probation was amended to require knowledge. Further, a condition not to be in a courthouse was modified to stay away only from proceedings the defendant knew involved gang members unless the probation officer gave permission to attend. (Staff attorney Paul Couenhoven)

In re A.M. (H033917)  
Panel attorney: Eric Hefflefinger  
Date: January 22, 2010

The court modified gang conditions of probation so that they would not be unconstitutionally vague or overbroad. (Staff attorney William Robinson)

People v. Robert Sanchez and Jorge Ayala (H032296)

Panel attorneys: Richard Ruben and Solomon Wollack  
Date: January 13, 2010

The court erred in imposing the gang enhancement for a serious felony when the defendant was not convicted of a serious felony. Further, the punishment for one count should have been stayed under Penal Code section 654, and the abstract of judgment must be amended to reflect that victim restitution was a joint and severable obligation. (Staff attorney Dallas Sacher)

People v. Christopher Barkley (H032690)  
Staff attorney: Jonathan Grossman  
Date: January 12, 2010

At a trial, appellant admitted he suffered a prior serious felony conviction. The jury convicted him of most charges but acquitted him of the new serious felony. The court stayed punishment for the prior serious felony. It also set a restitution fine of \$10,000 plus restitution fines in two other cases on which he was sentenced the same day. The court of appeal agreed that the prior serious felony should be stricken, not stayed, and the total restitution fine could not exceed \$10,000.

People v. Stoffer (H033836)  
Panel attorney: R. Shanti O'Brien  
Date: January 8, 2010

Appellant was convicted of molesting a granddaughter with his hands. There was insufficient evidence to order that he undergo an AIDS test. (Staff attorney Lori Quick)

## **DEPENDENCY CASES**

In re C.B. (H035085)  
Panel attorneys: Lee Gulliver, Caroline Todd  
Date: November 18, 2010

The court of appeal held the juvenile court abused its discretion in finding the benefit of adoption outweighed the benefit of the parent-child exception when it believed the adoptive parents would continue to permit the minor to visit the biological parents. Such an agreement was unenforceable. Further, new notice under ICWA needed to be sent when critical information concerning an ancestor was missing. (Staff attorney Jonathan Grossman)

In re S.G. (H035517)  
Panel attorneys: Mara Carman and James Haworth  
Date: November 15, 2010

The matter was remanded for the Department to provide proper notice under ICWA. (Staff attorney Vicki Firstman)

K.D. v. Superior Court (H035546)

Attorney: John P. Hannon

Date: August 16, 2010

The court granted the mother's petition for extraordinary writ to review the setting of a hearing pursuant to Welfare and Institutions Code section 366.26. The court of appeal concluded there was sufficient evidence to find it would be detrimental to return the minor, but the juvenile court erred in not considering whether reunification was possible within the next six months. (SDAP did not participate in this proceeding)

In re A.C. (H034769)

Panel attorney: Catherine Czar

Date: July 15, 2010

After parental rights were terminated, CPS wanted to move the minor from a foster home to a group home. Believing this was a more restrictive placement, CPS filed a section 387 petition which included language concerning her behavioral problems. While the minor agreed to the change in placement, she argued that a section 388 petition for modification, without language blaming her for the move, was appropriate. The court of appeal agreed in a published decision. Because parental rights were terminated, section 387 did not apply. (Staff attorney Jonathan Grossman)

In re S.T. (H034753)

Panel attorney: Carolyn Todd

Date: March 19, 2010

The matter was remanded for proper notice under the Indian Child Welfare Act. (Staff attorney Jonathan Grossman)

In re M.S. (H034629)

Panel attorney: Cathy Czar

Date: February 18, 2010

The order terminating parental rights was reversed to ensure that proper notice was sent as required by ICWA. (Staff attorney Vicki Firstman)

In re W.K. (H034165)

Panel attorney: James Haworth  
Date: January 19, 2010

The mother unsuccessfully sought a restraining order against the father in dependency court and appealed. Attorney represented the father and convinced the court of appeal to affirm. The dependency court had sufficient information to properly exercise its discretion and the lack of recent violent episodes justified the dependency court's action. (Staff attorney Jonathan Grossman)

