

**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. Mark Rivera (H038702)

Staff attorney: William Robinson

Date: December 10, 2014

Appellant was sentenced to serve 25 years to life in prison for a felony with two prior strike convictions. The court of appeal concluded there was insufficient evidence to support the findings that the two prior strike convictions were strikes.

People v. Victor Martinez (H039511)

Panel attorney: Hilda Scheib

Date: October 21, 2014

Appellant was one of several people seen running from a car which had ammunition in it. There was insufficient evidence appellant possessed the ammunition. (Staff attorney Jonathan Grossman)

People v. Stephen Smith (H039617)

Staff attorney: Paul Couenhoven

Date: October 16, 2014

Resisting or delaying an officer requires that the officer be lawfully performing his or her duties. Appellant was convicted for refusing to submit to the officer's authority when he attempted a detention. There was insufficient evidence to support the conviction because there was no evidence to support the conclusion appellant was lawfully detained. The prosecution failed to introduce evidence that appellant matched the description of the suspect.

People v. Kenneth Doolittle (H037391)

Panel attorney: Wilder Lee

Date: September 8, 2014

In this appeal concerning a series of white collar crimes, the court of appeal agreed in a

published decision there was insufficient evidence some of the charges were brought within the statute of limitations. (Staff attorney Jonathan Grossman)

People v. Gabriel Silva and Jose Moreno (H038980)

Panel attorney: Mary Jo Strnad for Moreno

Date: August 25, 2014

A jury convicted the defendants of residential burglary. Silva entered the residence; Moreno remained in the car. The court of appeal held there was insufficient evidence Moreno was aware of Silva's actions or aided and abetted. (Staff attorney Paul Couenhoven)

People v. Iniguez (H038896)

Panel attorney: Danalynn Pritz

Date: July 24, 2014

The court determined there was insufficient evidence for one of the counts of violating Penal Code section 288. The punishment for battery must be stayed pursuant to Penal Code section 654. Finally, the AIDS education fine must be stricken because it did not apply. (Staff attorney William Robinson)

People v. Benitez (H039397)

Panel attorney: Cortney Shevelson

Date: March 10, 2014

There was insufficient evidence of duress, force, or fear when some of the crimes were committed while the victim was apparently asleep. Further, the punishment for false imprisonment must be stayed pursuant to Penal Code section 654 because of the punishment for violating section 269. (Staff attorney William Robinson)

## **PRETRIAL AND POSTTRIAL MOTIONS**

People v. Jesus Contreras (H039231)

Panel attorney: JuNelle Harris

Date: October 16, 2014

Appellant pled no contest to transporting drugs. The court of appeal agreed that he is entitled to take advantage of the new law requiring transportation to be for sale. He was permitted to withdraw his plea. (Staff attorney William Robinson)

People v. Heng Sem (H039252)  
Panel attorney: Ronald DeHoff  
Date; September 17, 2014

Appellant was placed on probation for three years. As the three year period was about to expire, probation was summarily revoked because she had not paid all of the victim restitution. After admitting a violation of probation, her probation remained summarily revoked for more than five years. The court of appeal held in a published decision that probation cannot remain summarily revoked after the defendant admits the violation and probation expired after the five year maximum term had passed. (Staff attorney Jonathan Grossman)

People v. Olsen (H039814)  
Panel attorney: Elisa Brandes  
Date: September 12, 2014

This is an appeal from a person committed under the Sexually Violent Predators Act who petitioned for conditional release. In a published decision, the court of appeal agreed the trial court employed the wrong standard for denying an evidentiary hearing on the grounds the petition was frivolous. (Staff attorney Jonathan Grossman)

People v. Javier Pina (H039455)  
Panel attorney: Rachel Varnell  
Date: August 28, 2014

Appellant moved to quash a search warrant and unseal the affidavit. The court of appeal reversed because there was insufficient information in the appellate record and remanded the matter for a new in camera hearing. (Staff attorney Dallas Sacher)

People v. Gabriel Martinez (H039686)  
Panel attorney: Philip Brooks  
Date: June 4, 2014

Appellant entered into a bargain and pled to domestic violence and making criminal threats. At sentencing, he moved to reduce the conviction for criminal threats to a misdemeanor. The court said it believed that would violate the plea bargain and the defendant might need to withdraw his plea. Based on this, defendant withdrew the motion. He argued on appeal the court was mistaken in believing the plea bargain required that the conviction be a felony. The court of appeal decided the trial court never made a formal ruling, and it remanded the matter for the trial court to determine if reducing the conviction to a misdemeanor would violate the plea bargain. (Staff attorney Lori Quick)

People v. Marinelli (H039416)  
Attorney: Mathew K. Higbee and Jennifer D. Strange  
Date: March 27, 2014

In a published decision, the court of appeal decided a person convicted of an attempted violation of Penal Code section 288 is eligible to have the conviction expunged under Penal Code section 1203.4. (SDAP did not participate in this appeal)

People v. Sangam Patel (H09130)  
Panel attorney: Jason Szydlik  
Date: January 6, 2014

The officer saw two people sitting in a car. He had them get out of the car and questioned them. He later learned the passenger was on parole and searched the car, where he found contraband belonging to appellant. In the motion to suppress evidence, the superior court found appellant and his companion were illegally detained but the subsequent search was attenuated by the passage of time. The court of appeal decided the search was not attenuated, given the illegal detention. (Staff attorney William Robinson)

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

People v. Coin Tisdale (H040035)  
Panel attorney: Larry Gibbs  
Date: December 9, 2014

A jury convicted appellant of possessing drugs, based in part on his answers to a police officer's questions. Appellant had been surrounded by officers, handcuffed, and pat searched while the officer asked what certain items in his pockets were. The court of appeal concluded appellant was in custody for purposes of *Miranda* and the questions amounted to an interrogation without a proper advisement of his right to remain silent. Because the admission of the statements was prejudicial, the conviction was reversed. (Staff attorney Paul Couenhoven)

People v. Juan Valenzuela (H039516)  
Panel attorney: Jean Marinovich  
Date: October 2, 2014

There were insufficient evidence that two of the charges were brought within the statute of limitations. The matter was remanded for a hearing to determine if the statute of limitations barred prosecution. (Staff attorney Jonathan Grossman)

People v. Javier Navarro (H039681)  
Staff attorney: Jonathan Grossman  
Date: August 13, 2014

The court could not accept trial counsel's stipulation that appellant suffered prior convictions for domestic violence and violating a restraining order without advising appellant of his *Boykin-Tahl* rights and without an express admission from him. Further the court could not impose a \$10 theft fine when he was not convicted of a crime listed in Penal Code section 1202.5.

