

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

SUFFICIENCY OF THE EVIDENCE

In Re R.R. (H035715)
Panel attorney: Michael O'Flannigan
July 11, 2011

The court found appellant vicariously committed great bodily injury. Because the enhancement applies only for personal infliction, the enhancement was stricken. Also, the condition of probation not to possess graffiti material was modified to require knowledge. (Staff attorney Paul Couenhoven)

People v. Joey Flowers (H036095)
Panel attorney: Scott Handleman
Date: May 31, 2011

Appellant tried to use someone else's credit card to make a purchase. He signed a credit slip and was charged with forgery. There was no evidence he signed it using someone else's name or a fictitious name, so there was insufficient evidence to support the forgery conviction. (Staff attorney Lori Quick)

People v. Gerber (H034639)
Panel attorney: Robert Angres
Date: June 8, 2011

Appellant was convicted of possessing child pornography (Pen. Code, § 311.11, subd. (a)), and furnishing a narcotic to a minor (Health & Saf. Code, § 11353), among other things. He took legal adult pornography and cut and paste the face of a minor on the pictures. Although he was charged with furnishing crack cocaine to a minor, the court instructed the jury he could be convicted of the crime if he furnished cocaine or methamphetamine to a minor. In fact, furnishing methamphetamine would be a crime under Health and Safety Code section 11380 but not section 11353. In a published decision, the court held there was insufficient evidence he possessed child pornography because there was not a minor engaging in or simulating sexual activity as required by the statute. Further, the trial court erred in falsely instructing the jury it could find him guilty of the charged crime for furnishing methamphetamine to a minor. Finally, the trial court's order to stay away from the victim and the family was unauthorized. (Staff attorney Dallas Sacher)

In re K.R. (H035826)
Panel attorney: Alfons Wagner
Date: May 25, 2011

The juvenile court found appellant culpable as an aider and abettor for felony assault with great bodily injury. Because the great bodily injury requires personal infliction, appellant could not be culpable as an aider and abettor. (Staff attorney William Robinson)

People v. Ross Killian (H035269)
Panel attorney: Michael Allen
Date: April 25, 2011

Appellant was convicted of illegally possessing fireworks in an unincorporated area of the county. Because there was insufficient evidence he was in an unincorporated area of the county, the conviction must be reversed. (Staff attorney Jonathan Grossman)

In re R.I. (H035393)
Panel attorney: Michael Breismeister
Date: January 11, 2011

The juvenile court found appellant committed vandalism and violated probation by committing a new crime and associating with a probationer. Appellant and his companion knocked on the door of someone they knew. They were with four or five other youths. When the 18 year-old resident opened the door, the companion stepped in. The resident told him he had to leave because his father required no one with alcohol to be in the house. Appellant also stepped in but stepped out when told to. The companion threatened the resident who pushed him out of the door. The companion yelled gang slogans and broke a window. He and at least three others banged on the sides of the house, and another was broken. The court found appellant culpable of vandalism as an aider and abettor. The court of appeal reversed for insufficient evidence. There was no evidence appellant did anything to aid in the vandalism. Further, there was no evidence he knew his companion was on probation. (Staff attorney Jonathan Grossman)

People v. Michael Corbett (H032848)
Panel attorney: Heather McKay
Date: January 5, 2011

Among other things, appellant was convicted of violating a protective order, charged under Penal Code section 273.6. The protective order was issued pursuant to Penal Code section 136.2, subdivision (a)(4), and section 273.6 did not apply to such protective orders. Thus, there was insufficient evidence to support the conviction. (Staff attorney Vicki Firstman)

PRETRIAL AND POSTTRIAL MOTIONS

People v. Rosie Travis (H036753)

Staff attorney: Jonathan Grossman

Date: December 9, 2011

Appellant was placed on Proposition 36 drug probation. She failed to appear. The court terminated her probation without anyone filing a formal petition to revoke probation, without the court holding a hearing or having her admit a violation, and without the court determining it was a drug-related violation of probation. The court of appeal agreed this was unauthorized. Further, fees were improperly imposed because the crime was committed before they were increased, and there was insufficient evidence of an ability to pay probation fees.

People v. Yasin Almalik (H035390)

Panel attorney: Jeffrey Needelman

Date: July 5, 2011

The court denied appellant's request for a certificate of probable cause, but the court of appeal issued a writ of mandate. The appellate court held the trial court engaged in illegal plea bargaining by giving an "indicated sentence" only if the defendant were to plead that day. (Staff attorney William Robinson)

People v. Lorenzo Arteaga (H036027)

Panel attorney: Rudy Kraft

Date: June 30, 2011

Appellant was committed as incompetent to stand trial. The court subsequently granted a petition to involuntarily medicate him. The court of appeal held there was insufficient evidence to support the order. (Staff attorney Jonathan Grossman)

Rios v. Superior Court (H036757)

Attorney: Lisa Kay McCamy

Date: June 30, 2011

In a previous appeal, the court reversed an enhancement and provided the prosecution may retry appellant within 60 days; otherwise, the superior court must resentence him. The prosecution failed to try him within 60 days, but the superior court denied the motion to dismiss the enhancement. The court of appeal granted the petition for writ of mandate and ordered that the enhancement be dismissed and appellant be resented. (SDAP did not participate in this petition)

People v. Ricky Medina (H034798)
Panel attorney: Julie Dunger
Date: June 29, 2011

An officer saw four men standing on a corner. One of them, not appellant, was holding a beer bottle. Appellant tried to walk away as the officer approached, but he was told to stop. The officer heard glass clanging in appellant's backpack, which led him to believe appellant had alcohol. The officer took control of the backpack and smelled marijuana. The officer searched the backpack and appellant, and he found marijuana and switchblade. The court of appeal reversed the denial of the motion to suppress evidence. He was detained when the officer told him to stop. There was no evidence appellant was drinking in public. While the officer might have reasonably believed he possessed alcohol, there was no evidence to give rise to an objective inference appellant was underage. (Staff attorney Dallas Sacher)

People v. Jesus Reyes (H035872)
Panel attorney : J.J. Hamlyn
Date: June 17, 2011

The police stopped appellant's car because it had a Florida license plate in the front of the car and no license plate in the back. Florida law permits only a front license plate on a car. Because there was no evidence the car was not properly registered in Florida, and the car was displaying the license plate as required by law, the police lacked reasonable suspicion to detain appellant. (Staff attorney Paul Couenhoven)

People v. Somnang Kim (H034868)
Staff attorney: Dallas Sacher
Date: March 30, 2011

In a published decision, the court held that when appellant entered a plea bargain for a life sentence, it violated the plea bargain to impose multiple life terms.