In re J.N. (H034242)  
Panel attorneys: Sheri Cohen and Roland Simoncini  
Date: January 6, 2010

The parents were in a car accident with the children inside. The parents had been drinking. The juvenile court assumed jurisdiction. The court of appeal held the accident alone where the parents had been drinking were insufficient grounds for assuming jurisdiction when the parents were remorseful and otherwise responsible, and there was little risk of the children suffering further harm. (Staff attorney Vicki Firstman)

### **HABEAS PROCEEDINGS**

In re Conley Dukes (Santa Clara Cnty. No. 88545)  
Staff attorney: Lori Quick  
Date: November 4, 2010

When the Board of Parole Hearings denied parole, it relied mostly on the commitment offense, though it also stated the prisoner lacked insight. The prisoner filed a habeas corpus petition. The superior court granted relief. The Board failed to provide a sufficient nexus for concluding that the circumstances of the crime or his apparent lack of insight rendered him unsuitable for parole.

In re Mario Trujillo (S178388)  
Staff attorney: Jonathan Grossman  
Date: October 13, 2010

Trujillo went to trial on four counts. During the trial, the prosecution withdrew count four. The jury convicted him of count three and hung on counts one and two. At retrial, the prosecution charged counts one, two, and four. The jury convicted him of all charges. On appeal it was argued trial counsel was ineffective for failing to dismiss count four on double jeopardy grounds. The court of appeal affirmed, stating trial counsel might have a tactical reason for not objecting. A habeas corpus petition was filed in the supreme court with a declaration from trial counsel stating there was not a tactical reason. The supreme court issued an order to show cause returnable to the superior court.

Villa v. Knowles (N.D. Cal. No. C 03-04766 JW)  
Staff attorney: William Robinson  
Date: September 27, 2010

The federal court granted relief on habeas corpus and ordered that the prisoner receive additional presentence credits.

David Leon v. Felker (N.D. Cal. C 07-3954 MHP)  
Staff attorney: Dallas Sacher  
Date: September 3, 2010

The defendant was convicted in state court of second degree murder, discharging a firearm at an occupied vehicle, and assault with a firearm. The jury also found he personally used a firearm causing great bodily injury. The district court granted relief on habeas corpus in part. It concluded the state court's decision that the merger doctrine did not apply to second degree murder and shooting into an occupied vehicle was unreasonable.

In re Byron Kenneth Mills (Santa Clara Cty. Super. Ct. No. 76347)  
Staff attorney: Paul Couenhoven  
Date: September 1, 2010

The superior court granted relief on habeas corpus to the Board's denial of a grant of parole.

In re Efrain Reyes (Santa Clara Cty. Super. Ct. No. 101413)  
Staff attorney: Lori Quick  
Date: August 24, 2010

The superior court granted relief on habeas corpus to the governor's denial of a grant of parole.

In re Irving Sheppard (Santa Clara Cty. Super. Ct. No. 79029B)  
Staff attorney: Lori Quick  
Date: August 11, 2010

Sheppard was denied parole. The court granted relief on habeas corpus. It determined that lack of remorse alone was insufficient ground for denying parole when the prisoner declines to discuss the commitment offense.

In re Richard Sena (Santa Clara Cty. Super. Ct. No. 1491691)  
Staff attorney: Jonathan Grossman  
Date: August 11, 2010

The superior court granted relief on habeas corpus to the denial by the Board of parole.

In re Roderick McConnell (Santa Clara Cty. Super. Ct. No. 160861)  
Staff attorney: William Robinson  
Date: August 6, 2010

The superior court granted relief on habeas corpus to the governor's denial of a grant of parole.

In re Stan Newton (Santa Clara Super. Ct. No. CC642535)  
Staff attorney: William Robinson  
Date: July 21, 2010

Petitioner pled guilty to two charges and admitted he suffered two prior strike convictions. One of them was for vehicular manslaughter which is a strike if it involves “the personal infliction of great bodily injury on any person other than an accomplice.” The facts showed that the victim was a front passenger in petitioner's car. There was no evidence he was not an accomplice. Trial counsel said he did not investigate the matter because he assumed that if the District Attorney's Office would charge it, the judge accept the admission, and the probation officer wrote about it, they would have noticed if it were not a strike. Petitioner alleged he would not have admitted the strike if he had been advised it might not be valid. The superior court found on habeas corpus that petitioner received ineffective assistance of counsel.