People v. Edie Salgado (H038981)  
Panel attorney: Hannah Good  
Date: July 17, 2014

The court lacked jurisdiction to summarily revoke probation and extend probation without finding a willful violation of probation. (Staff attorney Vicki Firstman)

People v. Jandres (H039079)  
Panel attorney: Julie Dunger  
Date: May 20, 2014

In a published decision, the court of appeal reversed a conviction for forcible rape of a woman with a one strike provision for kidnapping. The trial court admitted under Evidence Code section 1108 evidence that appellant entered a house, saw a girl, covered her mouth, and carried her a few feet before dropping her. He then ran away, got on his bicycle, and burglarized a different house in the neighborhood for valuables. The prosecution argued the incident with the girl was with sexual intent because he put his finger in her mouth, as proven by DNA evidence. However, the DNA expert did not say his DNA was found in her mouth, only that they obtained a DNA sample from her from her cheek. Further, kidnapping is not an offense listed in section 1108. To the extent the prosecution's theory was that he was guilty of annoying or molesting the child, the jury was never instructed on this. Finally, even if the evidence was admissible under section 1108, the probative value was greatly outweighed by its prejudicial effect. (Staff attorney Jonathan Grossman)

People v. Ngo (H038673)  
Panel attorney: Thomas Singman  
Date: March 28, 2014

The information alleged the crime occurred in 2009, but the court instructed the jury the crime was in 2010, which, according to the testimony, is when another incident occurred. Further, the court failed to instruct on the lesser included offense of attempt. In a published decision, the court decided the errors required reversal of two of the convictions. (Staff attorney Jonathan

Grossman)

People v. Rene Rojas (H037357)

Panel attorney: Candace Hale

Date: February 11, 2014

Firearm use enhancements could not be imposed for offenses where use of a firearm was an element of the offense. (Staff attorney Paul Couenhoven)

People v. Atkins (H038834)

Panel attorney: Danalynn Pritz

Date: January 10, 2014

Appellant entered a plea bargain in which it was contemplated certain allegations would be dismissed, but they never were. The court of appeal agreed they must be dismissed to comply with the plea bargain. (Staff attorney William Robinson)

#### **SENTENCING**

In re L.M. (H039491)

Panel attorney: Susannah McNamara

Date: December 31, 2014

The matter was remanded for the court to declare if the offense was a misdemeanor or felony. (Staff attorney Jonathan Grossman)

In re Hector S. (H040653)

Panel attorney: Rudolph Alejo

Date: December 23, 2014

The matter was remanded for the court to declare if the offense was a misdemeanor or felony. (Staff attorney Vicki Firstman)

People v. Luis Munoz (H039895)

Panel attorney: Gabriel Bassan

Date: December 23, 2014

A condition not to use or possess drugs was modified to require knowledge. (Panel attorney Patrick McKenna)

People v. Jose Ramirez (H040086)  
Panel attorney: Candace Hale  
Date: December 18, 2014

Appellant was sentenced to prison. The court's order that he have no contact with the victim or reside in a home with a minor was unauthorized. (Staff attorney Jonathan Grossman)

People v. James Flores (H040288)  
Panel attorney: Mary Jo Strnad  
Date: December 15, 2014

The court intended to set the restitution fines at the statutory minimum amounts but failed to impose the amount that existed when the crime was committed. The court of appeal reduced the fines to the statutory minimum at the time the crime was committed. (Staff attorney Patrick McKenna)

People v. Lawrence Madera (H040992)  
Panel attorney: Bart Scott  
Date: December 11, 2014

A prior conviction could not serve as a prior prison commitment enhancement because it was being used as a prior serious felony conviction enhancement. (Staff attorney William Robinson)

People v. Michael Hostia (H039403)  
Staff attorney Paul Couenhoven  
Date: December 11, 2014

There was insufficient evidence of an ability to pay attorney fees. Also, the court used the wrong formula for calculating the restitution fines.

People v. Renee Vasquez  
Panel attorney: Julie Schumer  
Date: December 11, 2014

The sentencing court ordered over objection that the defendant could not move out of the county or travel out of California without the probation officer's approval. The court of appeal held the condition was unreasonable. (Staff attorney Lori Quick)

People v. James Cruz (H040012)  
Panel attorney: Jared Coleman  
Date: December 11, 2014

Gang conditions of probation were modified to require knowledge. (Staff attorney Lori Quick)

In re A.V. (H040718)  
Panel attorney: Ronald Dehoff  
Date: December 8, 2014

The juvenile court should not have calculated the maximum confinement time when the minor was not removed from the home. (Staff attorney Paul Couenhoven)

People v. Juan Valencia (H039516)  
Panel attorney: Jean Marinovich  
Date: December 8, 2014

The court erred in limiting presentence conduct credits and imposing a parole restitution fine by relying on statutes enacted after the crime was committed. (Staff attorney Jonathan Grossman)

People v. Abraham Bocanegra (H039766)  
Staff attorney: William Robinson  
Date: December 8, 2014

Appellant was sentenced on two cases at once, and the court ordered presentence credits for only one of them. Since he was serving a concurrent sentence, he was entitled to presentence credits for both cases.