People v. Felix Maquiz (H034495)
Panel attorney: Alex Coolman
Date: March 7, 2011

Appellant had insisted on a speedy trial. On the eve of trial, he refused to accept a plea offer. Trial counsel declared a doubt as to appellant's competence. As the court was suspending criminal proceedings, appellant asked for a *Marsden* hearing, but the court refused to hold one. Subsequently, the court permitted him to represent himself without an attorney, even during the competency proceedings. After being found competent, a jury convicted him of the crime. The court of appeal held the trial court erred in not holding a *Marsden* hearing upon request. (Staff

attorney Jonathan Grossman)

People v. Roy Shelton (H033587)

Panel attorney: Alfons Wagner

Date: January 7, 2011

When appellant's SVP trial was set to start, the trial judge was to go on vacation. Over appellant's objection, the trial was continued for several months, on top of the long pretrial delays that had already occurred. The court of appeal held the delay in going to trial violated due process, requiring reversal of the SVP commitment. (Staff attorney Jonathan Grossman)

ERROR AT TRIAL OR HEARING

People v. Bergstrom (H034782)

Attorney: James Campbell

Date: October 24, 2011

Appellant was tried by jury for forcible sodomy. There was evidence that the complaining witness was intoxicated, but he was not accused of sodomy accomplished by intoxication. The court modified the instruction on consent to include a reasonable ability to give consent. The court of appeal concluded the modified instruction was prejudicial error because it was an incorrect description of consent overcome by force. (SDAP did not participate in this appeal)

People v. Javier Baltazar (H036593)

Panel attorney: Julie Dunger

Date: September 27, 2011

After the jury returned its verdict, appellant waived his right to a jury determination of whether alleged conduct enhancements were true. The court found deemed them to be true without holding a hearing. The court of appeal reversed because appellant never waived his right to a court trial on the enhancements. (Staff attorney Paul Couenhoven)

People v. Daniel Lopez (H034619)

Panel attorney: Jana Clark

Date: August 19, 2011

In a published decision, the court decided that evidence of a prior theft to show intent under Evidence Code section 1101, subdivision (b) was inadmissible because intent was not an issue in dispute. This error required reversal of one of the convictions. (Staff attorney William Robinson)

People v. Christopher Curiel (H034664)
Attorney: Alyssa Christine Mellott
Date: June 29, 2011

A jury convicted appellant of participating in a robbery with several other suspects and found a gang enhancement to be true. One officer testified that he interviewed two of the confederates, and they were evasive in their answers. Nonetheless, the gist of what they said was that the robbery was preplanned. The court of appeal held the evidence was inadmissible under the conspiracy exception to the hearsay rule because the conspiracy had ended and the exception permitted the admission of the co-conspirators' statements, not the officer's characterizations of their statements. Admission of the evidence also violated the confrontation clause. As a consequence, the gang enhancement was reversed. (SDAP did not participate in this appeal)

People v. Gerber (H034639)
Panel attorney: Robert Angres
Date: June 8, 2011

Appellant was convicted of possessing child pornography (Pen. Code, § 311.11, subd. (a)), and furnishing a narcotic to a minor (Health & Saf. Code, § 11353), among other things. He took legal adult pornography and cut and paste the face of a minor on the pictures. Although he was charged with furnishing crack cocaine to a minor, the court instructed the jury he could be convicted of the crime if he furnished cocaine or methamphetamine to a minor. In fact, furnishing methamphetamine would be a crime under Health and Safety Code section 11380 but not section 11353. In a published decision, the court held there was insufficient evidence he possessed child pornography because there was not a minor engaging in or simulating sexual activity as required by the statute. Further, the trial court erred in falsely instructing the jury it could find him guilty of the charged crime for furnishing methamphetamine to a minor. Finally, the trial court's order to stay away from the victim and the family was unauthorized. (Staff attorney Dallas Sacher)

People v. Jose Sanchez (H035075)
Panel attorney: Syda Kosofsky
Date: March 23, 2011

In a published decision, the court of appeal held that the admission at trial of a certificate of no record violated the confrontation clause. Further, Penal Code section 12022.5, subdivision (b)(5), which makes it a felony to possess a concealed firearm if the defendant "has been convicted" of certain crimes, requires the "convict[ion]" to occur before the commission of the offense; it was not enough that the defendant was convicted of a qualifying offense in the current proceeding. (Staff attorney Jonathan Grossman)

People v. Christina Anzalone (H035123)

Panel attorney: Gabriel Bassan
Date: March 17, 2011

Appellant had a jury trial. The jury deliberated and announced it had reached a verdict. It returned to the courtroom. The foreperson gave the verdict form to the clerk. The court then dismissed the jury without reading the verdict in open court or asking the jurors if this was their verdict. The procedure violated appellant's right to a complete and unanimous verdict and required retrial. (Staff attorney William Robinson)

People v. Romero (H035392)
Panel attorney: Ron Boyer
Date: March 16, 2011

There was an agreement appellant would be found guilty of one count in a court trial, but there were entries in the minute orders that he was found guilty of other counts and this affected his fines. The court of appeal remanded the matter to correct the record. (Staff attorney Paul Couenhoven)

People v. Darryl Shearer (H034943)
Panel attorney: Jeffrey Glick
Date: February 23, 2011

A cold DNA hit made appellant a suspect in a 1994 murder. His DNA was found on some objects near or on the body. Oddly, sperm inside the victim was not from appellant. He wanted to introduce evidence of a drug dealer who bragged about arranging her death, but the superior court would not admit it. The court of appeal reversed, deciding that exclusion of the evidence of third party culpability deprived him of a fair trial. (Staff attorney Jonathan Grossman)

