

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

SUFFICIENCY OF THE EVIDENCE

People v. Pedro Zuniga-Garcia (H043180)

Staff attorney: Paul Couenhoven

Date: August 17, 2017

There was insufficient evidence appellant destroyed evidence, a gang kite in the jail, when he unsuccessfully tried to flush it down the toilet. He was instead guilty of the attempted destruction of evidence. There was also insufficient evidence to support the gang crime for the incident. The court could only impose one-third the punishment for a gang enhancement that was attached to a subordinate term, Finally, the court failed to award an additional five days of actual presentence credits.

People v. Alfred Lopez (H042682)

Panel attorney: Maggie Shrout

Date: June 27, 2017

A jury convicted appellant with possession of drug paraphernalia and destroying evidence, among other things, for throwing a glass smoking pipe on the ground, breaking it. However, the crime of destroying evidence requires destroying it beyond use, not just damaging it. Since the prosecution was able to present the broken pipe into evidence, there was insufficient evidence of destroying evidence. Further, a parole revocation restitution fine could not be imposed because appellant was never going to be placed on parole. (Staff attorney Jonathan Grossman)

People v. Travis Hoffmeister (H41041)

Staff attorney: Patrick McKenna

Date: May 19, 2017

Appellant was convicted of murder. The court of appeal decided there was insufficient evidence that the murder was in the first degree. Relevant to premeditation, there was no evidence of motive and only weak evidence of planning and the manner of killing.

People v. