

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. Jose Alvarez (H041836)

Panel attorney: Jennifer Mannix

Date: December 18, 2015

There was insufficient evidence of a grand theft for stealing keys when there was no evidence they were worth more than \$950, even though it cost more than \$950 to change the locks. (Staff attorney Jonathan Grossman)

People v. Samih Stephan (H040062)

Panel attorney: Michael Allen

Date: December 11, 2015

Appellant was convicted by a jury of grand theft for stealing hotel keys. There was no evidence of the value of the keys themselves, only that it cost more than \$950 to change the locks. The court of appeal reversed for lack of sufficient evidence. Theft is determined by the value of the property taken, not the consequential costs to the victim. (Staff attorney Jonathan Grossman)

People v. Alfonzo Gutierrez (H041596)

Panel attorney: Seth Flagsberg

Date: November 30, 2015

Appellant possessed 218 grams of cocaine base for sale in count one (Health & Saf. Code, § 11351.5) and 787 grams of powder cocaine for sale (Health & Saf. Code, § 11351) in count two. The jury found true as alleged in count one that he possessed more than one kilogram. However, the amounts in counts one and two could not be combined. Further, appellant was entitled to be resentenced on count one because the punishment for possession of cocaine base for sale has since been reduced. (Staff attorney William Robinson)

People v. William Bettencourt (H040438)

Panel attorney: Michael Allen

Date: November 6, 2015

There was insufficient evidence appellant committed the crime to promote, further, or assist criminal conduct by a gang member. (Staff attorney Lori Quick)

People v. Luna (H040191)
Panel attorney: Katarzyna Kozik
Date: July 29, 2015

The information alleged two counts occurring in a ten month period, but the victim described only one incident. There was thus insufficient evidence to support one fo the convictions. (Staff attorney William Robinson)

People v. Marino Zarate (H039134)
Panel attorney: David Scopp
Date: June 9, 2015

Appellant was convicted of driving under the influence, recklessly evading an officer, resisting arrest, and the gang crime. The court agreed there was insufficient evidence to support the gang crime. Although appellant was with another gang member, there was insufficient evidence the latter aided and abetted. (Staff attorney William Robinson)

People v. Devries (H039641)
Panel attorney: Alan Siraco
Date: February 11, 2015

Appellant was convicted of ten counts of forcible lewd conduct on a minor under the age of 14 years. The victim testified appellant molested her “a lot,” at least when she was 3 to 7 years old. Appellant was not yet 18 years old when she was 3 years old. The court concluded the “a lot” testimony was not sufficient to sustain ten counts, but her testimony that it occurred at least once a year when she was 4 to 7 years old was enough to sustain four of the convictions. Also, the order that appellant stay away from the victims was unauthorized. (Staff attorney Lori Quick)

People v. Valdovinos (H039339)
Panel attorney: Mark Farbman
Date: January 29, 2015

Among other things, appellant was convicted of assault to commit lewd conduct on a child under the age of 14 years. The conviction must be reversed because there was insufficient evidence the child was under the age of 14 years. (Staff attorney William Robinson)

PRETRIAL AND POSTTRIAL MOTIONS

People v. Jon Perroton (H041294)

Staff attorney: Jonathan Grossman

Date: December 28, 2015

The revocation of probation was reversed. The trial court erred in finding probable cause the defendant violated probation when the standard of proof was a preponderance of the evidence. Further, there was insufficient evidence to support two of the alleged violations of probation. The court of appeal also held that when a defendant commits a current offense that qualifies for a jail sentence under Penal Code section 1170, subdivision (h) and subsequently commits a serious felony for which he is placed on probation, the court lacks the authority to sentence the defendant to prison on the current offense.

People v. Jarvis Garner (H041132)

Panel attorney: Michael Allen

Date: December 22, 2015

The court of appeal reversed because the superior court failed to maintain an adequate record to review its in camera decision concerning a motion for discovery under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

People v. George Jaeger (H041784)

Staff attorney: Nerissa Huertas

Date: December 21, 2015

The defendant took a check for \$1300, washed the amount out, and rewrote the check for \$300. He was convicted of felony forgery and sought to reduce to a misdemeanor under Proposition 47. The petition was denied because the check was worth more than \$1300. The court of appeal reversed. What mattered was the amount of the check when forged.

People v. Biniam Ashedom (H040563)

Panel attorney: Michael Mehr

Date: December 18, 2015

Appellant was entitled to withdraw his plea because the court said when he pled it would reduce the conviction to a misdemeanor under Penal Code section 17(b) but did not. (Staff attorney Jonathan Grossman)

People v. William Burnes (H040102)
Panel attorney: JuNelle Harris
Date: December 14, 2015

The superior court found appellant ineligible for resentencing under the Three Strikes Reform Act because the probation report stated he was personally armed with a weapon. In a published decision, the court of appeal reversed because the probation report was not part of the record of conviction. (Staff attorney William Robinson)

People v. Basilio Tubera (H041358)
Panel attorney: Michael Sampson
Date: December 8, 2015

The court refused to reduce a conviction to a misdemeanor under Penal Code section 17 under the mistaken view that appellant had been sentenced to prison on that case. Because this was incorrect, the matter was remanded for a new determination. (Staff attorney Lori Quick)

People v. Max Denize (H039974)
Staff attorney: William Robinson
Date: December 2, 2015

Appellant was eligible for resentencing under the Three Strikes Reform Act for the current convictions that were not serious felonies, though one of his current convictions is a serious felony.

