

**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. Aaron Davis (H041255)

Panel attorney: Paul Kleven

Date: November 8, 2016

Appellant was convicted of stalking while a restraining order was in effect and of repeatedly violating the restraining order. The order was never validly served.. The court of appeal agreed there was insufficient evidence because there lacked evidence there was a valid restraining order. (Staff attorney Lori Quick)

People v. Antonio Quesada (H041174)

Panel attorney: Peggy Headley

Date: July 6, 2016

Appellant received a second strike sentence based on a conviction for assault with a deadly weapon for which he was placed informal probation. The court held that placing him on informal probation for a wobbler rendered the conviction a misdemeanor by operation of law. Consequently, it could not serve as a prior strike conviction. (Staff attorney Lori Quick)

In re K.S. (H041562)

Panel attorney: Michael Sampson

Date: April 4, 2016

There was insufficient evidence of appellant using force or duress in orally copulating the victim, other than his confession. Because of a lack of a corpus delicti, the conviction was reduced. (Staff attorney Lori Quick)

In re A.S. (H042302)

Panel attorney: Heather Shallenberger

Date: March 22, 2016

Three people were found in the victim's car. The victim told them to get out. Appellant was

in the back seat and the first to get out. She said they were in there in order to get warm. She was found to have committed auto burglary. The court of appeal decided there was insufficient evidence that she had the intent to take anything or commit a felony when she entered the car. (Staff attorney Patrick McKenna)

People v. Jaime Guevara (H039877)
Panel attorney: Gordon Brownell
Date: March 8, 2016

There was insufficient evidence to support the gang crime based on appellant assisting another who was not a gang member. (Staff attorney Patrick McKenna)

PRETRIAL AND POSTTRIAL MOTIONS

People v. Cynthia Martinez (H043430)
Panel attorney: Michael McCormick
Date: December 22, 2016

The court was required to reduce to misdemeanors convictions that qualified under Proposition 47, though the convictions had been expunged. (Staff attorney William Robinson)

People v. Cynthia Fuson (H043336)
Panel attorney: Blair Greenberg
Date: December 13, 2016

The court was required to reduce to misdemeanors convictions that qualified under Proposition 47, though the convictions had been expunged. (Staff attorney William Robinson)

People v. Miguel Moreno (H042132)
Panel attorney: Sara Coppin
Date: November 16, 2016

Proposition 47 applies to auto theft and auto theft with a prior. (Staff attorney William Robinson)

People v. Gavin Quitob (H043197)
Panel attorney: Edward Mahler
Date: November 10, 2016

Shoplifting under Proposition 47 includes entering a store to commit theft by false pretenses.
(Staff attorney Paul Couenhoven)

People v. Joseph Pesti (H042613)
Staff attorney: Nerissa Huertas
Date: November 8, 2016

Appellant was convicted of felony petty theft with a prior and felony commercial burglary with an on-bail enhancement. Under Proposition 47, the petty theft with a prior was reduced to a misdemeanor, and he was resentenced. The on-bail enhancement should have been stricken at resentencing because it was no longer based on a felony. Further, commercial burglary qualified for relief under Proposition 47, even though it was based on a forgery.

In re John Guiomar (H043114)
Staff attorney: Jonathan Grossman
Date: November 7, 2016

Appellant was convicted of robbery with a strike, a failure to appear without a strike, and some convictions that qualified for relief under Proposition 47. At resentencing, the court changed the sentence for the failure to appear to be four years concurrent (the middle term doubled). This was unauthorized because a strike did not attach to this conviction.

People v. James Elkins (H043211)
Panel attorney: Mary Jo Strnad
Date: October 21, 2016

Proposition 47 applied to convictions that were expunged. (Staff attorney William Robinson)

People v. Larry Page (H041765)
Staff attorney: William Robinson
Date: October 20, 2016

Although one of appellant's current convictions was a serious felony, he was eligible for relief for the other conviction under Proposition 36.

People v. Ty Brown (H043422)
Staff attorney: William Robinson
Date: September 22, 2016

The court erred in deciding it did not have authority to reduce the conviction to a misdemeanor under Proposition 47 after the defendant had his conviction expunged.

People v. Jasmine Tucker (H042830)
Panel attorney: Kimberly Taylor
Date: September 27, 2016

Commercial burglary to commit use of a stolen credit card qualifies as shoplifting under Proposition 47. (Staff attorney Patrick McKenna)

People v. Joseph Panza (H042993)
Panel attorney: Jeffrey Kross
Date: September 8, 2016

While on probation, appellant was imprisoned in Arizona on a new case. He made a demand to be sentenced on probation in absentia under Penal Code section 1203.2a, but the trial court failed to act. After completing the Arizona sentence, the California court revoked probation. The court of appeal reversed. The trial court lost jurisdiction when it failed to act pursuant to the section 1203.2a (Staff attorney Paul Couenhoven)

People v. Benjamin Mancillas (H043072)
Staff attorney: Paul Couenhoven
Date: August 31, 2016

The court erred in denying a petition for resentencing under Proposition 47 on the ground the prosecution would be deprived of the benefit of the plea bargain.