In re S.J. (H040997)  
Panel attorney: Noelle Powell  
Date: December 5, 2014

The matter was remanded for the juvenile court to determine if the offense was a felony or a misdemeanor. It also modified a condition to comply with school rules to require knowledge. (Staff attorney Jonathan Grossman)

In re Michael B. (H040055)

Panel attorney: Randall Conner  
Date: December 4, 2014

The juvenile court erred in making the minor liable for attorney fees. (Staff attorney William Robinson)

People v. Jason Wilson (H039970)  
Panel attorney: Ross Green  
Date: December 3, 2014

There was insufficient evidence of an ability to pay probation fees, and a condition of probation relating to alcohol and drugs was modified to require knowledge. (Staff attorney Patick McKenna)

In re K.M. (H040059)  
Panel attorney: Eileen Manning-Villar  
Date: December 2, 2014

A condition of probation not to be near a school campus was modified to avoid problems with vagueness and overbreadth. (Staff attorney Vicki Firstman)

People v. Fermin Esquivel (H039035)  
Panel attorney: Jeffrey Glick  
Date: November 24, 2014

The abstract of judgment was corrected to reflect the proper amount of victim restitution. (Staff attorney William Robinson)

People v. Jay Freeman (H039179)  
Staff attorney: Lori Quick  
Date: November 19, 2014

The court failed to properly award presentence conduct credits based on amended Penal Code section 4019.

People v. Daniel Michael  
Staff attorney: Paul Couenhoven  
Date: November 18, 2014

Conditions of probation concerning not to possess drugs or alcohol or go where they are used or sold was modified to require knowledge.

People v. Evarado Ramirez (H040728)  
Staff attorney: Paul Couenhoven  
Date: November 17, 2014

Conditions of probation concerning not to possess drugs or alcohol or go where they are used or sold was modified to require knowledge.

In re Karina B. (H040237)  
Panel attorney: Laura Burhgardt  
Date: November 6, 2014

The juvenile matter was remanded for the court to determine if the offense was a felony or a misdemeanor. Further, the minor's parents can be ordered to pay attorney fees, but not the minor. Finally, the court was to clarify what fines it was imposing. (Staff attorney William Robinson)

In re V.T. (H040149)  
Panel attorney: Rudolph Alejo  
Date: November 6, 2014

The minor's parents can be ordered to pay attorney fees, but not the minor. (Staff attorney William Robinson)

People v. Fernando Mora (H039941)  
Panel attorney: Eileen Rice  
Date: October 30, 2014

A probation condition not to possess alcohol, intoxicants, or controlled substances was modified to require knowledge. (Staff attorney William Sacher)

People v. Frank Rocco  
Panel attorney: Elisa Brandes  
Date: October 29, 2014

When appellant was convicted of elder abuse, the court imposed a \$10,000 fine and \$31,000

in penalty assessments. Because Penal Code section 368 specifies the maximum fine was \$6000, the default fine of up to \$10,000 under Penal Code section 672 did not apply. Further, the court's motivation for the fine, to effectively disinherit appellant, was an improper basis for imposing the fine. (Staff attorney William Robinson)

People v. John Bustamante (H040060)  
Panel attorney: Robert Angres  
Date: October 28, 2014

The court lacked the authority to increase the probation revocation restitution fine upon a revocation of probation. (Staff attorney Lori Quick)

People v. Nema Mesbahi (H038946)  
Panel attorney: Alex Green  
Date: October 28, 2014

Because the court intended to impose restitution fines according to the formula for a crime committed in 2009, the amount should be reduced to reflect the rate at the time of the offense. (Staff attorney Paul Couenhoven)

People v. William Kenville (H039418)  
Staff attorney: Lori Quick  
Date: October 28, 2014

The matter was remanded for the court to explain the basis of the penalty assessments imposed on certain fines.

People v. James Graham (H040457)  
Panel attorney: Matthew Wilson  
Date: October 23, 2014

A stay away order when the defendant was sentenced to prison was unauthorized. (Staff attorney Jonathan Grossman)

People v. Oshawa Box (H040213)  
Panel attorney: Teresa Biagini  
Date: October 22, 2014

A probation condition not to possess a dangerous or deadly weapon was modified to require knowledge. (Staff attorney Patrick McKenna)

People v. Felipe Chavez (H040499)  
Staff attorney: Paul Couenhoven  
Date: October 21, 2014

Probation conditions to stay away from the victims or their residences or places of work was amended to require knowledge.

People v. Isidro Quintana (H38900)  
Panel attorney: Jin Kim  
Date: October 21, 2014

A fine must be stricken because it was not orally imposed by the court. Additionally, the court was required to award presentence conduct credits. (Staff attorney Dallas Sacher)

People v. Nan Wu (H039303)  
Panel attorney: D.T. Rogers  
Date: October 16, 2014

Appellant was convicted of grand theft, and probation was denied. There was insufficient evidence of an ability to pay the presentence investigation report fees, and the order not to contact the victim was unauthorized. (Staff attorney Vicki Firstman)

People v. Augustine Salvatierra (H040338)  
Staff attorney: Paul Couenhoven  
Date: October 9, 2014

Conditions of probation concerning drugs and alcohol were modified to require knowledge.

People v. Juan Lazaro (H040618)  
Staff attorney: Paul Couenhoven  
Date: October 7, 2014

Probation conditions concerning alcohol and gang-related material and activity were modified to require knowledge.

People v. Randy Reyes (H039587)  
Panel attorney: Sara Coppin  
Date: October 7, 2014

The court miscalculated the amount of presentence credits. (Staff attorney Jonathan Grossman)

People v. Riding (H040633)  
Staff attorney: Sharon Fleming  
Date: September 29, 2014

Conditions of probation were modified to avoid vagueness and overbreadth concerning whom appellant is allowed to date, possession of pornographic material, and access to a computer. (Staff attorney Paul Couenhoven)

People v. Michael Garza (H038840)  
Staff attorney: Paul Couenhoven  
Date: September 26, 2014

A condition of probation not to possess illegal drugs was modified to require knowledge.