People v. Ramiro Gonzales (H032866)
Panel attorney: Jean Matulis
Date: January 27, 2011

In preparation of appellant's trial under the Sexually Violent Predator's Act, the district attorney delivered a subpoena duces tecum for his records from his prior therapist. Over his objection, the subpoena was enforced and the material was admitted at trial. In a published decision, the court held the material was privileged. The dangerous patient exception did not apply, because the statute required a belief there was specific information in the records showing he was a danger; it was not sufficient that he was allegedly a sexually violent predator. The court further held this violated his federal constitutional rights to privacy and reversal was required. (Staff attorney Jonathan Grossman)

People v. Leopoldo Cortes (H032799)
Panel attorney: Steven Schorr
Date: January 11, 2011

Appellant was convicted of murder. The trial court had limited the defense expert's testimony who would have said appellant suffered from post-traumatic stress syndrome and acted in a disassociated state when he killed the victim and thus lacked the necessary intent. The trial court believed this was tantamount to evidence of diminished capacity. The court of appeal reversed in a published decision. The evidence was admissible to show lack of specific intent. Further, the court erred in shackling the defendant without a sufficient showing of cause. (Staff attorney Dallas Sacher)

SENTENCING

People v. Richelle Dasinger (H036429)
Staff attorney: Lori Quick
Date: December 21, 2011

The court erred in increasing restitution fines upon a revocation of probation.

People v. Martin Corona (H0356717)
Panel attorney: Jeremy Valverde
Date: December 21, 2011

There was insufficient evidence appellant had the ability to pay the drug program fine. (Staff attorney Lori Quick)

People v. Matthew Boronda (H035914)
Staff attorney: Vicki Firstman
Date: December 20, 2011

When appellant's probation was modified in March 2009, he waived presentence credits of more than 365 days. The court thus awarded 244 actual days and 121 conduct days. When probation was again modified in July 2010, the court awarded 183 actual days, instead of 244 days, for the period before March 2009 so that the total amount of presentence credits would be no more than 365 days under amended Penal Code section 4019. The court of appeal held that appellant could not have knowingly and intelligently waived presentence credits pursuant to a law that did not yet exist. Thus, he was entitled to 244 actual days for the period before March 2009.

People v. Brady (H036073)
Staff attorney: Vicki Firstman

Date: December 20, 2011

The court assessed a \$1200 fine under Penal Code section 290.3, including penalty assessments. Because the court did not indicate how it arrived at \$1200, it was not possible to determine if this was the correct amount. The matter was remanded for a the court to be more clear.

People v. Maribel Benabides (H036075)

Staff attorney: Lori Quick

Date: December 20, 2011

The court could not raise the restitution fine when probation was revoked. Further, the drug lab fee must be modified to reflect the amount orally argued and a second drug lab fee must be stricken because it was assessed on a crime to which it does not apply.

People v. David DelReal

Panel attorney: Jefferey Glick

Date: December 20, 2011

Appellant was charged with attempted premeditated murder with enhancements under Penal Code sections 12022.53 and 12022.7. The jury found him guilty of attempted voluntary manslaughter and found the enhancements to be true. Because section 12022.53 does not apply to attempted voluntary manslaughter, the court reduced the enhancement to a violation of section 12022.5. The court of appeal agreed that under Penal Code section 654, the sentencing court could not impose a punishment for the section 12022.7 enhancement. (Staff attorney Jonathan Grossman)

People v. Richard Burch (H036178)

Panel attorney: Joseph Escobosa

Date: December 15, 2011

The court could not increase the restitution fine upon a revocation of probation. (Staff attorney Vicki Firstman)

People v. Guy Blanco (H036421)

Staff attorney: Jonathan Grossman

Date: December 9, 2011

There was insufficient evidence of an ability to pay a booking fee.

People v. Jacob Chavez (H036355)

Panel attorney: Alex Coolman
Date: December 9, 2011

The court lacked the authority to issue a stay away order when the defendant was sentenced to prison. (Staff attorney Jonathan Grossman)

People v. Joshua Silva (H036923)
Staff attorney: William Robinson
Date: November 30, 2011

Because appellant's crimes occurred between January 25, 2010 and September 28, 2010, he was entitled to one-for-one presentence conduct credits. Also, the probation condition not associate with those "suspected" to be gang members or drug users was unconstitutionally vague.

People v. Benny Hernandez (H035408)
Panel attorney: Danalynn Pritz
Date: November 30, 2011

The court could not impose a parole revocation restitution fine when the defendant is sentenced to serve life without parole. (Staff attorney William Robinson)

People v. Sergio Pablo and Jorge Rico (H035031)
Panel attorneys: Gordon Brownell and J. Frank McCabe
Date: November 28, 2011

The court could not impose an enhancement under both Penal Code section 186.22(b)(5) and section 12022.53(b) and (e). The court also failed to award presentence credit for the day he was arrested and it failed to award presentence conduct credits. (Staff attorney Paul Couenhoven)

People v. Ramiro Ramirez (H036200)
Panel attorney: Lynne Coffin
Date: November 23, 2011

Appellant was sentenced after January 25, 2010, so he was entitled to the increased conduct credits. (Staff attorney Vicki Firstman)

People v. Shunnee King (H036342)
Panel attorney: Victoria Stafford
Date: November 18, 2011

The court ordered the abstract of judgment be corrected to accurately reflect the sentence imposed. (Staff attorney Dallas Sacher)

People v. Voit (H035882)
Staff attorney: Jonathan Grossman
Date: November 18, 2011

The court of appeal reduced certain fines and penalty assessments because the crime was committed before increases went into effect.