People v. Adam Rodriguez (S223129)
Panel attorney: Jonathan Berger
Date: August 22, 2016

Appellant won a motion to suppress evidence in San Jose. The prosecution refiled the charges. He renewed his motion to suppress and requested the same judge hear the motion pursuant to Penal Code section 1538.5, subdivision (p). The court denied the request, stating the judge was unavailable because he had been reassigned to be in Palo Alto. The suppression motion was denied, and the court of appeal affirmed. The supreme court granted review and held the judge was not unavailable under the statute simply because he was assigned to set at a courthouse in another city in the county. (Staff attorney Lori Quick)

People v. Jose Cebrenros (H043131)
Panel attorney: Blair Greenberg
Date: August 22, 2016

Proposition 47 applies to a conviction that has been expunged under Penal Code section 1203.4. (Staff attorney William Robinson)

People v. Pete Valdez (H042346)
Panel attorney: Jason Szydlik
Date: August 18, 2016

The superior court erred in believing that probationers were not entitled to relief under Proposition 47. (Staff attorney Jonathan Grossman)

People v. Recia Esteban (H042626)
Panel attorney: Julia Freis
Date: July 19, 2016

Appellant was on probation for a crime that qualified to be reduced to a misdemeanor under Proposition 47. The superior court refused to grant relief unless it violated probation and sentenced him. In doing so, it executed the previously stayed violation revocation restitution fine. The court of appeal held he was eligible for resentencing while on probation and the court erred in revoking probation and requiring him to pay an additional fine in order to grant him relief. (Staff attorney Jonathan Grossman)

People v. Marciela Campbell (H043155)
Panel attorney: Blair Greenberg
Date: July 18, 2016

Appellant was entitled to relief under Proposition 47 for an offense that had been expunged. (Staff attorney William Robinson)

People v. Ramon Caceres (H042320)
Panel attorney: Rachel Sussman
Date: July 7, 2016

A person on probation is eligible for resentencing under Proposition 47. (Staff attorney Patrick McKenna)

People v. Leslie Carreon (H040632)
Panel attorney: Monica Stoner
Date: June 30, 2016

Appellant was staying in the converted garage of a probationer. In conducting a probation search, the police also searched the converted garage and found contraband in appellant's purse. The police knew it was appellant's room. In a published opinion, the court of appeal reversed the denial of the motion to suppress the evidence. A probation search condition amounts to consent. But the probationer did not have the authority to consent to search appellant's purse in her room. (Staff attorney Patrick McKenna)

People v. Angela Beltran-Carranza (H042332)
Panel attorney: Carla Castillo
Date: June 28, 2016

The court could not deny a petition for resentencing under Proposition 47 simply because the defendant had entered into a plea bargain. (Staff attorney William Robinson)

People v. Johnny Cordova (H041050)
Panel attorney: Keith Wattley
Date: June 24, 2016

The court held in a published decision that the definition of dangerousness enacted by Proposition 47 applied to cases brought under Proposition 36. (Staff attorney William Robinson)

People v. Eric Dunn (H042059)
Panel attorney: Carrie Kojimoto
Date: June 24, 2016

The superior court denied the Proposition 47 petition for resentencing because the prosecution would not be able to receive the benefit of the bargain. The superior court said if it granted the petition, the prosecution would be permitted to undo the plea bargain. In a published decision, the court of appeal ruled that the petition could not be denied because there was a plea bargain and the prosecution did not have the authority to withdraw the plea if the petition were granted. (Staff attorney William Robinson)

People v. Ryan Garrett (H041927)
Panel attorney: Edward Mahler
Date: June 15, 2016

In a published decision, the court held that entering a store with intent to commit theft by fraud through identity theft (Pen. Code, § 530.5) is covered by Proposition 47 when the amount is less than \$950. (Staff attorney William Robinson)

People v. Daniel Andrade (H042520)
Panel attorney: Mary Jo Strnad
Date: June 14, 2016

Proposition 47 applies to expunged convictions. (Staff attorney Patrick McKenna)

People v. Airy (H042552)
Staff attorney: William Robinson
Date: June 14, 2016

Proposition 47 prohibits resentencing for those who must register under Penal Code section 290, subdivision (c). Appellant must register because he committed a sex offense in another state, but this provision is not found under subdivision (c) of section 290. He thus qualified for resentencing under Proposition 47.