People v. Saragoza Sanchez (H038294)  
Panel attorney: Robert Angres  
Date: September 26, 2014

Appellant was charged with attempted robbery with a gang enhancement under Penal Code section 186.22, subdivision (b)(4). It, however, did not apply. Respondent argued subdivision (b)(1)(B) of section 186.22 applied, but the court held it was never alleged or found true by the jury. (Staff attorney Lori Quick)

People v. Joshua Bacci (H039954)  
Panel attorney: Julia Spikes  
Date: September 24, 2014

Appellant was convicted of receiving stolen property. The court imposed a \$10 theft fine and penalty assessments under Penal Code section 1202.5. The fine was unauthorized because section 1202.5 does not list receiving stolen property. (Staff attorney Paul Couenhoven)

People v. Eric Watson (H039914)  
Panel attorney: Jenny Huang  
Date: September 24, 2014

A probation condition not to possess intoxicants, alcohol, or controlled substances was modified to require knowledge. (Staff attorney Lori Quick)

People v. Felicia Cruz (H040139)  
Staff attorney: Lori Quick  
Date: September 23, 2014

A condition of probation to stay away from the victim was modified to specify who it was, and a condition not to possess burglary tools was modified to require knowledge of what was prohibited.

People v. Romeo Alvarez  
Staff attorney: Patrick McKenna  
Date: September 18, 2014

Conditions of probation not to possess a weapon or possess or consume marijuana were modified to require knowledge.

In re Evelyn G. (H041062)  
Panel attorney: Dena Young  
Date: September 9, 2014

The matter was remanded for the court to determine if the crime was a misdemeanor or a felony. Further, conditions of probation concerning a stay away order and to not possess paraphernalia were modified to require knowledge.

In re Gabriel C. (H039538)  
Panel attorney: Eileen Manning-Villar  
Date: September 5, 2014

The court of appeal found that not permitting the minor to move without approval of the probation officer impermissibly delegated judicial authority to probation. The condition was modified to require approval of the court. Further the condition not to possess a deadly weapon was modified to avoid vagueness problems. (Staff attorney Lori Quick)

People v. Gordon MacDonald (H040267)  
Panel attorney: Alissa Bjerkhoel  
Date: September 5, 2014

A probation condition not to be in a place where alcohol is the chief item of sale was modified to avoid vagueness problems. (Staff attorney Patrick McKenna)

People v. Davis Mendez (H039651)  
Panel attorney: Jonathan Berger  
Date: August 29, 2014

The court erred in using the current formula for setting the restitution fine for a crime occurring in 2012. (Staff attorney Vicki Firstman)

People v. Lillian Ayon (H039900)  
Staff attorney: Jonathan Grossman  
Date: August 29, 2014

To the extent the minute order states the court was imposing a probation violation restitution fine, it must be corrected because the court never orally pronounced such a fine at sentencing.

People v. Grant Wilson (H040313)  
Panel attorney: Maggie Shrout  
Date: August 21, 2014

Drug conditions of probation were modified to require knowledge. (Staff attorney Lori Quick)

People v. Christopher Morones (H039945)  
Panel attorney: Richard Boire  
Date: August 21, 2014

A condition of probation not to have access to police scanners was modified to require knowledge. A condition of probation, which the court orally indicated it was not going impose, must be stricken from the minute order. (Staff attorney Paul Couenhoven)

People v. Huy Le (H040151)  
Panel attorney: Alan Siraco

Date: August 8, 2014

Although the abstract of judgment lists a \$3600 restitution fine, the court never orally pronounced one. The matter was remanded for the court to determine the proper amount of the restitution fine. (Staff attorney William Robinson)

In re C.A. (H039846)  
Panel attorney: Jenny Brandt  
Date: August 1, 2014

The matter was remanded for the juvenile court to declare whether the offense was a felony or a misdemeanor. Further, a no contact condition of probation was modified to require knowledge. (Staff attorney Vicki Firstman)

In re Guillermo M. (H040532)  
Panel attorney: Sylvia Ronnau  
Date: July 25, 2014

The minor carried a loaded concealed firearm, and the court sustained the petition for violating Penal Code sections 25400 and 25850. The court of appeal agreed the punishment for one of the crimes must be stayed pursuant to Penal Code section 654. (Staff attorney Lori Quick)

People v. Scarlett Bowman (H040058)  
Staff attorney: Paul Couenhoven  
Date: July 24, 2014

Conditions not to use or possess alcohol or drugs were modified to require knowledge.

People v. Melisa Fernandez (H039640)  
Staff attorney: Patrick McKenna  
Date: July 24, 2014

The probation supervision fee was stricken because of insufficient evidence of an ability to pay it. Probation conditions to not contact the victim, not access the Internet, or erase the Internet history of the browser were modified to require knowledge.

People v. Dowdell and Lincoln (H037404)  
Panel attorneys: Eric Weaver for Dowdell, Jonathan Berger for Lincoln

Date: July 17, 2014

A jury convicted Lincoln of kidnapping for ransom or extortion in count one, kidnapping during a carjacking in count two, carjacking in count three, kidnapping for robbery in count four, and criminal threats in count five. In a published decision, the court decided the conviction for count three must be dismissed because it is a lesser included offense to count two. Further, the punishment for either count one or count two must be stayed pursuant to Penal Code section 654. Dowell was convicted of counts one and four. The punishment for count four must be stayed, as the trial court orally pronounced. The court also decided the jury was misinstructed on intimate partner battering, but it was harmless. (Staff attorney Paul Couenhoven)

People v. Povio (H039309)  
Panel attorney: JuNelle Harris  
Date: July 17, 2014

In a published decision, the court decided an order to stay 300 yards from a playground required knowledge. (Staff attorney William Robinson)

In re A.B. (H039890)  
Panel attorney: Ronald Dehoff  
Date: July 17, 2014

A minors was found to have attempted robbery and committed battery. The punishment for battery must be stayed pursuant to Penal Code section 654. Also, a minor could not be required to pay attorney fees. (Staff attorney William Robinson)

People v. Jaime Cota (H040332)  
Panel attorney: Jean Marinovich  
Date: July 10, 2014

Appellant committed a crime in 2000. The fine and penalty assessments must be reduced to reflect the amounts that existed at the time of the offense. (Staff attorney William Robinson)

People v. Virgil Dupree (H039278)  
Panel attorney: Brandon Douglas  
Date: July 8, 2014

A probation condition not to possess graffiti material was modified to require knowledge. (Staff attorney Lori Quick)

People v. Michael Schultz (H040314)  
Staff attorney: Lori Quick  
Date: June 27, 2014

The court imposed a booking fee over the defendant's objection. The court of appeal remanded the matter for an ability to pay determination.