In re Chester Ryner (Santa Clara Super. Ct. No. 79891)  
Staff attorney: Michael Kresser  
Date: July 19, 2010

The superior court granted relief on habeas corpus to the governor's denial of a grant of parole.

In re Phoen Mey (Santa Clara Super. Ct. No. 142586)  
Staff attorney: Jonathan Grossman  
Date: July 11, 2010

The superior court granted relief on habeas corpus to the Board's denial of parole.

In re Daniel Dominguez (Santa Clara Super. Ct. No. CC768960)  
Panel attorney: Eric Weaver  
Date: April 2, 2010

Defendant pled no contest and admitted he suffered five prior serious felony convictions. Trial counsel advised defendant that at sentencing, the district attorney could dismiss the prior serious felonies in the interest of justice, and mitigating evidence was prepared for a sentencing hearing. After the prior serious felonies were not dismissed at sentencing, he filed a petition for writ of habeas corpus. The superior court found trial counsel was ineffective. While the statutes permit the district attorney to move to dismiss an alleged prior serious felony conviction when there is a problem with proving it, the law does not grant the district attorney the power to request dismissal after it has been admitted in the interest of justice. (Staff attorney Dallas Sacher)

### **MISCELLANEOUS**

Almalik v. Superior Court (H035597)  
Panel attorney: Jeffrey Needelman  
Date: December 8, 2010

There is a potential claim on appeal that the court induced the defendant's plea. A notice of appeal was filed, but the court refused to issue a certificate of probable cause. The court of appeal issued a writ of mandate directing the superior court to issue a certificate of probable cause. (Staff attorney William Robinson)

People v. Herbert Willmes (H034656)  
Staff attorney: Jonathan Grossman  
Date: November 30, 2010

The court remanded the SVP case to the superior court pursuant to People v. McKee (2010) 47 Cal.4th 1172.

People v. Oscar Valdez (H034946)  
Staff attorney: Dallas Sacher  
Date: September 9, 2010

Stemming from a domestic violence incident, Valdez was convicted of misdemeanor battery and violating a restraining order. He was then charged in a new complaint of felony assault with an enhancement for great bodily injury. The superior court dismissed the new case for being an improper successive prosecution. The prosecution appealed. The court of appeal affirmed.

In re Charles Williams (H033771)

Panel attorney: Benjamin Ramos  
Date: July 22, 2010

Williams had been convicted of first degree murder. The Parole Board granted parole, but the governor vetoed the decision. Williams filed a habeas corpus petition in the superior court which granted relief. The government appealed. The court of appeal affirmed the order but modified it so as to not limit the governor's discretion. (Staff attorney Michael Kresser)

In re Olan Willis (H033182)  
Panel attorney: Mark Defilippis  
Date: July 28, 2010

Willis had been convicted of first degree murder as an aider and abettor, as he drove the getaway car. The Parole Board denied parole. Willis filed a habeas corpus petition in the superior court which granted relief. The government appealed. The court of appeal affirmed the order but modified it so as to not limit the Board's discretion. (Staff attorney Michael Kresser)

People v. Gomberg (H033519)  
Staff attorney: Jonathan Grossman  
Date: June 30, 2010

The court remanded the SVP case to the superior court for a hearing under People v. McKee (2010) 47 Cal.4th 1172.