People v. Jack Ochoa (H041918)
Panel attorney: Frank McCabe
Date: June 13, 2016

Appellant was arrested for being part of a methamphetamine ring with the Nuestra Familia criminal street gang. He was charged with conspiracy to distribute methamphetamine, and he pled to it. Afterward, he was indicted with conspiracy to distribute methamphetamine with a gang enhancement. The court held in a published decision that the second prosecution violated Penal Code section 654 and *Kellett v. Superior Court* (1966) 63 Cal.2d 822. (Staff attorney Paul Couenhoven)

People v. Reynaldo Acidera (H042312)
Panel attorney: Rachel Sussman
Date: June 7, 2016

A defendant is eligible for resentencing under Proposition 47 when he is on probation. (Staff attorney Jonathan Grossman)

People v. Justin Edwards (H042627)

Panel attorney: Rachel Sussman
Date: May 31, 2016

A defendant is eligible for resentencing under Proposition 47 when he is on probation. (Staff attorney William Robinson)

People v. Freddy Espino (HJ040942)
Panel attorney: Rudy Alejo
Date: May 24, 2016

After appellant was stopped for speeding, he was searched and the officers found a crystal-like object in his pocket. Suspecting it was crystal methamphetamine, the officer handcuffed appellant. The officer then determined the object was not drugs but probably jewelry. But appellant remained handcuffed when the officer asked for permission to search the car. Appellant agreed, and drugs were found in the car. In a published decision, the court determined appellant was arrested when he was handcuffed. When the officer determined the object was not drugs, there was no longer probable cause for an arrest. His consent while under arrest without probable cause was invalid. (Staff attorney Jonathan Grossman)

People v. Hoan Do (H041759 et al.)
Panel attorney: Sejal Patel
Date: May 10, 2016

An officer went to a house after receiving a dispatch to do a “welfare check.” The reporting party from Massachusetts called concerned that her sister was being held hostage at the house where cocaine was being grown. The reporting party said her sister was Kathy Nguyen and the renter of the property was Hoan. The caller provided a description of both. The officer arrived at the house and saw two people outside matching their descriptions. They identified themselves as Hoan Do and Kathy Nguyen. Nguyen said she was the landlord and was not being held hostage. She did not know if there was anyone else inside. She did look nervous. The police searched the house and found marijuana being grown. The court of appeal reversed the denial of the suppression motion, holding there was not an objective basis for suspecting there was an emergency concerning one’s safety to justify the warrantless entry of the house. (Staff attorney William Robinson)

People v. Joshua Nay (H040384)
Staff attorney: Patrick McKenna
Date: April 26, 2016

The officers could not detain appellant for possessing marijuana paraphernalia, which is not illegal. Though the officer had cause to pat search him for weapons, the officer lacked justification

to remove a glass pipe from appellant's pants pocket because the officer did not say he believed it was a weapon or anything but a marijuana paraphernalia.

People v. Melecio Padillo (H041625)

Panel attorney: Edward Mahler

Date: April 19, 2016

Appellant's convictions were reduced to misdemeanors pursuant to Proposition 47. The court should have applied excess time in custody to his fines. (Staff attorney Jonathan Grossman)

People v. James Andert (H041834)

Panel attorney: Katja Grosch

Date: April 11, 2016

Appellant was held to answer. Although he waived his right to a speedy arraignment on the information, this did not permit the prosecution to delay filing the information more than 15 days after the preliminary hearing, as required by statute. Because the case had been dismissed before, appellant was entitled to have the conviction reversed. (Staff attorney Patrick McKenna)

People v. Martha Gomez(H042357)

Panel attorney: Katherine Dwight

Date: March 21, 2016

Proposition 47 applied to those on probation. (Staff attorney Lori Quick)

People v. Roger Storment (H042338)

Panel attorney: Carla Castillo

Date: February 29, 2016

The court refused to reduce appellant's conviction for forgery to a misdemeanor under Proposition 47 because there was a plea bargain. The court of appeal reversed. (Staff attorney Paul Couenhoven)

People v. Juan Rodriguez (H042101)

Panel attorney: Morgan Taylor

Date: February 22, 2016

The superior court erred in believing that auto theft was not covered by Proposition 47.

(Staff attorney William Robinson)

People v. Antonio Silva (H042164)

Panel attorney: Michael Sampson

Date: February 11, 2016

Appellant's conviction was reduced to a misdemeanor. He was entitled to have excess time in custody credited toward his fines. (Staff attorney Paul Couenhoven)

People v. Rafaela Garcia (H042396)

Staff attorney: William Robinson

Date: February 10, 2016

Monterey denied reducing a conviction under Proposition 47 because appellant was on probation. The court of appeal reversed, holding in a published opinion that a probationer has been "sentenced" under Prop. 47.