In re J.R. (H039813)  
Panel attorney: Alissa Bjerkhoel  
Date: June 27, 2014

Probation conditions not to possess an incendiary device and to have no contact with the victim were modified to avoid problems with vagueness and overbreadth. The minute order of the dispositional hearing was corrected to indicate that the minor did not admit one of the counts. (Staff attorney William Robinson)

In re D.D. (H040161)  
Panel attorney: Rachel Sussman  
Date: June 27, 2014

The matter was remanded for the court to determine if a wobbler was a felony or a misdemeanor. Further, the court needed to modify or clarify conditions of probation to stay away from school campuses and to not possess paraphernalia. (Staff attorney Paul Couenhoven)

People v. Paul Gomez (H039952)  
Staff attorney: Patrick McKenna  
Date: June 24, 2014

Appellant pled no contest to two counts on condition that an enhancement and two other counts be dismissed, and he was placed on probation. The court erred in forgetting to dismiss the enhancement. Also conditions of probation not to possess a firearm and not to contact the victim were modified to require knowledge.

People v. Antonio Esquivel (H039949)  
Panel attorney: Randy Kravis  
Date: June 24, 2014

A condition to stay away from courthouses was modified to avoid problems with vagueness

and overbreadth. (Staff attorney Vicki Firstman)

People v. John Sorenson (H039803)

Panel attorney: Teresa Biagini

Date: June 19, 2014

Appellant was convicted of hit and run with injury. The court awarded more than \$225,000 in victim restitution. Trial counsel was ineffective for not challenging the award because the court should have set the amount to be the medical expenses paid, not the medical expenses billed. (Staff attorney William Robinson)

People v. Jose Zapien (H039878)

Panel attorney: Paul Kleven

Date: June 17, 2014

A gang condition of probation not to possess a cell phone, pager, or mobile device was stricken because it was not orally ordered by the court. Another condition of probation not to possess or display gang indicia or tattoos was modified to require knowledge and not to require that any current tattoos be removed. (Staff attorney Paul Couenhoven)

People v. Gabriel Martinez (H039398)

Staff attorney: Patrick McKenna

Date: June 6, 2014

As part of a published decision, the court of appeal held trial counsel was ineffective for not objecting to the sentencing court using the wrong amount in the formula for calculating the restitution fine.

People v. Mark Kuchler (H038371)

Panel attorney: Jennifer Sheetz

Date: June 5, 2014

The order to stay away from the victim was modified to avoid problems with vagueness and overbreadth. (Staff attorney Paul Couenhoven)

In re Gary F. (H039701)

Panel attorney: Victoria Schultz

Date: May 30, 2014

The juvenile court did not have the authority to order the minor to pay attorney fees, even if he was 18 years old at the time of the order. (Staff attorney William Robinson)

People v. David Gomez (H040082)

Staff attorney: Lori Quick

Date: May 28, 2014

Appellant was convicted of domestic violence. He objected to certain conditions of probation as being unreasonable. The court of appeal agreed that the conditions he not consume alcohol, undergo drug testing, and participate in drug counseling was unsupported by the evidence and not reasonably related to the offense or his background.

In re Z.B. (H040103)

Panel attorney: Dena Young

Date: May 23, 2014

A condition of probation not to possess surveillance equipment was modified to require knowledge. (Staff attorney Patrick McKenna)

People v. Michael Grayson (H039089)

Staff attorney: Vicki Firstman

Date: May 22, 2014

Appellant was convicted of several crimes with three strikes and received 25 years to life for each one, plus enhancements. The court erred in finding two prior serious felonies to be true because they were not brought and tried separately. The court also erred in imposing the punishment for serious prior felonies in connection to three charges where it was never alleged. Finally, the abstract of judgment must be corrected to show that the serious felony convictions did not apply to some of the charges where they were never imposed by the court.

People v. Scott (H038448)

Panel attorney: Eric Weaver

Date: May 22, 2014

The defendant was convicted of sex offenses occurring in 2006. The court erred in imposing an AIDS education fine because it did not apply to the conviction. It erred in imposing a \$300 sex registration fine because it was \$200 at the time of the offense. It erred in imposing 300% in penalty assessments because it was lower at the time of the offense. Trial counsel was ineffective for not objecting to setting the restitution fine at \$240, when the court intended to impose the statutory

minimum, because the amount was lower at the time of the offense. (Staff attorney Jonathan Grossman)

People v. Deng (H038016)  
Panel attorney: Susannah McNamara  
Date: May 22, 2014

Conditions of probation to stay away from the victim and concerning the Internet were modified to require knowledge. (Staff attorney Vicki Firstman)

People v. Aragon (H039880)  
Staff attorney: Jonathan Grossman  
Date: May 21, 2014

Conditions of probation concerning possession of pornography and use of the Internet were modified to require knowledge.

People v. Andy Acosta (H038983)  
Panel attorney: Robert Derham  
Date: May 21, 2014

Appellant was convicted of domestic violence and sentenced to probation. The court imposed a women's shelter fee and a domestic violence fee. However, the fees are permitted if the defendant is placed on probation, so they were stricken. (Staff attorney Paul Couenhoven)

People v. Bryan Martin (H039805)  
Panel attorney: David Morse  
Date: May 20, 2014

Appellant was convicted of a robbery and a petty theft. He then escaped from the jail and committed a burglary. The court agreed he was not awarded sufficient presentence credits in the petty theft case. It also found that although he could be deprived of good conduct credits for his escape, the matter needed to be remanded before the court could deprive him of his work time credits. (Staff attorney William Robinson)

In re A.L. (H039489)  
Panel attorney: Stanley Radtke  
Date: May 20, 2014

Conditions of probation to stay away from the victim and to stay away from schools were modified to avoid problems with overbreadth or vagueness. (Staff attorney Vicki Firstman)

In re R.C. (H040192)  
Panel attorney: Eileen Manning-Villar  
Date: May 14, 2014

The matter was remanded for the court to correctly calculate predispositional credits. (Staff attorney Jonathan Grossman)