People v. Flores (H034199)  
Panel attorney: Alfons Wagner  
Date: June 18, 2010

The court remanded the SVP case to the superior court for a hearing under People v. McKee (2010) 47 Cal.4th 1172. (Staff attorney Jonathan Grossman)

People v. Henry Bratton (H034527)  
Attorney: Michael Evan Beckman  
Date: June 24, 2010

The governor rejected the Parole Board setting a parole date for Mr. Bratton. He filed a petition for writ of habeas corpus, and the superior court granted relief. The government appealed. The court of appeal affirmed, though it modified the remand order slightly. (SDAP was not involved in this appeal)

In re Daniel Barrios (H034677)  
Panel attorney: Keith Wattley  
Date: June 8, 2010

The Parole Board denied Barrios's request for parole, based primarily on the commitment offense. He filed a petition for writ of habeas corpus which the superior court granted. It ordered a new parole hearing to comply with the requirements of *In re Lawrence* (2008) 44 Cal.4th 1181. The government appealed. The court of appeal affirmed with minor modifications. (Staff attorney Michael Kresser)

People v. Nilesh Singh (H032536)  
Panel attorney: Michael Mehr  
Date: June 4, 2010

Singh was in custody of the immigration officials. The superior court granted Singh's petition for writ of habeas corpus. The prosecution appealed. While the appeal was pending, the California Supreme Court held that there is no habeas corpus petition jurisdiction when the petitioner is only in custody of federal immigration officials. Panel attorney worked out a settlement with the government. The prosecution agreed to dismiss the appeal, which the court of appeal permitted. (Staff attorney Vicki Firstman)

People v. Juan Carlos Ruiz (H033380)  
Panel attorney: David Carico  
Date: April 12, 2010

Appellant was driving a car while under the influence of alcohol. The police stopped him, but then he sped off. The police chased him for a while but then ended the pursuit. Appellant hit a car, injuring two people. Another pursuit ensued. Appellant pled guilty to DUI with injury, two counts of recklessly evading an officer, and two counts of hit and run. They stipulated there is a factual basis contained in the accident report. The trial court issued a certificate of probable cause. The court of appeal agreed that there was not a factual basis to support two convictions of reckless evasion and two convictions for hit and run. Further, Penal Code section 654 did not permit separate punishments for DUI with injury and reckless evasion. (SDAP did not participate in the appeal)

People v. James Guasch (H032720)  
Attorney: Dean Johnson  
Date: April 6, 2010

Appellant was convicted of two counts of transporting and distributing a controlled substance when he drove to a location with the drugs and then sold them to an undercover officer as arranged. The court agreed that the conviction for one of the counts must be stayed under Penal Code section

654. (SDAP did not participate in this case)

People v. Taravella (H033992)

Attorney: John Schuck

Date: February 23, 2010

The defendant was convicted of committing oral copulation of a minor under the age of 16 years by one at least 21 years old. In a published decision, the court of appeal held that the trial court had discretion to determine if he should continue to register under *People v. Hofscheier* (2006) 37 Cal.4th 1185. It also concluded that the proper means of seeking relief for a conviction that has long been final is through an action for declaratory relief. (SDAP did not participate in this case)

In re James Sauers (H034179)

Panel attorney: Keith Wattley

Date: January 26, 2010

The court affirmed the granting of relief on habeas corpus by the superior court. The courts decided Sauers was entitled to a new parole board hearing in compliance with *In re Lawrence* (2008) 44 Cal.4th 1181. (Staff attorney Michael Kresser)

In re Michael Harris (H033292)

Attorney: Marc Elliot Grossman

Date: January 19, 2010

The court of appeal affirmed as modified the superior court granting relief on habeas corpus from the denial of parole by the Board. (SDAP did not participate in this case)

People v. Augustin Uribe (Santa Clara Cty. No. CC598686)

Attorney: Alfonso Lopez

Date: January 6, 2010

Uribe had been convicted of molestation. At trial, the child recanted. The strongest evidence against him came from the SART nurse, Mary Ritter. After trial, it was learned that the SART exam had been videotape. A defense expert determined after viewing the videotape that, contrary to Ritter's testimony, there was no evidence of abuse. The conviction was reversed. In the superior court, Uribe moved for dismissal on the ground of outrageous government conduct because the prosecution knowingly failed to disclose the existence of the videotapes in sex cases for 20 years. The prosecuting attorney testified that there was no knowing misconduct. The court found the deputy district attorney was not credible, as his testimony was contradicted by other witnesses and evidence. The case was dismissed. for outrageous government conduct. (SDAP did not participate

in the motion)