People v. Felix (H042334)

Panel attorney: Carla Castillo

Date: February 8, 2016

Appellant was entitled to have his conviction for possession of methamphetamine reduced to a misdemeanor under Proposition 47. (Staff attorney Paul Couenhoven)

People v. Manuel Ortiz(H042062)

Panel attorney: Blair Greenberg

Date: January 8, 2016

The court ruled in a published decision that someone convicted of stealing a motor vehicle (as opposed to unlawfully driving it) under Vehicle Code section 10851 is eligible for resentencing under Proposition 47 if it can be shown the value of the vehicle was less than \$950. (Staff attorney William Robinson)

ERROR AT TRIAL OR HEARING

People v. James Cramer et al. (H34348)

Panel attorneys: Eric Weaver, David Martin, Maribeth Halloran

Date: December 30, 2016

The gang expert testified that the Nuestra Familia gang was notoriously violent and described violent murders. This testimony was only marginally relevant to proving the allegations and should have been excluded under Evidence Code section 352. The prejudice required reversal of the gang findings. (Staff attorney Lori Quick)

People v. Paul Gauwain (H042644)
Panel attorney: Julia Freis
Date: December 28, 2016

Trial counsel waived the defendant's right to a jury in an MDO extension trial. Because there was not finding the defendant lacked the capacity to make this decision, waiver of the right to jury needed to be made personally by the defendant. (Staff attorney Jonathan Grossman)

People v. Stillwell (H041819)
Panel attorney: Jean Matulis
Date: November 29, 2016

Appellant was committed for life under the SVP Act. The court of appeal agreed the judgment must be reversed because hearsay evidence was improperly admitted through the expert as a basis for the opinion. Further, there was a potential equal protection claim that SVP defendants had a right not to testify. (Staff attorney Lori Quick)

People v. Manuel Rosas (H038879)
Panel attorney: Eric Weaver
Date: November 16, 2016

Admission of testimonial hearsay through the gang expert was prejudicial not only to the gang allegations but also to the underlying charge, requiring reversal of the judgment. (Staff attorney Lori Quick)

People v. Everardo Robles-Carvajal (H039162)
Panel attorney: Gordon Scott
Date: June 30, 2016

Appellant violated probation by picking up a new case. Trial counsel waived his appearance at the sentencing hearing. Counsel did not have this authority. The court erred in sentencing appellant without him present or a personal waiver from him. It also failed to consider to impose his sentence concurrent with the other sentence and failed to award proper presentence credits. Trial counsel was ineffective for not protecting appellant's rights in these matters. (Staff attorney William

Robinson)

People v. Jose Olivas (H040864)

Panel attorney: Robert Angres

Date: June 28, 2016

Several offenses were charged in the alternative. The jury asked which order it should consider the charges, and the trial court responded it should not consider the lesser related charges unless it first acquits on the greater charges. The court of appeal decided in a published decision this was error requiring reversal of those charges. (Staff attorney Paul Couenhoven)

In re S.V. (H041274)

Panel attorney: Jonathan Gettleman

Date: May 17, 2016

Trial counsel was ineffective for not objecting to an officer's testimony that appellant was the "primary aggressor" in a fight in which he claimed self-defense. (Staff attorney William Robinson)

People v. Israel Lopez and Richard Guerrero (H039476)

Panel attorneys: Frank McCabe and John Dwyer

Date: May 10, 2016

Guerrero received ineffective assistance of counsel when trial counsel asked some questions that opened the door to the admission of damaging evidence. As to both defendants, the abstract of judgment was corrected because it could be read erroneously to indicate that the defendants must pay the fines twice. (Staff attorney Paul Couenhoven)

People v. James O'Day (H041099)

Panel attorney: Alfons Wagner

Date: March 23, 2016

The trial court was required to obtain a personal waiver of the right to a jury in order to proceed with a court trial in an NGI extension proceeding. (Staff attorney Paul Couenhoven)

People v. Peter Mortimer (H037530)

Panel attorney: Julia Spikes

Date: March 23, 2016

The trial court was required to obtain a personal waiver of the right to a jury in order to proceed with a court trial in an NGI extension proceeding. (Staff attorney William Robinson)

People v. Corey Tidwell (H042335)
Panel attorney: Rachel Sussman
Date: March 17, 2016

In a published decision, the court of appeal decided that Proposition 47 applies to a qualifying felony conviction that had been expunged. (Staff attorney Lori Quick)