In re W.A. (H039924)  
Panel attorney: Dena Young  
Date: May 13, 2014

The juvenile court found appellant committed auto theft and received a stolen motor vehicle. The matter was remanded to determine if the offenses were felonies or a misdemeanors. (Staff attorney Vicki Firstman)

People v. Robert Gidding  
Panel attorney: Bart Scott  
Date: May 8, 2014

The court decided the punishment for assault must be stayed in lieu of the punishment for robbery. (Staff attorney William Robinson)

People v. Consuelo Diaz (H038766)  
Panel attorney: Carlo Rolando  
Date: May 6, 2014

The court remanded the matter for a new hearing to determine appellant's ability to pay probation supervision fees. (Staff attorney Jonathan Grossman)

People v. Dennis McGuire  
Panel attorney: Scott Handleman  
Date: May 5, 2014

When appellant pled, the court promised it would not impose a booking fee, but a booking fee was imposed at sentencing. The court of appeal agreed it must be stricken in order to comply

with the plea bargain. (Staff attorney Jonathan Grossman)

In re F.M. (H0389667)

Panel attorney: Maggie Shrout

Date: May 2, 2014

The court order to stay away from young minors was modified to require knowledge. (Staff attorney Paul Couenhoven)

In re O.C. (H039645)

Panel attorney: Eileen Manning-Villar

Date: May 2, 2014

Three conditions of probation were modified to avoid constitutional concerns. The requirement that appellant notify the probation officer before changing his residence was modified to permit his parents to change their address. A condition not to associate with certain people was modified to require knowledge. A curfew condition was modified to specify when he was allowed out of the home in the morning. (Staff attorney William Robinson)

People v. Adrian Rosales (H039068)

Panel attorney: Lydia De La Torre

Date: May 2, 2014

A condition not to possess controlled substances was modified to require knowledge. A condition to stay away from those who use controlled substances was modified to permit associating with those who use drugs with a prescription. The assessment of the drug lab fee and penalty assessments was reversed for the court to clarify how the amount was calculated. (Staff attorney Lori Quick)

People v. Freddie Mendoza (H040209)

Panel attorney: Jill Kent

Date: May 2, 2014

A probation supervision fee was unauthorized when the defendant was placed on mandatory supervision. (Staff attorney Lori Quick)

People v. Pablo Camacho (H038705)

Staff attorney: Paul Couenhoven

Date: April 29, 2014

The court erred in imposing the upper term of eight years for a violation of Penal Code section 245, subdivision (c), because the upper term is five years. The court was also required to impose one-third of the punishment for an enhancement attached to a subordinate term. Finally, the punishment for making criminal threats must be stayed pursuant to Penal Code section 654 in lieu of the punishment for dissuading the witness.

People v. Jose Gaspar (H039761)

Panel attorney: Joseph Shipp

Date: April 28, 2014

The court imposed three years for a great bodily injury enhancement and ten years for a gang enhancement attached to a violent felony. The conviction was a violent felony because of the great bodily injury enhancement. The court could not impose both punishments. Because the punishment was being reduced, the restitution fines, which were assessed according to the formula in Penal Code section 1202.4, must be reduced. Finally, the minute order of the sentencing hearing and the abstract of judgment must be amended to delete a reference to a waiver of appellate rights, because there was no such waiver. (Staff attorney William Robinson)

People v. Klatt (H038755)

Panel attorney: Maggie Shrout

Date: April 23, 2014

The court decided in a published decision that a mandatory condition of probation to waive the right against self-incrimination while undergoing polygraph testing was unconstitutional and to waive the psychotherapist privilege while undergoing counseling was overbroad. This decision is consistent with another published decision, People v. Friday (Mar. 27, 2014, H039404) and disagrees with another Sixth District published decision, People v. Garcia (Mar. 21, 2014, H039603). Further, a condition not to socialize with any person with physical custody of a minor without the probation officer's approval was vague and overbroad. (Staff attorney Jonathan Grossman)

People v. Joe Martinez (H039273)

Panel attorney: Paul Carroll

Date: April 21, 2014

The court miscalculated penalty assessments because it failed to take into account that the crimes were committed when the assessments were lower. (Staff attorney Paul Couenhoven)

In re J.D. (H039960)  
Panel attorney: Siri Shetty  
Date: April 18, 2014

The court lacked the authority to place the minor at DJJ because his most recent offenses were not qualifying offenses. (Staff attorney Paul Couenhoven)

People v. Friday (H039404)  
Staff attorney: Lori Quick  
Date: March 27, 2014

The court decided in a published decision that a mandatory condition of probation to waive the right against self-incrimination while undergoing polygraph testing was unconstitutional. The court disagrees with another Sixth District published decision, *People v. Garcia* (Mar. 21, 2014, H039603). Some other conditions of probation were modified to require knowledge.

In re N.H. (H039258)  
Panel attorney: Jasmine Patel  
Date: March 27, 2014

The minor was convicted of vehicular manslaughter and DUI with injury with several enhancements for personally inflicting great bodily injury. The matter was remanded for a new dispositional hearing because the court failed to determine if the offenses were misdemeanors or felonies, erroneously imposed a great bodily injury enhancement for a victim who was the subject of the manslaughter, and miscalculated the maximum confinement time. (Staff attorney Jonathan Grossman)

People v. Louis Salazar (H038292)  
Panel attorney: Alex Coolman  
Date: March 27, 2014

Appellant was convicted of murder for a crime that occurred in 1977. The court erred in denying presentence credits and imposing a restitution fine based on statutes that did not exist at the time of the crime. (Staff attorney Jonathan Grossman)

People v. Raul Ramirez (H038462)  
Panel attorney: Sharon Fleming  
Date: March 19, 2014

Penal Code section 4019 provides for four days of presentence credits for every two days in custody when the crime is committed on or after October 1, 2011. In a published decision, the court of appeal held this provision applies when some of the crimes are committed before the date but others are committed afterward. (Staff attorney Paul Couenhoven)

People v. Richard Garcia (H039043)  
Panel attorney: Ron Boyer  
Date: March 19, 2014

The court imposed concurrent sentences for attempted criminal threats and for battery against a cohabitant. The court of appeal agreed that the punishment for the latter must be stayed pursuant to Penal Code section 654. (Staff attorney Lori Quick)

In re C.V. (H039230)  
Panel attorney: Carrie Kojimoto  
Date: March 19, 2014

A condition of probation to stay away from gang members was stricken when there was no history of gang involvement. (Staff attorney William Robinson)

People v. Castro (H039283)  
Staff attorney: William Robinson  
Date: March 12, 2014

Conditions of probation not to use or possess alcohol or drugs or be where they are sold, not to be within 100 yards of the victim, and not to possess burglary tools were modified to require knowledge.