People v. Gonzolo Camarena (H036819)
Panel attorney: Rachel Sussman
Date: November 15, 2011

Appellant committed his crime in February 2010 but was sentenced after September 2010. The court erred in calculating his presentence credits under Penal Code section 4019 that existed after September 2010 instead of the one that existed in February 2010. (Staff attorney Paul Couenhoven)

People v. Sergio Miranda (H036477)
Staff attorney: Paul Couenhoven
Date: November 14, 2011

The court of appeal decided the trial court is required to calculate presentence conduct credits for those sentenced to prison under amended Penal Code section 2933. Further, the minute order of the sentence was inaccurate when it stated the court struck certain priors appellant never admitted.

People v. Kenneth Chapman (H035443)
Panel attorney: Eric Multhaup
Date: November 14, 2011

In calculating the minimum indeterminate term under Penal Code section 1170.12, subdivision (c)(2)(A)(iii), the court could not use the same prior conviction to add one year as a prison prior and five years as a prior serious felony. Thus the minimum indeterminate term must be reduced by one year. (Staff attorney Vicki Firstman)

People v. Steven Saucedo (H035471)
Panel attorney: Thomas Singman

Date: November 8, 2011

The court imposed the upper term for residential burglary which was doubled because of a prior strike conviction. The court imposed concurrent terms for some enhancements, saying the concurrent terms were because the same factors that were elements of the enhancements were used to impose the upper term on the underlying charge. The court did not have discretion to impose concurrent terms for the enhancements. It should have stricken the enhancements. (Staff attorney Paul Couenhoven)

People v. Jorge Gutierrez (H036316)

Panel attorney: Karli Sager

Date: November 3, 2011

The court of appeal struck from the minute order of the sentencing hearing and the abstract of judgment an AIDS fine because the sentencing court never ordered it. It also struck the drug program fine because there was insufficient evidence of an ability to pay. Finally, it modified the restitution fines to reflect the court's oral order. (Panel attorney Paul Couenhoven)

People v. Demontre Haynes (H036503)

Staff attorney: Jonathan Grossman

Date: November 3, 2011

The court remanded the matter for a determination of appellant's ability to pay probation fees.

People v. Ramon Sanchez (H036324)

Panel attorney: Robert Angres

Date: November 2, 2011

The court modified certain conditions of probation to avoid problems with vagueness and overbreadth. It also modified the amount of the probation revocation restitution fine to be the same as the restitution fine without the ten percent administrative surcharge. (Staff attorney Lori Quick)

People v. Manuel Martinez (H036003)

Panel attorney: R. Shanti O'Brien

Date: October 28, 2011

Appellant was convicted of carrying a concealed firearm and the gang crime based on carrying the firearm. The court agreed one of the counts must be stayed pursuant to Penal Code section 654. (Staff attorney Paul Couenhoven)

In re A.B. (H036810)
Panel attorney: Erik Bruce
Date: October 26, 2011

The court modified the condition of juvenile probation not to be adjacent to a school campus in order to avoid problems with overbreadth and vagueness. (Staff attorney Lori Quick)

People v. Jason Lopez (H035181)
Panel attorney: Gail Chesney
Date: October 25, 2011

The court of appeal agreed the superior court erred in leaving it to the jail to determine the amount of presentence credits. (Staff attorney William Robinson)

People v. Joe Diaz (H035568)
Panel attorney: Steven Scully
Date: October 24, 2011

The court could not set the restitution fine at \$15,000 because the statute established a \$10,000 limit. (Staff attorney Paul Couenhoven)

People v. Robert Ramirez (H035473)
Panel attorney: Robert Morse
Date: October 14, 2011

Appellant could not be punished both for brandishing a knife and for false imprisonment which was accomplished by brandishing the knife. (Staff attorney Dallas Sacher)

People v. Francisco Reyes (H035847)
Staff Attorney: Vicki Firstman
Date: October 12, 2011

The court could not increase the restitution fine upon a revocation of probation, and it miscalculated the amount of presentence credits.

People v. Jack Ryan (H036275)
Staff attorney: Vicki Firstman
Date: October 6, 2011

The court agreed appellant was entitled to one additional actual day of presentence credits.

People v. Alfonso Zavala (H036112)

Staff attorney: Paul Couenhoven

Date: September 29, 2011

The court concluded it was not reasonable to require appellant to stay away from gang members as a condition of probation when he had no history of gang involvement and the crime was not gang related.

People v. Charles George (H035127)

Panel attorney: Steven Schorr

Date: September 29, 2011

The court erred in failing to award presentence conduct credits for a murder committed before 1998. (Staff attorney Paul Couenhoven)

In re S.H. (H036085)

Panel attorney: Gunnar Rosenquist

Date: September 23, 2011

Appellant was found culpable for seven counts of arson arising from setting fire to five cars. In two of them, the fire spread to other objects. The court of appeal concluded he can be found to have committed seven arsons, but he can be punished for only five of them. (Staff attorney William Robinson)

People v. Bobby McNutt (H035906)

Staff attorney: Paul Couenhoven

Date: September 23, 2011

The court ordered as a condition of probation that appellant pay a criminal justice (booking) fee. Payment of the fee cannot be a condition of probation. Further, there was insufficient evidence of an ability to pay.

People v. Roger Mattingly (H036139)

Panel attorney: Jonathan Berger

Date: September 23, 2011

The court of appeal agreed that appellant was entitled to one additional day of actual

presentence credits. It also determined he was entitled to increased presentence conduct credits for the time served on or after January 25, 2010 but not before. (Staff attorney William Robinson)

People v. David Ramsey (H036052)
Panel attorney: Meredith Fahn
Date: September 20, 2011

The court could not increase the restitution fine upon a revocation of probation. (Staff attorney Vicki Firstman)

People v. Daniel Jiminez (H035170)
Panel attorney: David Martin
Date: September 19, 2011

Conditions of probation were modified to comply with constitutional requirements. (Staff attorney Vicki Firstman)

People v. Leonel Valdez (H036142)
Staff attorney: William Robinson
Date: August 31, 2011

Appellant committed his crime after January 25, 2010 but was sentenced in October 2010. He was not given increased presentence credits as was required by the Penal Code section 4019 that was in effect from January to September 2010. This was error.