People v. Felecia Bica (H041776)
Panel attorney: Alex Green
Date: February 8, 2016

A jury convicted appellant of two counts of assault with a deadly weapon on a peace officer and reckless evasion, among other things. The court modified the accident instruction to make it appear that there was no accident defense if there was “culpable negligence.” Because this was an incorrect statement of the law, the conviction for assault was reversed. (Staff attorney Patrick McKenna)

SENTENCING

People v. Alvarado (H040802)
Panel attorney: Thomas Singman
Date: December 14, 2016

Sex offender conditions of probation were modified to not violate the constitutional right concerning self-incrimination and privacy. Other probation conditions were modified to require knowledge. (Staff attorney Paul Couenhoven)

People v. Matthew Ruiz et al. (H040242)
Panel attorneys: Maureen Fox and Steve Bedrick
Date: November 30, 2016

The minors were tried as adults and sentenced to life in prison. The matter was remanded to the trial court to determine if they are entitled to a hearing under *People v. Franklin* (2016) 63 Cal.4th 261 to establish a record concerning their youthfulness when the crime was committed. (Staff attorney William Robinson)

People v. Jose Saldivar (H042887)
Panel attorney: Joy Maulitz
Date: November 21, 2016

A condition of probation not to possess burglary tools was modified to require knowledge.
(Staff attorney Lori Quick)

People v. Ericka Martinez (H042513)
Panel attorney: Kevin Lindsley
Date: November 18, 2016

Appellant was on probation when she filed a petition under Proposition 47. The court erred in believing it must revoke probation and sentence the defendant to prison before granting the petition, (Staff attorney William Robinson)

People v. Edith Rosario (H042286)
Panel attorney: David Scopp
Date: November 14, 2016

A stay away condition of probation requires knowledge. (Staff attorney Patrick McKenna)

People v. Ubaldo Sanchez (H040503)
Panel attorney: Kyle Gee
Date: November 9, 2016

Because the crime was committed in 1982, the court could only impose a restitution fine under former Government Code section 13967. (Staff attorney Lori Quick)

People v. Roy Maldonado (H043371)
Panel attorney: Courtney Shevelson
Date: November 7, 2016

The court lacked the authority to impose a stay away order for a defendant not on probation.
(Staff attorney Jonathan Grossman)

People v. Jose Sandoval (H042448)
Panel attorney: Alissa Bjerkhoel
Date: November 4, 2016

Appellant was sentenced to prison for residential burglary for two years, though he had more than two years of presentence credits. The court lacked the authority in ordering him to stay away from the victim because it did not have jurisdiction to set terms of parole. The court also failed to dismiss a prison prior pursuant to the plea bargain. And excess time in custody must be credited toward his fines. (Jonathan Grossman)

People v. Jorge Diaz (H042670)
Panel attorney: Paul Carroll
Date: October 26, 2016

The restitution fines were reduced to reflect the statutory formula that existed at the time the crime was committed. (Staff attorney William Robinson)

People v. Jesus Serrano (H042471)
Panel attorney: Nancy Brandt
Date: October 11, 2016

A probation condition not to “associate with persons whose behavior might lead to criminal activities” was stricken as being unconstitutionally vague. (Staff attorney William Robinson)

People v. Troy Avilla (H040750)
Panel attorney: Susannah McNamara
Date: October 11, 2016

The punishment for two counts of making criminal threats and for assault with a deadly weapon must be stayed in lieu of the punishment for two counts of robbery. Further, the court could not impose an indeterminate term for commercial burglary with two prior strikes, though he was also convicted of robbery. (Staff attorney Lori Quick)

People v. Johnny Suarez (H041111)
Panel attorney: Ron Boyer
Date: October 5, 2016

The punishment for felon in possession of a firearm must be stayed under Penal Code section 654 in lieu of the punishment for assault with a deadly weapon. Further, the court was required to state the basis for its fines and to award presentence credits. (Staff attorney Lori Quick)

People v. Connors (H042385)

Panel attorney: Katherine Dwight
Date: September 27, 2016

A probation condition not to possess sexually explicit material was modified to require knowledge. (Staff attorney Jonathan Grossman)

People v. Zeferino Espinoza (H039219)
Panel attorneys: Lawrence Gibbs and E. Michael Linscheid
Date: September 26, 2016

Appellant was convicted of possessing marijuana as a misdemeanor. While the appeal was pending, the crime was reduced to an infraction. He was entitled to have the conviction reduced on appeal. (Staff attorney Jonathan Grossman)

People v. Juan Amezcuita (H042748)
Panel attorney: William Holzer
Date: September 19, 2016