People v. Leo Hill (H040009)
Panel attorney: David Martin
Date: November 19, 2015

Appellant's prior conviction for voluntary manslaughter did not disqualify him from resentencing under the Three Strikes Reform Act, and he was eligible for resentencing on the non-serious felony convictions even though he also had some current serious felony convictions. (Staff attorney William Robinson)

People v. Timothy Vernon (H042231)
Panel attorney: Blair Greenberg
Date: November 19, 2015

Appellant's convictions for auto theft with a prior conviction (Veh. Code, § 10851, Pen. Code, § 666.5) and for possession of a stolen car (Pen. Code, § 496d) were eligible for resentencing

under Proposition 47, at least when the defendant presented prima facie evidence the value of the vehicle was less than \$950. (Staff attorney Jonathan Grossman)

People v. Tomas Delgado (H040648)

Panel attorney: Rachel Sussman

Date: November 17, 2015

The defendant is eligible for resentencing under the Three Strikes Reform Act on the non-serious felony convictions, even if some of the current convictions were serious felonies. (Staff attorney William Robinson)

People v. Dale Briggs (H041433)

Staff attorney: Patrick McKenna

Date: November 13, 2015

The officer stopped appellant riding his bicycle at night and eventually arrested him on drug charges. The magistrate dismissed the complaint after granting a motion to suppress evidence, and the prosecution appealed. The court held there was insufficient evidence to support the prosecution's contention that the bicycle lacked reflectors or a light to justify the detention.

People v. Steven Carpenter (H041502)

Panel attorney: Andrew Shear

Date: October 19, 2015

The court erred in determining appellant was ineligible for deferred entry of judgment for a drug offense. Though he was also convicted of residential burglary, it was not related to the drug offense. Further, a condition of probation concerning drugs and alcohol required knowledge. (Staff attorney Paul Couenhoven)

People v. James Colyar (H041325)

Panel attorney: Jamie Lee Moore

Date: October 23, 2015

Appellant's commitment extension for being not guilty by reason of insanity must be reversed because trial counsel waived his right to counsel without appellant himself expressing a desire to waive the right. (Staff attorney Patrick McKenna)

People v. Miguel Gonzalez (H040708)

Panel attorney: J. Wilder Lee
Date: October 8, 2015

Appellant was convicted of being a prisoner in possession of a weapon with two prior strikes. His petition for resentencing under the Three Strikes Reform Act was denied on the ground he was armed during the commission of the offense. The record of conviction showed, however, he had swallowed it. The court of appeal held this did not constitute being armed because it was not readily available for use. (Staff attorney William Robinson)

People v. Talyon Orr (H041278)
Staff attorney: William Robinson
Date: August 31, 2015

Appellant was convicted of residential burglary and receiving stolen property with two prior strikes. He was sentenced to serve 60 years to life. His petition for resentencing under Proposition 36 was denied because his current offense included a residential burglary. However, he was entitled to resentencing on the receiving stolen property conviction.

People v. Joshua Seymour (H040560)
Staff attorney: Patrick McKenna
Date: August 31, 2015

In a published decision, the court of appeal agreed that because appellant was discharged from probation early, the court was required to grant his petition to expunge the conviction, even though he still owed victim restitution.

People v. Joe Collier (H039927)
Panel attorney: Jennifer Mannix
Date: August 28, 2015

Because the court failed to independently review the personnel file during an in camera hearing held pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, the matter was remanded for a new hearing. (Staff attorney Lori Quick)

People v. Bruce Blackburn (S211078)
Panel attorney: Rudy Kraft
People v. Dawn Tran (S211329)
Panel attorney: Carl Gonser
Date: August 17, 2015

Trial counsel waived the client's right to a jury determination of an MDO extension petition and of an NGI extension petition. The Sixth District held that the waiver of the right to a jury must be made by the client. The attorney can make the waiver only if there is substantial evidence to create a doubt as to the client's competence. The record should have a clear indication that the client waived the right to a jury or that he is incompetent. The court of appeal, however, found the error did not amount to a miscarriage of justice. The prosecution's petition for review was granted. The supreme court agreed with the court of appeal, except the deprivation of a jury trial amounted to a miscarriage of justice. (Staff attorneys Jonathan Grossman and Paul Couenhoven; Julia Freis, Ozro Childs, and Al Wagner also worked on this issue)

People v. Sean Roberts (H040091)

Staff attorney: Patrick McKenna

Date: June 17, 2015

Appellant entered into a plea bargain where he admitted certain charges in exchange for other charges being dismissed. The court, however, neglected to dismiss the remaining charges. The matter was remanded for the court to fulfill the plea bargain. Further, conditions of mandatory supervision concerning possession of indicia of drug sales, controlled substances, and drug paraphernalia required knowledge.