People v. Roy Gordon (H039553)  
Staff attorney: Lori Quick  
Date: March 11, 2014

A condition of probation not to use or possess alcohol or drugs or be where they are sold was modified to require knowledge.

In re Edward F. (H039809)  
Panel attorney: William White  
Date: March 7, 2014

The minor was adjudicated for committing a crime that was a wobbler. The matter was remanded for the court to determine if it were a felony or a misdemeanor. (Staff attorney Lori Quick)

In re J.Q. (H039905)  
Panel attorney: Gunnar Rosenquist  
Date: March 7, 2014

The minor was adjudicated for committing a crime that was a wobbler. The matter was remanded for the court to determine if it were a felony or a misdemeanor. (Staff attorney Lori Quick)

People v. Richard Miller (H039406)  
Staff attorney: Paul Couenhoven  
Date: March 7, 2014

There was insufficient evidence to support part of the order for restitution.

People v. Edgar Ferrer (H039169)  
Panel attorney: Eileen Rice  
Date: February 28, 2014

The superior court was required to calculate presentence conduct credits. (Staff attorney Jonathan Grossman)

People v. Charles Peotter (H038909)  
Panel attorney: Patricia Watkins  
Date: February 28, 2014

Calculation of the restitution fine according to the statutory formula was error when the court relied on an increase in the formula enacted after the commission of the crime. (Staff attorney William Robinson)

People v. Hicks (H038821)  
Staff attorney: Lori Quick  
Date: February 25, 2014

Due to concerns for vagueness and overbreadth, conditions of probation requiring appellant

to take a polygraph exam and waive his right to self-incrimination was modified to require questions related to successful completion of the program, not to socialize with anyone with a minor child was stricken, not to possess pornography was modified to require knowledge as informed by the probation officer, and not to use a computer data encryption device was modified to require knowledge.

People v. Howard Posey (H039347)

Panel attorney: David Martin

Date: February 24, 2014

Appellant was convicted of misdemeanor battery against a cohabitant and grand theft from person. The court issued a permanent no contact order. While the court could have issued a stay away order for ten years, it lacked the statutory authority to issue a lifelong ban. (Staff attorney Paul Couenhoven)

People v. Celestino Jimenez (H038857)

Panel attorney: Charles Marson

Date: February 24, 2014

Due to concerns for vagueness and overbreadth, conditions of probation not to use alcohol or drugs, and not to possess firearms, ammunition or weapons were modified to require knowledge. A condition of probation not to associate with members of a criminal street gang was stricken as being unsupported. (Staff attorney Dallas Sacher)

People v. Michael Infante (H039530)

Panel attorney: J. Frank McCabe

Date: February 21, 2014

Due to concerns for vagueness and overbreadth, a condition of probation to stay away from the victim was modified to require knowledge. (Staff attorney Paul Couenhoven)

People v. Ruben Estrada (H038280)

Panel attorney: Rachel Varnell

Date: February 20, 2014

The trial court was required to award presentence conduct credits. (Staff attorney Lori Quick)

People v. Rudolfo Miramontes and Michael Ortiz (H036887)  
Panel attorney: Danalynn Pritz and Heather MacKay  
Date: February 14, 2014

Appellants' punishment for the gang crime must be stayed in lieu of their punishment for conspiracy to commit certain crimes for the gang. The restitution fines must be reduced accordingly. (Staff attorney Dallas Sacher)

People v. Jonathan Dowell (H039306)  
Panel attorney: Rachel Sussman  
Date: February 14, 2014

Probation conditions not to possess or consume alcohol or illegal drugs and not to possess a firearm or ammunition were modified to require knowledge. (Staff attorney Lori Quick)

People v. Michael Galope (H039646)  
Staff attorney: Lori Quick  
Date: February 10, 2014

The court attempted to set the restitution fine according to the formula in Penal Code section 1202.4, but it erroneously included in the calculation a count for which the punishment was stayed. When it revoked probation, it purported to impose a different restitution fine. The court therefore reduced the restitution fines.

People v. Karen Tompkins (H039693)  
Panel attorney: Rudy Kraft  
Date: February 10, 2014

When appellant pled, it was agreed her restitution fines would be \$308. But when she was sentenced, the court set the amount at \$480. The court of appeal reduced the amount to \$308. (Staff attorney William Robinson)

People v. Adolfo Ochoa (H039369)  
Panel attorney: Jill Kent  
Date: February 6, 2014

There was insufficient evidence appellant had the ability to pay probation fees. (Staff attorney Lori Quick)

People v. Carlos Espinoza (H038508)  
Panel attorney: Paul Carroll  
Date: January 31, 2014

Appellant, who was 17 years old at the time of the offense, was convicted of first degree murder, attempted premeditated murder, and the gang crime with gang and firearms enhancements. He was sentenced to serve 85 years to life. The court held the sentence constituted cruel and unusual punishment. (Staff attorney William Robinson)

People v. Raul Hernandez (H039090)  
Panel attorney: Susannah McNamara  
Date: January 23, 2014

Appellant was convicted of burglary and possession of burglary tools. The punishment for the latter conviction should have been stayed pursuant to Penal Code section 654. (Staff attorney Lori Quick)

People v. Quintilo Martinez (H038317)  
Panel attorney: Richard Boire  
Date: January 23, 2014

The court lacked authority to make a no contact order for the defendant who was sentenced to prison. (Staff attorney Paul Couenhoven)

People v. Jonathan Roberts (H039597)  
Staff attorney: Paul Couenhoven  
Date: January 22, 2014

A condition of probation not to consume alcohol or drugs was modified to require knowledge.