Appellant pled to felony attempted grand theft with the agreement he would be placed on probation for five years, and it will be reduced to a misdemeanor if he is successful after one year. More than a year later, he violated probation. Nonetheless, he was entitled to have the conviction reduced to a misdemeanor under the terms of the plea bargain. (Staff attorney William Robinson)

People v. Roberto Mendoza (H042130)
Panel attorney: Michael Flynn
Date: August 30, 2016

Appellant was convicted of stalking and five counts of contempt for violating a restraining order. The punishment for contempt needed to be stayed under Penal Code section 654. (Staff attorney Paul Couenhoven)

In re Isaiah S. (H042774)
Panel attorney: Laura Pedicini
Date: August 24, 2016

A no contact condition of probation was modified to require knowledge. (Staff attorney Patrick McKenna)

In re D.C. (H042615)
Panel attorney: Eileen Manning-Villar
Date: August 23, 2016

A curfew as a condition of probation was modified to permit the minor to be out with his parent or guardian. (Staff attorney Lori Quick)

People v. William Brown (H040734)
Panel attorney: Joy Maulitz
Date: August 18, 2016

The same prior conviction could not serve as a prison prior and a prior serious felony conviction. (Staff attorney Patrick McKenna)

People v. Arevalo (H041071)
Staff attorney: Lori Quick
Date: July 29, 2016

The defendant was convicted of a sex offense. The abstract of judgment stated the court prohibited visitation with the victim and the family under Penal Code section 1202.5. The abstract needed to be corrected to reflect that court orally prohibited visitation only with the victim.

People v. Thomas Wingo (H042624)
Panel attorney: Peter Goldscheider
Date: July 15, 2016

Appellant was on probation when he was convicted of committing a new offense. The court imposed its punishment without stating they were to be served consecutively, but it awarded presentence credits in only one of the cases. Because the probation violation was based solely on the same conduct and he was ordered to serve the time concurrently, he was entitled to presentence credits in both cases. The court stating afterward that it intended to impose a consecutive sentence was not effective. (Staff attorney Jonathan Grossman)

People v. Cristina Rodriguez (H042534)
Panel attorney: Katja Grosch
Date: June 30, 2016

Probation conditions prohibiting tattoos and possession of police scanners were modified to avoid problems with vagueness and overbreadth. (Staff attorney Paul Couenhoven)

People v. Wallace Carmalt (H038402)
Panel attorney: John Dwyer
Date: June 28, 2016

The court imposed the incorrect amount of penalty assessments to the fines. (Staff attorney William Robinson)

People v. Ruiz (H042398)
Panel attorney: Lise Breakey
Date: June 28, 2016

The punishments for contacting a minor with the intent to commit a sexual offense and for meeting the minor for lewd purposes must be stayed in lieu of the punishment for committing lewd conduct on the minor on the day in question. (Staff attorney Jonathan Grossman)

People v. Bradley Moore (H042279)
Staff attorney: Jonathan Grossman
Date: June 14, 2016

Appellant admitted a violation of probation, but the court never reinstated probation. The court erred in keeping probation in summary revoked status.

People v. Bernabe Lopez (H040272)
Panel attorney: Stephanie Adraktas
Date: June 10, 2016

When the same prior conviction qualifies as both a serious felony and a violent felony, the enhancement for the violent felony must be stricken, not stayed. (Staff attorney William Robinson)

People v. Gregorio Frias (H040691)
Panel attorney: Maggie Shrout
Date: June 10, 2016

The court should have calculated the restitution fine based on the formula that existed at the time of the offense, not at the time of sentencing. (Staff attorney William Robinson)

People v. Jose Ocegueda (H041157)

Staff attorney: Paul Couenhoven
June 9, 2016

The court erred in imposing a full consecutive subordinate term, instead of one-third the middle term. The appellate court also said in the published portion of the opinion that mental disability is relevant in determining whether a defendant committed attempted voluntary manslaughter under an imperfect self-defense claim, but the error was harmless.

People v. Garcia (H040262)
Panel attorney: Gene Vorobyov
Date: May 27, 2016

The punishment for robbery should have stayed under Penal Code section 654 in lieu of the punishment for kidnapping for robbery. (Staff attorney William Robinson)

In re L.G. (H42455)
Panel attorney: Eileen Manning-Villar
Date: May 25, 2016

The juvenile court failed to determine if a wobbler was a felony or misdemeanor, miscalculated the maximum confinement time, and failed to provide the proper amount of predispositional credits. (Staff attorney Patrick McKenna)

People v. Mark Bernard (H041733)
Panel attorney: Charles Marson
Date: May 18, 2016