People v. Ricardo Islas (H041485)

Panel attorney: Edward Mahler

Date: June 9, 2015

The waiver of a right to jury with the promise that appellant could be punished to serve no more than four years was an illegal promise by the court that required reversal of the judgment. (Staff attorney William Robinson)

People v. Zeferino Espinoza (H039219)

Panel attorney: E, Michael Linscheid

Date: January 28, 2015

Appellant was charged with eight counts, two of which would be strikes. As trial started, the court granted his motion to represent himself, but it denied his request for a one day continuance. The court never advised him that if he fails to appear for trial he would be giving up his right to confront witnesses or present evidence at the trial. He failed to appear at trial, and he was tried in absentia without counsel. The jury acquitted him of the two serious felonies but convicted him of the other counts. The court of appeal reversed in a published decision. The trial court should have granted the continuance to give him an adequate opportunity to prepare. Once he failed to appear without a waiver of his rights to confrontation and present evidence, the court was required to re-

appoint counsel or declare a mistrial. (Staff attorney Jonathan Grossman)

ERROR AT TRIAL OR HEARING

People v. Frank Thomas (H041855)

Panel attorney: Jean Matulis

Date: December 10, 2015

Appellant's NGI extension was reversed because trial counsel waived his right to a jury trial over his objection. (Staff attorney Paul Couenhoven)

People v. Abel Esparza (H040625)

Panel attorney: Meredith Fahn

Date: November 25, 2015

In a published decision, the court of appeal held the appellant was entitled to a new hearing to determine if he were suitable for resentencing under the Three Strikes Reform Act because the superior court relied on the wrong standard of proof and on facts not in evidence in denying the petition. (Staff attorney Dallas Sacher)

People v. Jaime Alvarez (H039691)

Panel attorney: Kat Kozik

Date: November 24, 2015

The court reversed the gang and firearms allegations because the gang expert testified about testimonial hearsay for the basis of his opinion. (Staff attorney Paul Couenhoven)

People v. Edward Austin (H041449)

Panel attorney: Julie Schumer

Date: November 13, 2015

Appellant was convicted of five counts of grand theft from the same incident. Four of the counts must be dismissed because a defendant can be convicted of only one theft from the same incident. (Staff attorney William Robinson)

People v. Susan Dilley (H040167)

Panel attorney: Jamie Lee Moore

Date: November 12, 2015

The police questioned appellant about her being a suspect in an embezzlement. Although the interview started in a non-confrontational tone, the officer became more aggressive as appellant denied her involvement. The court of appeal held the interrogation became custodial and the failure to suppress her statements constituted prejudicial error. (Panel attorney Patrick McKenna)

People v. Fernando Moreno (H041189)
Staff attorney: William Robinson
Date: November 12, 2015

Appellant pled guilty to possession of a weapon by a prisoner with two prior strikes. He petitioned for resentencing under the Three Strikes Reform Act. The only information in the record of conviction was that he possessed a weapon while a prisoner. The trial court nonetheless denied the petition on the ground he was personally armed, based on information from the prosecution's opposition to a *Romero* motion filed after he pled. Because this information was not part of the record of conviction, there was insufficient grounds for the court to find he was ineligible for a resentencing hearing.

In re U.S. (H041822)
Panel attorney: Heather Shallenberger
Date: November 10, 2015

The juvenile court could not amend the petition at the end of the jurisdictional hearing to find appellant had committed a lesser related offense. (Staff attorney Patrick McKenna)

People v. Donald Whitner (H040856)
Panel attorney: Edward Mahler
Date: November 6, 2015

The court failed to follow the plea bargain when it increased the sentence at the sentencing hearing. (Staff attorney Jonathan Grossman)

People v. Pham (H040107)
Panel attorney: Sharon Fleming
Date: October 29, 2015

The court remanded the matter to determine if the charge of exhibiting harmful matter to a minor occurred within the statute of limitations. (Staff attorney Paul Couenhoven)

People v. Ortega (H038220)
Panel attorney: Rudy Kraft
Date: September 29, 2015

Appellant was charged with sexual penetration. The jury found him not guilty but convicted him of the lesser included offense of sexual assault. The court refused the defense request to instruct on sexual battery. The court of appeal decided in a published opinion that sexual battery is not statutorily a lesser included offense, and the information was not specific enough to say it was a lesser included offense as pled. It was, however, a lesser included offense, if one considered the transcript of the preliminary hearing, and the court held one can. The error was prejudicial. (Staff attorney Dallas Sacher)

People v. Arthur McAdory (H040483)
Panel attorney: Mark Greenberg
Date: September 25, 2015

A juror complained about comments by two other jurors during deliberations concerning the defendant's "culture." The trial court did not interpret this to be a racial reference and did not investigate the matter further. The court of appeal disagreed, and the matter was remanded for the trial court to make an inquiry about possible racial bias of the jurors. (Staff attorney Paul Couenhoven)

People v. Brian Rathjen (H041612)
Panel attorney: Jean Matulis
Date: September 22, 2015

The defendant could not be found guilty of two counts of hit and run for one accident, even when there were two victims. (Staff attorney William Robinson)

People v. Jeremy Garcia (H040067)
Panel attorney: Sara Ruddy
Date: July 30, 2015

The court reversed the verdicts for the gang enhancement, holding that a gang expert's reliance on statements by individuals to police officers, contained in police reports and field identification cards, were testimonial for purposes of determining the primary activities of the gang. Consequently, the statements violated the confrontation clause. Further, the court could not impose a ten year gang enhancement for a violent felony based on a great bodily injury enhancement also attaching to the conviction. (Staff attorney Lori Quick)

People v. Frederick George (H040665)
Staff attorney: Jonathan Grossman
Date: July 24, 2015

The judgment was reversed for failure to give a unanimity instruction.