People v. Angel Perez (H037988)  
Panel attorney: Danalynn Pritz  
Date: January 22, 2014

The court could not impose a punishment for both Penal Code section 186.22, subdivision (b)(1) and Penal Code section 12022.53, subdivision (e) when the defendant did not personally possess the firearm. Further, the court erred in ordering victim restitution for merchandise that was returned undamaged. (Staff attorney Jonathan Grossman)

People v. Carlos Zamora (H039247)  
Panel attorney: Matthew Wilson  
Date: January 21, 2014

There was insufficient evidence the defendant had the ability to pay probation fees. (Staff attorney Jonathan Grossman)

In re Alejandro S. (H039497)  
Panel attorney: Joy Maulitz  
Date: January 17, 2014

The juvenile court cannot order that the minor pay attorney fees. Further, gang condition of probation was modified to require knowledge. Finally, the matter was remanded to determine if a wobbler was a felony or a misdemeanor. (Staff attorney William Robinson)

People v. Christopher Rodriguez (H039314)  
Staff attorney: Lori Quick  
Date: January 15, 2014

The court lacked the authority to impose a five year restraining order as a condition of probation when probation lasted only three years. Further, the condition that he not possess a weapon required knowledge.

#### **DEPENDENCY CASES**

In re S.C. (H040379)  
Panel attorney: Louise Collari  
Date: November 25, 2014

The matter was reversed for failure to comply with the notice requirements of ICWA. (Staff attorney Vicki Firstman)

In re D.S. (H039774)  
Panel attorneys: James Haworth (step father), Neale Gold (mother), Deborah Wald (minor)  
Date: October 27, 2014

The juvenile court ruled the step father was a presumed father but the presumption was rebutted by the biological father who qualified as a presumed father under *Adoption of Kelsey S.* (1992) 1 Cal.4th 816. It had made a factual finding, however, that the biological father failed to do

all that he could have to assume a parental role. The step father, mother, and minor appealed. In a published decision, the court of appeal reversed. The juvenile court's factual finding precluded a conclusion that the biological father qualified as a *Kelsey S.* father. (Staff attorney Vicki Firstman)

In re Leo C. (H040231)

Panel attorney: Tara Morrissey

Date: July 11, 2014

The dependency court erred in finding reasonable services were offered to the father. He submitted to a psychological evaluation at the time of the six month review hearing. The evaluator found that because he had suffered traumatic brain injury when he was a young child, he appeared to have difficulty retaining information. The evaluator recommended a more comprehensive neurological evaluation to determine how to better provide services for him. The court should have ordered the second evaluation, instead of terminating services based on poor compliance with the case plan. (Staff attorney Jonathan Grossman)

In re E.P. (H040344)

Panel attorney: Patricia Saucier and Catherine Czar

Date: June 26, 2014

The minor was detained from the mother and placed with the father. After a contested hearing, the court denied reunification services to the mother and dismissed the dependency. The mother and the minor appealed. The court of appeal reverse, holding that there was insufficient evidence to support the findings necessary for dismissal of the dependency. Because reunification services were denied on the premise that the dependency was being dismissed, the juvenile court must reconsider whether to grant services. (Staff attorney Vicki Firstman)

In re J.C. (H040303)

Panel attorney: Catherine Czar

Date: May 28, 2014

A dependency petition was filed to protect the 16 year-old minor because her mother did not want her home. The mother requested a restraining order against the minor, which the court denied, and she appealed. Czar, representing the minor, successfully argued the court did not abuse its discretion. (Staff attorney Jonathan Grossman)

In re J.F. (H039555)

Panel attorney: Allison Cruz

Date: January 31, 2014

The matter was remanded so that proper notice could be provided under ICWA. (Staff attorney Vicki Firstman)

S.H. v. Superior Court (H040329)

Attorney: Dylan Roy

Date: January 23, 2014

After the paternity of the father was established, he requested reunification services. Instead, the court terminated services for the mother and set the matter for a hearing pursuant to Welfare and Institutions Code section 366.26. Father filed a writ petition, and the court of appeal granted relief. The juvenile court was required to consider the father's request for services. (SDAP was not involved in this matter)

### **HABEAS CORPUS**

People v. William Delacruz (H039109, H039282)

Panel attorney: Elaine Forrester

Date: December 11, 2014

Appellant was convicted in two felony cases and sentenced with a prior strike. He also filed a habeas corpus petition, alleging trial counsel was ineffective because there was insufficient evidence the prior conviction constituted a strike. He was granted relief on habeas corpus, and the sentences in both current cases were reversed. (Staff attorney Paul Couenhoven)

In re Richard Sena (Santa Clara No. 149169)

Staff attorney: Jonathan Grossman

Date: January 13, 2014

The Board of Parole Hearings found petitioner suitable for parole, but the governor reversed the decision. The superior court had found the governor's decision was not supported by some evidence and ordered he be released in five days. The prison held on to him, thinking it had 60 days to appeal. About three weeks after the order he be released, he was disciplined for a rules violation, and eventually the decision to release him on parole was rescinded. He filed a new habeas corpus petition in the superior court. The court decided that the prison officials did not have the authority to hold him beyond the five days under the court's order; thus, his parole could not be rescinded for conduct occurring more than five days after the court's order. (Staff attorney Jonathan Grossman)

### **MISCELLANEOUS**

Lee v. Superior Court (H039380)

Attorney: Shaneen Porter, David Beauvais, Daniel Clymo

Date: April 14, 2014

Defendants were arrested in the Occupy Santa Cruz movement. There existed video that would show whether the defendants committed any crime. Their attorneys requested the discovery before the preliminary hearing. When it was not provided, the court granted several continuances of the preliminary hearing and ordered the discovery be provided. The district attorney's office was never able to obtain usable videos from the police agency. The court sanctioned the district attorney's office \$500. The district attorney appealed, and the court of appeal upheld the order. (SDAP did not participate in the case).

People v. Brittany Morales (H039915)

Panel attorney: Teresa Biagini

Date: March 26, 2014

The court held in a published decision that the court of appeal has jurisdiction over an appeal where the defendant was held to answer on a felony, though he was eventually convicted of a misdemeanor. (Staff attorney Jonathan Grossman)