The court lacked the authority to impose an additional restitution fine upon a violation of probation. (Staff attorney William Robinson)

People v. Albert Martinez (H039734)
Panel attorney: Maureen Fox
Date: May 11, 2016

Appellant's sentence was enhanced for committing a serious felony under Penal Code section 667, subdivision (a) and under section 186.22, subdivision (b)(1)(B) which provides for an increased penalty for committing a serious felony for the benefit of a gang. But the only reason why the crime was a serious felony was because of the gang enhancement. Thus, the court could only impose one of the enhancements. (Staff attorney Paul Couenhoven)

People v. Roberto Casarez (H042353)
Panel attorney: Carla Castillo
Date: May 11, 2016

Proposition 47 applied to those on probation. (Staff attorney Lori Quick)

People v. Michael Reyes (H041629)
Staff attorney: William Robinson
Date: May 10, 2016

The restitution fines could not be increased on remand.

People v. Erin Fischer (H042791)
Panel attorney: Ozro Childs
Date: May 2, 2016

Although appellant received credit for time served, and thus his prison sentence was a paper commitment, the applicable statute for presentence credits was Penal Code section 4019, not section 2993.1 because possession of a loaded firearm in a vehicle by a felon was not a violent felony. (Staff attorney Paul Couenhoven)

People v. Eduardo Munoz (H040873)
Panel attorneys: Jeffrey Glick
Date: April 226, 2016

A stay away order was modified to avoid problems with vagueness. (Staff attorney Lori Quick)

People v. Miguel Rivera (H041742)
Staff attorney: Jonathan Grossman
Date: March 28, 2016

The trial court erred in imposing a one year term for a first time offense of driving under the influence. The maximum potential sentence was six months.

People v. Mario Soto (H42115)
Panel attorney: Michelle May Peterson

Date: March 25, 2016

In a published decision, the court ruled that a condition requiring him to receive the probation officer's approval of where to live was unreasonable, a \$25 administrative fee under Penal Code section 1463.07 was unauthorized because he was never released on his own recognizance, a \$55 fee under Penal Code section 1205(d) was reduced to \$30 because there was no evidence he was ordered to pay fines in installments and payment of the fee could not be made a condition of probation, and a restitution fine must be stayed when it was imposed for a count where the punishment had been stayed pursuant to Penal Code section 654. (Staff attorney Lori Quick)

People v. LeGrante Ellis (H040933)

Panel attorney: Jeffrey Glick

Date: March 23, 2016

The abstract of judgment must be amended to reflect the correct amount of presentence credits. (Staff attorney William Robinson)

People v. Allan Jekyll (H042234)

Staff attorney: Paul Couenhoven

Date: March 14, 2016

The court erred in purporting to strike the punishment for four prison priors that were not alleged.

People v. Alejandro Gonzales (H041860)

Panel attorney: Jennifer Mannix

Date: March 14, 2016

The punishment for resisting or deterring an officer must be stayed in lieu of the punishment for assault on an officer for the same conduct. (Staff attorney Jonathan Grossman)

People v. Quintero (H041447)

Panel attorney: David Scopp

Date: February 23, 2016

Appellant was convicted of statutory rape, and he was placed on probation. This is an offense where the court has discretion whether to order the defendant to register. The court here made the order but said it would reconsider the requirement at a later date, depending on his performance on probation. The court of appeal reversed. Registration is for life or not at all. (Staff

attorney Patrick McKenna)

In re L.G. (H042392)

Panel attorney: Brian McComas

Date: February 11, 2016

The matter was remanded for the juvenile court to determine whether the offense of receiving stolen property was a misdemeanor or felony. (Staff attorney Lori Quick)

People v. Ruano (H041200)

Panel attorney: Kevin Lindsley

Date: February 11, 2016

Penal Code section 654 prohibited punishing appellant for both possession of a concealed gun and possession of a loaded gun in a public place. The restitution fine should be adjusted accordingly. (Staff attorney William Robinson)

People v. Argenis Tapia (H041191)

Panel attorney: Stephanie Adraktas

Date: February 8, 2016

The court remanded the matter for the superior court to explain the basis for its fines and penalty assessments. (Staff attorney Jonathan Grossman)

People v. Robert Ashurst (H040995)

Panel attorney: Carrie Kojimoto

Date: February 5, 2016

Appellant was convicted of possession of a controlled substance while armed with a loaded firearm and of being a felon with a firearm. The punishment for the latter charge must be stayed pursuant to Penal Code section 654. (Staff attorney Jonathan Grossman)

People v. Jacob Lopez (H042129)

Panel attorney: Blair Greenberg

Date: January 25, 2016

The court of appeal held that auto theft (Veh. Code, § 10851, subd. (a)) can be covered by Proposition 47. (Staff attorney Patrick McKenna)