People v. Manuel Rosas (H038879)
Panel attorney: Eric Weaver
Date: June 3, 2015

A gang expert was allowed to testify that a fellow gang member heard appellant admit committing the crime. The court ruled the evidence did not violate the confrontation clause, but it should have been excluded under Evidence Code section 352, notwithstanding an instruction the evidence was not admitted for the truth of the matter asserted. The court found the evidence was harmless as to the serious charges but prejudicial to the use of a gun enhancement. (Staff attorney Lori Quick)

People v. Rustin Bangham (H038975)
Staff attorney: Jonathan Grossman
Date: March 19, 2015

Appellant was charged with two counts of domestic violence from two separate incidents and three counts of dissuading a witness. The first dissuading count occurred on the date of the second domestic violence incident. The other two dissuading counts were from numerous telephone calls from the jail in which appellant told the complaining witness to say he did not do anything wrong. The witness was uncooperative with law enforcement from the beginning, and she refused to testify after consulting with her own attorney. The court admitted her statements to the police and to appellant under the forfeiture by wrongdoing doctrine. It was argued that telling the complaining witness to tell the truth was not dissuading a witness. The jury found appellant guilty only of a lesser included misdemeanor for the second incident and acquitted him of the dissuading charge from that incident, but it otherwise convicted him. The court of appeal reversed. Appellant's conduct did not cause the witness to refuse to testify; she decided this on her own. The error was prejudicial to all counts because the dissuading counts were dependent upon the assumption appellant was guilty of the underlying domestic violence.

People v. David Villaneda (H040183)
Panel attorney: Jill Kent
Date: February 20, 2015

Officers questioned appellant in his home during a parole search about a residential burglary.

He was never *Mirandized*. The court agreed that under the circumstances of the case, he was in custody and the admission of the statements violated *Miranda*. (Staff attorney Lori Quick)

People v. Earnest Andrews (H039340)
Panel attorney: J. Wilder Lee
Date: February 18, 2015

In a published opinion, the court of appeal agreed that the *Mayberry* defense applied to the crime of misdemeanor sexual battery. (Staff attorney Paul Couenhoven)

People v. Michael Gonzales (H039071)
Staff attorney: Patrick McKenna
Date: January 13, 2015

In a published decision, the court held that the prosecution must prove the defendant knew a firearm was loaded in order to convict him of carrying a loaded firearm in a vehicle (Pen. Code, § 26100, subd. (a)), disagreeing with *In re Ramon A.* (1995) 40 Cal.App.4th 935.

SENTENCING

People v. Sergio Cortez (H041481)
Panel attorney: Blair Greenberg
Date: December 18, 2015

A condition of probation concerning the possession or use of illegal drugs was modified to require knowledge. (Staff attorney Lori Quick)

People v. Jesse Noble (H040844, H040845)
Panel attorney: Eric Nelson
Date: December 11, 2015

Probation conditions banning the possession of weapons and the consumption of alcohol or controlled substances were modified to require knowledge. (Staff attorney Jonathan Grossman)

People v. Jaime Saavedra (H041166)
Panel attorney: Alissa Bjerkhoel
Date: December 8, 2015

The trial court erred in failing to award presentence conduct credits. (Staff attorney Jonathan

Grossman)

People v. Sheng Chiang (H040838)

Panel attorney: Teresa Biagini

Date: November 6, 2015

A condition to stay away from the victim was modified to require knowledge and to specify the distance. A condition not to go where drugs were sold or used was stricken as unreasonable because there was no evidence of a history of substance abuse. (Staff attorney Lori Quick)

People v. Ronald Morris (H041781)

Staff attorney: William Robinson

Date: November 3, 2015

Appellant was convicted of a crime and assessed a restitution fine. With the passage of Proposition 47, the conviction was reduced to a misdemeanor. Appellant sought to have the excess time in custody credited toward the restitution fines. A statute, passed after the crime but before Proposition 47 prohibited reducing restitution fines by excess time in custody. The court of appeal held the ex post facto clause prevented applying the new rule to crimes committed before the statute was enacted.

People v. Walton (H040869)

Panel attorney: J.P. Lavallee

Date: November 3, 2015

Appellant was convicted of attempted statutory rape and placed on probation. The court held that a condition of probation not to use or possess drugs or alcohol required knowledge, a condition to submit to chemical testing must be stricken because there was no evidence of a history of drug use, a condition not to possess sexually explicit material required knowledge, and a requirement prohibited him from being in the presence of children under 18 years needed to be modified by the trial court. (Staff attorney Lori Quick)

People v. Espinosa (H041735)

Panel attorney: Stephanie Adraktas

Date: October 29, 2015

The crimes were committed in the 1990's. Accordingly, the penalty assessments to fines must be reduced to reflect the amount in effect at the time of the offense. (Staff attorney Lori Quick)

People v. Dustin Gibbons (H040527)
Panel attorney: Andrew Shear
Date: October 23, 2015

The court could not impose a \$10 theft fine under Penal Code section 1202.5 for an offense not listed in the statute. (Staff attorney Lori Quick)

People v. Angela Nunez (H041402)
Panel attorney: Sara Coppin
Date: October 23, 2015

The court did not have the authority to order a protective order under Penal Code section 136.2 after sentencing the defendant for a crime that did not involve domestic violence. (Staff attorney Paul Couenhoven)

People v. Jesse Alfaro (H040982)
Panel attorney: Sara Coppin
Date: October 22, 2015