People v. Alberto Navalon (H036698)
Panel attorney: Carey Shimon
Date: August 25, 2011

Appellant committed his crime before January 25, 2010 and was sentenced after September 28, 2010. The court of appeal held he was entitled to increased presentence credits for all of the time in custody on and after January 25, 2010 but not before then. (Staff attorney William Robinson)

In re Alfredo A. (H036091)
Panel attorney: Junelle Harris
Date: August 25, 2011

Certain gang conditions of probation were modified in order to avoid problems with them being unconstitutionally vague and overbroad. (Staff attorney Lori Quick)

People v. Torrez (H036145)
Panel attorney: Martin Velez
Date: August 19, 2011

The court agreed to modify a condition of probation not to possess a mobile communication device to not possess one for purposes of conducting illegal activity. (Staff attorney Lori Quick)

People v. Hector Colin (H034812)
Panel attorney: John Dwyer
Date: August 19, 2011

An AIDS education fine was struck because it did not apply to the charge appellant was convicted of. (Staff attorney William Robinson)

People v. Dennis Strong (H035707)
Panel attorney: Patricia Lai
Date: August 12, 2011

Appellant had three cases. In one case, he received eight months consecutive to the other cases. But he had 510 days of presentence credits on that case. The court of appeal agreed that the "dead time" he acquired in that case must be credited to the other cases. (Staff attorney William Robinson)

People v. Rudolfo Salas (H035897)
Staff attorney: Jonathan Grossman
Date: August 2, 2011

The court of appeal agreed the superior court miscalculated presentence credits and improperly increased the restitution fine upon a violation of probation.

People v. Johnston (H035499)
Panel attorney: Robert Derham
Date: July 29, 2011

Appellant was convicted of robbery, burglary, false imprisonment, and impersonating a police officer. All of the charges stemmed from him robbing a person in a hotel room by impersonating an officer. The court agreed that punishment for three of the four counts must be stayed under Penal Code section 654. (Staff attorney Vicki Firstman)

In re D.G. (H036149)
Panel attorney: David Scopp
Date: July 29, 2011

The court of appeal agreed that the matter must be remanded for the juvenile court to determine if the offense was a misdemeanor or a felony (*In re Manzy W.* (1997) 14 Cal.4th 1199) and that the condition of probation not to be adjacent to a school was overbroad. (Staff attorney Jonathan Grossman)

People v. Desiree Davis (H036417)
Staff attorney: William Robinson
Date: July 28, 2011

The Sixth District Court of Appeal has been refusing to apply amended Penal Code section 4019 retroactively to those convicted and in custody before January 25, 2010. However, it decided that if one is in custody both before January 25, 2010 and after, the defendant should receive additional presentence conduct credits for the time on and after January 25.

People v. Alcala (H036230)
Staff attorney: Dallas Sacher
Date: July 21, 2011

Appellant pled guilty to committing a crime which was a wobbler. As part of the agreement, the crime would be a misdemeanor. The court sentenced him to one year in jail. The court of appeal held the punishment was unauthorized. The statute concerning the crime did not specifically state a punishment. Thus Penal Code section 19 controlled, which stated that the maximum punishment for a crime that was a misdemeanor was six months when no specific punishment is described in the statute.

People v. Javier Salazar (H035813)
Panel attorney: Erik Bruce
Date: July 21, 2011

A condition of probation was modified to require knowledge. Further, payment of the booking fee, court security fee and court facility fees could not be conditions of probation. (Staff attorney Jonathan Grossman)

People v. Francisco Ruiz (H035767)
Panel attorney: Danalynn Pritz
Date: July 19, 2011

Gang conditions of probation were modified to define the term gang to be a criminal street gang and to strike that appellant could be found in violation of probation because of suspected activity. (Staff attorney Dallas Sacher)

People v. Raul Catalan (H036000)
Panel attorney: Ozro Childs
Date: July 19, 2011

Gang conditions of probation were modified to avoid problems with overbreadth and vagueness. (Staff attorney Lori Quick)

People v. Jose Hernandez (H036193)
Panel attorney: Katja Grasso
Date: July 13, 2011

The court modified a condition of probation not to possess drug paraphernalia to require knowledge. Further the condition not to possess controlled substances was modified to permit the possession of controlled substances for which appellant had a valid prescription. Finally, the court held the condition of probation not to possess indicia of drug sales was vague. (Staff attorney Paul Couenhoven)

People v. Armando Miranda (H035956)
Staff attorney: Lori Quick
Date: July 13, 2011

Gang conditions of probation were modified to avoid vagueness and overbreadth problems.

People v. Noe Urena (H034720)
Panel attorney: Marsanne Weese
Date: July 7, 2011

The court of appeal awarded additional presentence credits due to a miscalculation by the trial court. (Staff attorney William Robinson)

In re David A. (H035910)
Staff attorney: Jonathan Grossman
Date: July 6, 2011

The victim of a residential burglary claimed the loss of an engagement ring he valued at

\$12,000, among other things. The victim said there were no receipts, no photographs of the ring, no appraisal, and he did not purchase the ring. The court expressed concern that this would be its actual value but felt compelled to order restitution for that amount absent evidence to the contrary. The court of appeal ordered that there be a new restitution hearing.

People v. Jose Jimenez (H034729)
Panel attorney: Morgan Daly
Date: July 6, 2011

The court struck a fine that did not apply to his conviction. (Staff attorney Paul Couenhoven)

In re I.C. (H035961)
Panel attorney: Maggie Shrout
Date: June 22, 2011

Probation conditions were modified to comply with the requirement that they not be unconstitutionally vague or overly broad. (Staff attorney Vicki Firstman)

In re N.C. (H035864)
Panel attorney: Ronald Dehoff
Date: June 16, 2011

Probation conditions were modified to require knowledge. (Staff attorney Vicki Firstman)

In re S.S. (H035908)
Panel attorney: Nathaniel Lucey
Date: June 14, 2011

The court ordered that certain probation conditions be modified to avoid overbreadth and vagueness problems. (Staff attorney Jonathan Grossman)

People v. Oscar Villapando (H035185)
Panel attorney: Jagdish Bijlani
Date: May 26, 2011

There was insufficient evidence appellant had the ability to pay a drug program fine and attorney fees. (Staff attorney Lori Quick)

In re R.R. (H035715)
Panel Attorney: Michael O'Flannigan
Date: May 26, 2011

The juvenile court found appellant culpable as an aider and abettor for felony assault with great bodily injury. Because the great bodily injury requires personal infliction, appellant could not be culpable as an aider and abettor. (Staff attorney Paul Couenhoven)

In re M.R. (H035980)
Panel attorney: Eileen Rice
Date: May 24, 2011

The juvenile court erred in setting a maximum term of confinement when the minor was placed on probation and placed at home. (Staff attorney Paul Couenhoven)

In re J.T. (H035811)
Staff attorney: Jonathan Grossman
Date: May 11, 2011

Appellant was on juvenile probation when he committed a new crime. The court placed him back on probation. In doing so, it detailed the conditions of probation he was to follow, which were the same as the conditions ordered before. Because the court reimposed the conditions of probation, instead of stating all previous orders remain in effect, the claim that the some of the conditions were unconstitutional was cognizable. Some of the conditions were vague or overly broad. Further, the court lacked authority to order a minor to pay for the cost of probation.

People v. Johnny Borquez
Panel attorney: Jean Marinovich
Date: May 10, 2011

The court decided appellant could not be convicted of grand theft and the lesser included offense of petty theft with a prior conviction for the same conduct. Further, the abstract of judgment needed to be corrected to reflect the proper amount of presentence credits and penalty assessments. (Staff attorney Lori Quick)

People v. Denise Lozano (H036229)
Staff attorney: Jonathan Grossman
Date: April 29, 2011

The court could not make payment of the probation costs, court security fee, criminal

conviction fee, and booking fee conditions of probation.

People v. Mark Stockdale (H035651)

Staff attorney: William Robinson

Date: April 27, 2011

A probation condition to stay 200 yards from all Safeway stores was overly broad.

In re P.R. (H036013)

Panel attorney: Traci Mason

Date: April 27, 2011

Probation conditions not to be adjacent to a school, not visit areas of gang-related activity, not transmit any gang-related symbol, and not be at a courthouse was overly broad. (Staff attorney Jonathan Grossman)

People v. Charles Fordjour (H034568)

Staff attorney: Paul Couenhoven

Date: April 25, 2011

Appellant pled guilty to committing a fraud. After a lengthy delay, he stated he wanted to withdraw his plea. The public defender's office was appointed to represent him. He then moved to replace appointed counsel or represent himself, but the court sentenced him without considering his motions. The court of appeal reversed. On remand, the trial court denied the *Marsden* and *Faretta* motions. In the second appeal, the judgment was reversed because the *Faretta* motion should have been granted. On remand again, appellant was in immigration custody. The court reimposed his sentence in his absence. The court of appeal reversed for the third time because the trial court violated his right to be present at sentencing.

People v. Daniel Inocencio (H035654)

Panel attorney: Carey Shimon

Date: April 25, 2011

Appellant was injured while working. He continued to collect worker's compensation when he was no longer injured. After conviction, the court ordered he pay restitution for the full amount of worker's compensation he received. The order was reversed. The trial court must order restitution only for the amount he illegally collected after he became able to work. (Staff attorney William Robinson)

People v. Marcus Stevenson (H035649)
Staff attorney: William Robinson
Date: April 19, 2011

The court struck a condition of probation that appellant not use alcohol when there was no evidence of using alcohol when the crime was committed or abusing alcohol in his background.

People v. Armando Beltran (H035738)
Panel attorney: Katja Grasso
Date: April 18, 2011

The court placed appellant on probation on condition that he not use alcohol or drugs or possess controlled substances. The court of appeal modified the conditions to require knowledge and to not possess unlawful or illegal controlled substances. (Staff attorney Vicki Firstman)

People v. Jose Pacheco (H035418)
Staff attorney: William Robinson
Date: April 14, 2011

The court reduced the amount of presentence credits because appellant suffered a prior serious felony conviction. His prior was a juvenile adjudication. In a published decision, the court of appeal held this did not qualify as a prior serious felony conviction, so he was entitled to more presentence credits.

People v. Matthew Pacheco (H036749)
Panel attorney: J. Courtney Shevelson
Date: April 13, 2011

Appellant was sentenced to prison in three different cases. The court of appeal agreed that the imposition of a \$259.50 booking fee in one case should be stricken because there was no evidence of the actual cost to the arresting agency, and the booking fee in another case should be stricken because the court never orally ordered it. Further, the matter must be remanded because there was insufficient evidence of an ability to pay a booking fee in a third case along with three other fines. (Staff attorney Paul Couenhoven)

People v. Reinaldo Ponce (H036236)
Staff attorney: Paul Couehnoven
Date: April 13, 2011

Probation conditions were modified to require knowledge.

People v. Josephina Reyes (H035643)
Staff attorney: William Robinson
Date: April 11, 2011

Appellant violated probation. The court was willing to return her on probation on condition she waive presentence credits over 365 days, which she did. After she later revoked probation, she contended she was entitled to presentence credits over 365 days earned after the waiver. The court of appeal agreed. It also agreed that the restitution fines could not be increased upon the revocation of probation.

People v. Ricardo Lara (H036143)
Staff attorney: William Robinson
Date: March 30, 2011

In a published decision, the court held that the sentencing court had discretion to strike an allegation appellant suffered from a prior serious felony conviction, and this would make him eligible to receive increased conduct credits under Penal Code section 4019.

People v. Tony Perez (H03825)
Panel attorney: Julie Schumer
Date: March 30, 2011

Appellant was first placed on Proposition 36 probation. After several violations, he was placed on general probation. He suffered several more violations but remained on probation. Then, the Probation Department petitioned to modify probation to add a condition that he be subject to a search condition; it did not allege a violation in the petition. The court granted the request. The court of appeal reversed. The condition was not added before, and there was no new evidence to justify the new condition. (Staff attorney Lori Quick)

People v. Vincent Hagenbush (H035593)
Panel attorney: Alan Siraco
Date: March 23, 2011

Conditions of probation were modified to require knowledge. (Staff attorney William Robinson)

People v. Shiseop Kim (H035561)
Panel attorney: Michael Mehr
Date: March 22, 2011

The court held that payment of the court security fee and court facility fee cannot be conditions of probation. (Staff attorney Jonathan Grossman)

People v. Cynthia Tuledo (H036041)
Staff attorney: Paul Couenhoven
Date: March 18, 2011

Appellant's probation was revoked. The trial court erred in increasing the restitution fine when sentencing her to prison.

People v. Alexander Kidd (H035819)
Staff attorney: William Robinson
Date: March 17, 2011

Conditions of probation were modified to comply with constitutional requirements.

People v. McGranahan (H035273)
Staff attorney: Lori Quick
Date: March 17, 2011

The sentence of 609 days for a misdemeanor sentence concurrent to a felony sentence was unauthorized.

People v. Lance Scott (H033759)
Panel attorney: Alex Green
Date: March 4, 2011

The superior court was not authorized to order victim restitution to a fire department for putting out an arson fire. (Staff attorney Dallas Sacher)

People v. Luther Brock (H034988)
Panel attorney: Robert Angres
Date: February 25, 2011

The court found there was insufficient evidence appellant had the ability to pay probation fees. Further, the restitution fine for violating probation should not include the administrative fee for collecting the original restitution fine. (Staff attorney Jonathan Grossman)

People v. Francisco Valenzuela (H035045)
Panel attorney: Robert Angres
Date: February 17, 2011

The court decided there was insufficient evidence appellant had the ability to pay the probation supervision fee and booking fee. (Staff attorney Lori Quick)

In re J.D. (H035674)
Panel attorney: Junelle Harris
Date: February 14, 2011

The matter was remanded to the juvenile court to determine if the offense was a felony or a misdemeanor. (Staff attorney Dallas Sacher)

People v. Joseph Mendoza (H036418 et al.)
Panel attorney: Rudy Kraft
Date: February 8, 2011

The court modified conditions of probation to require knowledge. It also ordered that payment of the court security fee and court facilities fee could not be a condition of probation. (Staff attorney William Robinson)

People v. Zolli Smith (H035169, H035490)
Panel attorney: J. Frank McCabe
Date: January 31, 2011

The court set victim restitution at more than \$280,000 without affording appellant an opportunity to be heard. This required reversal. (Staff attorney Dallas Sacher)

In re J.P. (H035262)
Panel attorney: Michael Flynn
Date: January 21, 2011

The court modified a condition of probation to require knowledge. (Staff attorney Vicki Firstman)

DEPENDENCY CASES

In re J.C. (H035985)
Panel attorney: Alex Coolman

Date: November 29, 2011

The 12 year-old minor was found to be a delinquent. Further investigation revealed he was being neglected by his mother. The court conducted a dual status evaluation to determine if he should be in the dependency system, but it erroneously concluded the dependency system was unavailable because his mother was not abusive. The court of appeal reversed.

In re G.D. (H036749)

Panel attorneys: Janet Sherwood; Lee Gulliver for the minor

Date: October 26, 2011

At a hearing under Welfare and Institutions Code section 366.26, the juvenile court found the parent-child exception to adoption applied and selected a plan of legal guardianship. The county appealed. The minor agreed with the parent. The court of appeal affirmed, rejecting the argument there was not substantial evidence to support the finding that the exception to adoption applied. (Staff attorney Vicki Firstman)

In re M.J. (H036794)

Panel attorney: Catherine Czar

Date: October 6, 2011

Atty represented the minor in a dependency case. The minor's trial counsel successfully petitioned to end visits because the minor refused to see her mother and exhibited symptoms of anxiety around the time visits were to occur. The mother appealed. The court of appeal agreed with the minor that the juvenile court did not abuse its discretion. (Staff attorney Jonathan Grossman)

In re Robert H. (H035646, H035948)

Panel attorney: Sheri Cohen

Date: July 22, 2011

The court of appeal decided notice to Indian tribes did not comply with ICWA. (Staff attorney Vicki Firstman)

HABEAS CORPUS

People v. Witcraft (H036159)

Staff attorney: Dallas Sacher

Date: December 6, 2011

Appellant was in an automobile accident which resulted in a police investigation. He was charged with and convicted of receipt of stolen property, providing false information, presenting a false registration card, and failing to provide proof of insurance. Six months later, he was charged with making a false insurance claim from the accident. A habeas corpus petition was filed, claiming trial counsel was ineffective for failing to object to the second case under *Kellet v. Superior Court* (1966) 63 Cal.2d 822. In a published decision, the court of appeal issued an order to show cause.

In re Johnny Lira (H036162)
Panel attorney: Steve Defilippis
Date: December 6, 2011

The Board of Parole Hearings found petitioner eligible for parole, but the governor reversed the decision. The superior court found there was insufficient evidence to support the governor's decision and reinstated the order for parole. In this habeas corpus petition, the court of appeal held in a published decision that petitioner was entitled to credits against his parole term for the time in custody after the governor's unsupported decision to reverse the grant of parole. (Staff attorney Michael Kresser)

In re Phoeun Mey (Santa Clara no. 142586)
Staff attorney: Jonathan Grossman
Date: May 4, 2011

There was not some evidence to support the governor's reversal of the Board's grant of parole.

In re Emmanuel Kurtz (Santa Clara No. 169004)
Staff attorney: Jonathan Grossman
Date: April 5, 2011

The superior court granted relief on habeas corpus, deciding that there was not some evidence to support the governor's reversal of the Board's grant of parole.

In re James Stevenson (Santa Clara No. 203910)
Staff attorney: Michael Kresser
Date: March 25, 2011

Petitioner was convicted of robbery for kidnapping and sentenced to life. The Board denied parole, and a habeas corpus petition was filed. The superior court ordered relief. It concluded that there was not some evidence he lacked sufficient insight.