People v. Juan Santiago (H042067)
Panel attorney: Morgan Taylor
Date: January 21, 2016

The county booking fee was struck because there was insufficient evidence the fee was no more than the actual administrative costs of booking and processing the arrestee. (Staff attorney Patrick McKenna)

People v. Max Miller (H040879)
Panel attorney: Jared Coleman
Date: January 14, 2016

The court modified a probation condition concerning the possession of weapons to require knowledge. Further, a \$50 lab fee and penalty assessments were stricken because a conviction for violating Health and Safety Code section 11370.1 is not subject to the fine. (Staff attorney Patrick McKenna)

People v. Yareli Vargas (H041094)
Panel attorney: Hilda Scheib
Date: January 14, 2016

The probation condition not to possess or use illegal drugs or go where they are used or sold was modified to require knowledge. (Panel attorney Paul Couenhoven)

People v. Ricardo Ortiz (H041412)
Panel attorney: David Scopp
Date: January 11, 2016

The court lacked the authority to make a ten year stay away order to protect the victim's sibling. A conditions of probation concerning gang insignia was modified to require knowledge. A condition limiting the defendant's ability to attend court was reworded to permit attending when he or a family member is a victim in a proceeding. (Staff attorney Patrick McKenna)

In re Joseph G. (H041949)
Panel attorney: Jennifer Sheetz
Date: January 5, 2016

A probation requirement that the minor not be near a child in a "non-public" place unless

there is “competent adult” supervision was reversed as vague. (Staff attorney Patrick McKenna)

DEPENDENCY CASES

In re C.P. (H043520)

Panel attorney: Julie Braden

Date: September 20, 2016

The parent had a right to view her own psychological evaluation that was submitted to the dependency court. (Staff attorney Jonathan Grossman)

In re L.W. (H043388)

Panel attorney: Louise Collari

Date: August 29, 2016

The court reversed because of a failure to provide adequate notice under the Indian Child Welfare Act. (Staff attorney Patrick McKenna)

In re L.L. (H042125)

Panel attorneys: Patricia Saucier (father), Linda Harvie (minor)

Date: March 22, 2016

The juvenile court terminated dependency jurisdiction, placing the minor with the father and permitting the mother to visit; but if there was a dispute about visits between the parents, the father’s position would prevail. The mother appealed, and the Department did not meaningfully participate in the appeal. The father and the minor successfully argued the juvenile court’s order was appropriate. (Staff attorney Jonathan Grossman)

In re J.T. (H042571)

Panel attorney: Jennifer King

Date: January 28, 2016

Although there was sufficient evidence for the court to assume dependency jurisdiction, there was insufficient evidence the father engaged in domestic violence or animal cruelty that was harmful to the minors. (Staff attorney Jonathan Grossman)

HABEAS CORPUS

In re Raymond Lambirth (H041812)

Panel attorney: Michael Satris

Date: November 21, 2016

The prisoner was informed just prior to his March 25, 2014 annual review at the Department of Corrections and Rehabilitation of certain restrictions, which he insisted were based on inaccurate information. He raised this at his annual review, and the classification committee assured him it would take appropriate action. He received notice on April 22 that the restriction would not be changed. He sent an appeal the next day, which was marked filed on April 25. CDCR denied the appeal as being filed a day after the 30 day deadline. He filed a habeas corpus petition. The court of appeal granted relief in a published decision. Even assuming the 30 days started to run on March 25, the mailbox rule should apply, and thus the appeal was timely sent on the 29th day. (Staff attorney William Robinson)

In re Moises Mancillas (H042652)
Panel attorney: Frederick Schnider
Date: August 23, 2016

The defendant was on probation in Monterey County when he was incarcerated in Nevada on another matter. He sent notice to Monterey County to be sentenced on the probation matters. The probation officer notified the court, but the court failed to act within 60 days as required by Penal Code section 1203.2a. In a published decision, the court of appeal held that the superior court lost jurisdiction when it failed to act within the 60 days. (Staff attorney William Robinson)

People v. Larry Giraldes (Santa Clara No. 157274)
Staff attorney: Jonathan Grossman
Date: April 11, 2016

The court granted relief on habeas corpus because, under *People v. Chiu* (2014) 59 Cal.4th 155, the defendant could not be convicted of first degree murder based on aiding and abetting on the theory of natural and probable consequences.

MISCELLANEOUS

People v. Duane Stillwell (H041819)
Panel attorney: Jean Matulis
Date: July 14, 2016

The court held there might be an equal protection violation in compelling SVP defendants to testify. (Staff attorney Lori Quick)