The court sentenced appellant to jail for two years on a felony. It also imposed a parole violation restitution fine. Because he will not be placed on parole, this fine was unauthorized. (Staff attorney Jonathan Grossman)

People v. Lusanne Fox (H040823)
Panel attorney: Jean Marinovich
Date: October 15, 2015

Appellant was convicted of theft occurring when the minimum restitution fine was \$200. The court, however, imposed a \$300 restitution fine, apparently believing this was the statutory minimum. The court of appeal agreed trial counsel was ineffective for not objecting. (Staff attorney Patrick McKenna)

People v. Collins (H040380)
Panel attorney: Joshua Schraer
Date: October 6, 2015

The court held that a condition of probation to waive a privilege against self-incrimination was unconstitutional. Conditions of probation to not possess pornographic or sexually explicit material, possess data encryption programs, or be where pornography is available were modified to

require knowledge. Finally, an order for attorney fees was remanded to determine the ability to pay. (Staff attorney Lori Quick)

People v. Escobar (H041060)
Panel attorney: Sharon Fleming
Date: September 29, 2015

The court erred in imposing a \$300 fine and penalty assessments for a crime committed when the fine was \$200 and the penalty assessments were less. (Staff attorney Jonathan Grossman)

People v. Joel Castillo (H041791)
Panel attorney: Jeff Glick
Date: September 24, 2015

The imposition of current penalty assessments to an older crime violated ex post facto principles. (Staff attorney Lori Quick)

In re J.C. (H041519)
Panel attorney: Laura Pedicini
Date: September 24, 2015

The court erred in imposing victim restitution for something the minor did not do. (Staff attorney Patrick McKenna)

People v. Fabian Romero (H040927)
Panel attorney: Robert Angres
Date: September 14, 2015

The court improperly used the same prior conviction to serve as both a prior serious felony conviction and as a prison prior. It should also be noted that an attempted violent felony is not itself a violent felony. (Staff attorney Paul Couenhoven)

People v. Adam Larios (H039931)
Panel attorney: J.J. Hamlyn
Date: September 10, 2015

Appellant was convicted of an assault and was ordered to stay away from school campuses over his objection. The condition was stricken because it was not related to the crime or to his

rehabilitation. (Staff attorney Jonathan Grossman)

People v. Maurice Ainsworth (H039571)

Panel attorney: Danalynn Prtiz

Date: September 11, 2015

The court erred in denying an evidentiary hearing on whether appellant forfeited presentence conduct credits due to misconduct in the jail. The court also failed to properly calculate the length of the sentence and the amount of the court facilities fee. (Staff attorney William Robinson)

People v. Gilberto Valencia (H040787)

Panel attorney: Elizabeth Garfinkle

Date: August 31, 2015

Appellant was convicted of residential burglary with a gun enhancement and carrying a loaded firearm in a public place. The punishment for the gun conviction needed to be stayed pursuant to Penal Code section 654. (Staff attorney Jonathan Grossman)

In re I.G. (H040896)

Panel attorney: Victoria Schultz

Date: August 25, 2015

A condition of probation to obey school rules was vague because it did not specify which school rules. (Staff attorney Jonathan Grossman)

People v. Calvin Moore (H040793)

Panel attorney: Alan Siraco

Date: August 21, 2015

Appellant was entitled to additional presentence credits. (Staff attorney William Robinson)

People v. Tommy Thomas (H038396)

Panel attorney: Michael Allen

Date: July 30, 2015

The court sentenced appellant and determined at a later date the amount of restitution. It also ordered he pay 10% interest on the award, starting on the day he was sentenced. The interest can start only on the date the restitution order was made. (Staff attorney Dallas Sacher)

People v. Delapena (H041363)
Panel attorney: Sejah Patel
Date: July 30, 2015

Conditions of probation concerning possession or consumption of drugs and possession of firearms or ammunition were modified to require knowledge. (Staff attorney Patrick McKenna)

People v. David Bennett (H042325)
Panel attorney: Jean Marinovich
Date: July 28, 2015

Appellant was convicted of commercial burglary and use of a stolen credit card. The punishment for the latter must be stayed pursuant to Penal Code section 654. (Staff attorney Paul Couenhoven)

People v. Angelica Hilldale (H040811)
Panel attorney: Alissa Bjerkhoel
Date: July 22, 2015

The matter was remanded because the trial court failed to calculate the amount of presentence credits. Further, a condition of probation listed in the minute order was not actually imposed by the court. (Staff attorney Patrick McKenna)

People v. Francisco Camarena (H041013)
Panel attorney: Steven Torres
Date: July 16, 2015

A no contact order with a certain victim was valid only if the court provided a time limit for the order. The matter was remanded for the court to do so. (Staff attorney Lori Quick)

People v. Wensy Sanchez (H040624)
Panel attorney: Randy Kravis
Date: July 16, 2015

A restitution order for the Victim Compensation and Government Claims Board was reversed because it was not supported by documentation as required by statute. (Staff attorney Paul Couenhoven)

In re V.O. (H041109)
Panel attorney: Rachel Sussman
Date: July 15 2015

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

People v. Ralph Ringo (H041418)
Panel attorney: Jonathan Berger
Date: July 15, 2015

An entry in the minute order of the sentencing hearing that a domestic violence restraining order shall remain in place was clerical error, as the judge never orally ordered this. (Staff attorney Jonathan Grossman)

People v. Dorothy Lopez (H041154)
Staff attorney: Paul Couenhoven
Date: June 5, 2015

A condition of probation not to possess alcohol or controlled substances was modified to require knowledge.