In re Harold Naipo (Santa Clara Cnty. No. 193029)
Staff attorney: Jonathan Grossman
Date: March 1, 2011

The superior court granted relief on habeas corpus, ruling that there was not some evidence for denying Naipo parole.

In re Kamal Sefeldeen (Santa Clara County Super. Ct. No. 105666)
Staff attorney: Lori Quick
Date: January 12, 2011

The Board of Parole Hearings denied parole based on the prisoner not demonstrating adequate insight into his crime. The court granted relief on habeas corpus, finding there was not some evidence to support the decision.

MISCELLANEOUS

Angel Botello v. Superior Court (H037060)
Attorney: Richard Rutledge
Date: September 15, 2011

There was a report of the defendant possessing a gun. The officers saw him walk into a public bathroom. After he left, the bathroom was searched and allegedly a gun was found inside. He filed a *Pitchess* motion, alleging the gun had been planted. The superior court denied the motion without conducting an in camera hearing. The defendant filed a petition for writ of mandate. The court of appeal granted the writ and ordered that the superior court conduct an in camera hearing. (SDAP did not participate in this case)

In re Donald Furtado (H036038)
Panel attorney: Keith Wattlely
Date: July 27, 2011

The Board granted parole, but the governor reversed the decision. The superior court granted relief on habeas corpus, and the government appealed. The court of appeal agreed there was not some evidence for denying parole. (Staff attorney Michael Kresser)

In re Richard Sena (H035977)
Staff attorney: Jonathan Grossman
Date: July 27, 2011

The Board denied parole. The superior court granted relief on habeas corpus, and the government appealed. The court of appeal agreed there was not some evidence for denying parole.

In re Roderick McConnell (H035932)
Staff attorney: William Robinson
Date: June 27, 2011

The court of appeal affirmed the superior court's decision on habeas corpus that there was not some evidence to support the governor's reversal of the grant of parole.

In re Jose Oliveira (H035697)
Panel attorney: Keith Wattley
Date: June 20, 2011

The court of appeal affirmed the superior court granting relief on habeas corpus. The superior court found the governor's reversal of a decision for parole was not supported by some evidence. Further, the court agreed that the proper remedy was to reinstate the Board's decision for parole without remanding the matter to the governor. (Staff attorney Michael Kresser)

In re James Elliott (H035447)
Panel attorney: Susan Jordan
Date: June 16, 2011

Appellant was convicted in 1976 of murder and sentenced to death. The supreme court had modified the sentence to life. In 2009, the Board denied his request for parole, relying in part on his refusal to discuss the commitment offense. In 2010, the superior court reversed the Board's denial of parole. The government appealed. The court of appeal affirmed. There was not some evidence to deny parole, apart from his purported lack of insight which stemmed at least in part from his statutory right to refuse to discuss the commitment offense. (Staff attorney Michael Kresser)

In re Chester Ryner (H035893)
Staff attorney: Michael Kresser
Date: June 10, 2011

The Board approved setting a parole date, but the governor reversed the decision. The superior court granted relief on habeas corpus. In a published decision, the court of appeal affirmed the superior court's order. Though the commitment offense was serious, there was not a nexus to show Ryner was currently unsuitable for parole. There was not some evidence he lacked sufficient insight when he acknowledged the material aspects of his conduct, showed understanding of its causes, and demonstrated remorse. Further, the proper remedy was to reinstate the Board's decision

without requiring further consideration of the request for parole.

People v. Mario Loya (H034651)
Staff attorney: Jonathan Grossman
May 17, 2011

Appellant had been committed as not guilty by reason of insanity. At a more recent hearing, the superior court ordered that appellant receive involuntary electroconvulsive treatment. He appealed and the court of appeal granted a petition for writ of supersedeas. While the appeal was pending, his condition improved and the government no longer sought the treatment. The parties agreed to a stipulated reversal.

Conservatorship of A.C. (H034195)
Panel attorney: Jean Matulis
Date: April 25, 2011

Representing the conservatee who was the respondent, she convinced the court to affirm the lower court's order of conservatorship. (Staff attorney Jonathan Grossman)

In re Roland Gairan (H035487)
Panel attorney: Michael Satris
Date: April 5, 2011

When the prisoner was released on parole, the government's appeal of an early superior court decision on habeas corpus finding there was not some evidence to deny parole became moot. The appeal was dismissed. (Staff attorney Michael Kresser)

In re Earthy Young (H03459)
Panel attorney: Michael Satris
Date: March 30, 2011

The court concluded there was not some evidence to justify the governor's reversal of the grant of parole. The court ordered that the Board's decision be reinstated. (Staff attorney Michael Kresser)

Meyers v. Superior Court (H036059)
Attorney: Kristin Carter
Date: March 29, 2011

Myers was stopped from riding his bicycle for failing to display a license plate. When he was requested to present a driver's license, he showed another's license, leading to his arrest. A search pursuant to arrest uncovered drugs and a concealed dagger. The information also alleged he suffered two prior strike convictions. He moved to suppress the evidence, which was denied. Trial counsel filed a petition for writ of mandate which the court of appeal granted. Neither the Municipal Code or the California Vehicle Code required showing a license plate on a bicycle. Since there was no cause for the detention, all evidence subsequently found needed to be suppressed. (SDAP did not participate in this case)

In re Javier Rodriguez (H035317)
Panel attorney: Keith Wattle
Date: March 1, 2011

In a published decision, the court held there was not some evidence to support the governor's reversal of the grant of parole.

Arnulfo Magallan v. Superior Court (H034892)
Attorney: Donald Landis
Date: February 24, 2011

Magallan wished to have a hearing on a motion to suppress evidence during the preliminary hearing. To properly prepare for the motion, he requested discovery of certain items, which the prosecution refused to provide. The magistrate granted the motion to compel discovery. The prosecution filed a petition for writ of mandate in the superior court which a three-judge panel granted. The Monterey County Public Defenders Office filed a petition for writ of mandate in the court of appeal. The court of appeal granted relief in a published decision, holding that a defendant had a right to discovery before preliminary hearing for purposes of bringing a motion to suppress evidence. (SDAP did not participate in this proceeding)