People v. Duc Tran (H040534)
Panel attorney: Blair Greenberg
Date: May 28, 2015

Conditions not to use or possess illegal drugs or own or possess firearms or ammunition require knowledge. (Staff attorney Patrick McKenna)

People v. Cornelio Hernandez (H040586)
Panel attorney: Carlo Rolando
Date: May 21, 2015

The court struck the probation condition not to associate with persons whose behavior might lead to criminal activities. Further, the court could not simply impose a total fine of \$2800 without identifying the basis of the fine. Finally, the court erred in not awarding any presentence conduct credits. (Staff attorney Patrick McKenna)

People v. Robert Butera (H040996)
Panel attorney: DT Rogers
Date: M ay 21, 2015

A \$10 crime prevention fine under Penal Code section 1202.5 did not apply to appellant's convictions. (Staff attorney Jonathan Grossman)

People v. Santiago Ortiz and Ricardo Martinez (H039152)
Panel attorney: Steven Schorr and Kyle Gee
Date: May 20, 2015

The matter was remanded for the court to correct an ambiguity in the sentencing. Further, the court was required to calculate presentence conduct credits, and the abstract of judgment needed to be corrected. (Staff attorney William Robinson)

People v. Gonzalez (H041229)
Panel attorney: Stephanie Adraktas
Date: May 18, 2015

Penalty assessments were adjusted to reflect the amount that existed when the crime was committed. (Staff attorney Patrick McKenna)

In re Jeffrey C. (H041390)
Panel attorney: Eileen Manning-Villar
Date: May 15, 2015

The juvenile court lacked the authority to charge a minor attorney fees. Conditions of probation concerning the possession of incendiary devices and to stay away were modified to require knowledge. (Staff attorney William Robinson)

People v. Juan Garcia (H041049)
Panel attorney: Jin Kim
Date: May 12, 2015

The court erred in ordering a no alcohol condition of probation over objection when there was no evidence of alcohol being involved in the crime or the defendant having a problem with alcohol. (Staff attorney Jonathan Grossman)

People v. Ricardo Torres (H040348)
Panel attorney: Rachel Varnell for Rivera
Date: May 12, 2015

A condition of probation for the codefendant Rivera, that he stay away from the victim, was modified to require knowledge. (Staff attorney Lori Quick)

People v. Magat (H039935)
Panel attorney: Christopher Morales
Date: May 11, 2015

A condition of probation waiving the right against of self-incrimination was stricken as unconstitutional, and a condition not to reside in a home where there was a child was modified to require knowledge. Imposition of a fine over objection without evidence of an ability to pay was stricken. (Staff attorney Paul Couenhoven)

People v. Carlus Underwood (H040312)
Panel attorney : Jeffrey Glick
Date: April 30, 2015

The court erred in imposing penalty assessments in effect at the time of sentencing instead of those in effect at the time the crime was committed. (Staff attorney Paul Couenhoven)

In re P.D. (H041371)
Panel attorney: Dena Young
Date: April 28, 2015

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

People v. Aundre Thompson (H040854)
Staff attorney: Lori Quick
Date: April 21, 2015

The court lacked authority to impose an AIDS education fine, and it was required to explain what the penalty assessments were.

People v. Delgado (H041059)

Staff attorney: Jonathan Grossman
Date: April 21, 2015

The condition of probation to waive his Fifth Amendment right against self-incrimination was unconstitutional.

People v. Elizabeth Wheeler (H041031)
Panel attorney: Charles Marson
Date: April 20, 2015

The probation condition not to associate with people whose behavior might lead to criminal activities was stricken. The condition not to frequent places where alcohol is the chief item of sale was modified to require knowledge. Appellant was awarded conduct credits for her presentence time in custody. (Staff attorney Jonathan Grossman)

People v. Raymond Cardenas (H041361)
Panel attorney: Lisa Ma
Date: April 13, 2015

Probation conditions concerning the possession or consumption of alcohol or controlled substances, or going where they are the major item of sale were modified to require knowledge. (Staff attorney Paul Couenhoven)

In re T.G. (H040915)
Panel attorney: Stanley Radtke
Date: April 8, 2015

The juvenile court cannot make the minor liable for attorney fees. (Staff attorney Lori Quick)

In re X.R. (H040558)
Panel attorney: Eileen Manning-Villar
Date: April 2, 2015

The juvenile court miscalculated predisposition custody credits. (Staff attorney Patrick McKenna)

People v. Gonzales (H040709)
Panel attorney: Sharon Fleming

Date: March 27, 2015

Appellant was convicted of a sex offense and placed on probation. The court held that a condition of probation that he waive his right against self-incrimination was unconstitutional. (Staff attorney Paul Couenhoven)

People v. Garcia (H040077)
Panel attorney: Sharon Fleming
Date: March 26, 2015

Appellant was convicted of a sex offense and placed on probation. The court held that a condition of probation that he waive his right against self-incrimination was unconstitutional. So was the condition not to date or socialize with someone with custody over a minor required knowledge, though this condition might be proper if modified. Other conditions of probation required knowledge. (Staff attorney Paul Couenhoven)

In re E.G. (H040886)
Panel attorney: Dena Young
Date: March 27, 2015

A stay away condition of probation was modified to require knowledge, and the matter was remanded for the court to determine if the offense was a felony or misdemeanor. (Staff attorney Paul Couenhoven)

People v. Julio Jimenez (H040459)
Staff attorney: Meredith Fahn
Date: March 25, 2015

The court erred in not awarding presentence credits. (Staff attorney Jonathan Grossman)

People v. Tekle (H040692)
Staff attorney: Lori Quick
Date: March 23, 2015

Appellant was convicted of a sex offense and placed on probation. The court held that a condition of probation that he waive his right against self-incrimination was unconstitutional. Further, a condition not to date or socialize with someone with custody over a minor required knowledge.

People v. Ricardo Esquivel (H038539)
Panel attorney: Sharon Fleming
Date: March 18, 2015

The court was required to impose one restitution fine for the case, not separate fines for each count. Further, the court imposed the incorrect amount for the criminal conviction assessment and the court security fees. (Staff attorney Paul Couenhoven)

People v. Pereira (H040159)
Panel attorney: Che Gettleman
Date: March 13, 2015

Appellant was convicted of possessing child pornography and placed on probation. The court held that a condition of probation that he waive his right against self-incrimination was unconstitutional. Further, conditions of probation not to possess sexually explicit material, not to date or socialize with someone with custody over a minor, not to reside in a home with a minor, not frequent where pornography is available, not to access the Internet without approval of the probation officer, and not to erase the Internet browser history must be modified to require knowledge. (Staff attorney Paul Couenhoven)

People v. Michael Trujillo (H040865)
Staff attorney: Katherine Dwight
Date: March 6, 2015

An administration fee for collecting the restitution fine was improperly part of the court order when the defendant was sentenced to prison. (Staff attorney Paul Couenhoven)

In re A.R. (H041047)
Panel attorney: Emily Lowther
Date: March 6, 2015

A condition of probation not to possess graffiti-related materials or engaging in illegal gang-related activity required knowledge. (Staff attorney Lori Quick)

People v. Juan Rebulloza (H040847)
Staff attorney: Paul Couenhoven
Date: February 27, 2015

In a published decision, the court decided that a condition of probation to waive one's Fifth

Amendment right not to incriminate oneself was unconstitutional, and the requirement to waive the psychotherapist privilege must be construed to permit disclosures only as necessary to ensure proper participation with probation.

People v. Monico Gonzalez
Staff attorney: Paul Couenhoven
Date: February 26, 2015

Appellant was convicted of fraud. Over objection, the court ordered he not use alcohol and he undergo drug treatment as conditions of probation, though there was no evidence of drug or excessive alcohol use. The court of appeal struck the conditions and modified the condition not to use or possess controlled substances to require knowledge.

In re C.R. (H040753)
Panel attorney: John Mills
Date: February 26, 2015

The condition of probation not to go to gang areas was modified to comply with constitutional requirements. (Staff attorney Patrick McKenna)

People v. Ruben Garcia (H040883)
Panel attorney: Morgan Taylor
Date: February 26, 2015

Conditions of probation concerning drugs were modified to require knowledge. (Staff attorney Jonathan Grossman)

People v. Barrios (H039190)
Panel attorney: JuNelle Harris
Date: February 25, 2015

Appellant could not be convicted of violating Penal Code section 288.5 and four counts of section 288 for the same acts. Further, the minute order and abstract of judgment were corrected to eliminate a fine the court never pronounced. (Staff attorney William Robinson)

In re K.C. (H040667)
Panel attorney: Jasmine Patel
Date: February 24, 2015

Conditions of post-DJJ release concerning use of drugs, possession of drug paraphernalia, and seeking education or employment were modified to comply with constitutional requirements. (Staff attorney Patrick McKenna)

People v. Gary George (H040455)
Panel attorney: Alexis Haller
Date: February 23, 2015

A probation supervision fee was not authorized when the defendant was placed on mandatory supervised release. (Staff attorney Patrick McKenna)

People v. Edward Jacalne (H040045)
Panel attorney: Jonathan Gettleman
Date: February 23, 2015

Conditions of probation not to possess pornography and to not delete Internet browsing activity were modified to require knowledge. (Staff attorney Patrick McKenna)

People v. Theodore Johnson (H040760)
Panel attorney: Maggie ShROUT
Date: February 23, 2015

The restitution fines were modified to reflect the correct formula at the time the crimes were committed. (Staff attorney William Robinson)

People v. Richard Davidson (H037751)
Panel attorney: JuNelle Harris
Date: February 9, 2015

Among other things, appellant was sentenced to serve 25 years to life for misdemeanor vandalism. This was unauthorized. Further, appellant could not be convicted of assault with a deadly weapon and assault with force likely to cause great bodily injury for the same act. The punishment for vandalism should have been stayed because it was the same act and committed with the same intent as a felony child endangerment conviction. The restitution fines should be reduced to take into account the conviction that was reversed and the punishments that were being stayed. Finally, the court erred in limiting presentence conduct credits in a third strike case to 20% of the actual days in custody. (Staff attorney William Robinson)

People v. Patricia Conklin (H040234)
Staff attorney: Jonathan Grossman
Date: January 27, 2015

Appellant was convicted of two counts of endangering the health of an elder by taking her mother out of a nursing home and returning her home, which was unsafe for her. Because appellant's intent was the same for both counts, the punishment for one of the counts should have been stayed under Penal Code section 654.

Ruelas v. Superior Court (H039848)
Attorney: William Daley
Date: January 23, 2015

In a published decision, the court held that mandatory sex registration for juveniles who commit a violation of Penal Code section 647.6 (annoying a child) and are committed to DJJ violate equal protection because minors who commit some contact sex offenses and minors who commit the same offense but are not committed to DJJ are not required to register. (SDAP did not participate in this case)

In re J.P. (H040958)
Panel attorney: Noelle Powell
Date: January 15, 2015

The minor could not be held liable for attorney fees. Further, the minor was entitled to precommitment credits. And the minute order needed to be amended to reflect the court's oral pronouncement of the dispositional orders. (Staff attorney Patrick McKenna)

People v. Efren Delgado (H040579)
Staff attorney: Lori Quick
Date: January 13, 2015

The court modified conditions of probation concerning drugs and alcohol to avoid constitutional problems.

People v. Ashish Lal
Panel attorney: Joseph Shipp
Date: January 6, 2015

The abstract of judgment was corrected to indicate that the punishment for the prison priors

were stricken. (Staff attorney Jonathan Grossman)

People v. Brigitte Baron (H040580)

Staff attorney: Jonathan Grossman

Date: January 5, 2015

The court modified a condition of probation concerning drugs and alcohol to avoid constitutional problems.

DEPENDENCY CASES

In re J.D. (H042411)

Attorneys: James Haworth and Paul Couenhoven

Date: December 14, 2015

The court reversed because of a failure to provide proper notice under ICWA.

In re K.D. (H041910)

Panel attorney: James Haworth

Date: October 19, 2015

The court failed to provide adequate notice as required under ICWA. (Staff attorney Jonathan Grossman)

In re C.R. (H041488)

Panel attorney: Catherine Lundy

Date: May 29, 2015

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

In re S.Z. (H041142)

Panel attorneys: Neale Gold, Rebekah Sass, Deborah Wald

Date: May 19, 2015

The juvenile court found the alleged father to be a presumed father but then found the presumption rebutted because another man had a judgment of paternity, though the latter was not a presumed father. This left the minor with no father. The court abused its discretion in failing to consider whether finding the presumed paternity was rebutted was in the minor's best interests.

(Staff attorney Jonathan Grossman)

HABEAS CORPUS

In re Daniel Jeske (H042424)

Panel attorney: Elisa Brandes

Date: November 30, 2015

A jury convicted appellant of residential burglary. In his defense, he presented evidence of a GPS monitor to his car that indicated he did not drive to the residence on that day, but this did not preclude the possibility he had other transportation. He testified he was with his mother, but his mother was not called to testify. In a habeas corpus petition, the mother declared she was never asked by trial counsel to testify. The court issued an order to show cause. (Staff attorney Jonathan Grossman)

In re Espinoza (H041440)

Panel attorney: Julie Dunger

Date: September 15, 2015

The defendant was convicted of assaulting a teenager who was a foster child. Trial counsel failed to properly request disclosure of the complaining witness's juvenile court file, which reported that the minor had a history of lying. The court issued an order to show cause, returnable to the superior court. (Staff attorney Jonathan Grossman)

In re Anthony Broussard (Santa Clara No. 82546)

Staff attorney: Lori Quick

Date: August 25, 2015

The Board of Parole Hearings denied parole, finding there was "some evidence" that Mr. Broussard posed an unreasonable risk to public safety. The superior court granted relief on habeas corpus. While the standard for a court reviewing the Board's decision is to determine if there is "some evidence" to support the Board's findings, Board itself must make its findings by a preponderance of the evidence.

In re Anthony Trzuppek (Santa Clara No. CC599160)

Staff attorney: Jonathan Grossman

Date: July 23, 2015

Petitioner was convicted of gross vehicular manslaughter while intoxicated with a great bodily injury enhancement. After his conviction was final, the supreme court decided in *People v.*

Cook (2015) 60 Cal.4th 922 that a great bodily injury enhancement cannot be added to such a conviction. A petition for writ of habeas corpus was filed, and the court agreed he was entitled to resentencing. His sentence was reduced by three years.

In re Alexis Aguilar (H040784)
Staff attorney: Patrick McKenna
Date: April 30, 2015

Appellant was convicted of murder with personal discharge of a firearm causing great bodily injury and the gang crime, which were committed when he was 17 years old. He was sentenced to serve 56 years to life. The court of appeal agreed the sentence amounted to a life without parole and violated the Eighth Amendment prohibition against cruel and unusual punishment. The court remanded the matter for a new sentencing hearing.

In re Willover (H040757)
Panel attorney: Larry Gibbs
Date: April 16, 2015

In a published decision, the court held that life without parole for an offender who was a minor when the crime was committed violated the Eighth Amendment because the sentencing court was under the mistaken view that LWOP was statutorily presumed. (Staff attorney Dallas Sacher)

MISCELLANEOUS

People v. David Lynall (H041737)
Staff attorney: Jonathan Grossman
Date: January 29, 2015

In a published decision, the court held that when charges are reduced to a misdemeanor pursuant to Proposition 47 after an information or indictment is filed, the appeal belongs in the court of appeal.

People v. Miguel Rivera (H041742)
Staff attorney: Jonathan Grossman
Date: January 29, 2015

In a published decision, the court held that when a felony conviction is reduced to a misdemeanor pursuant to Proposition 47, the appeal belongs in the court of appeal.

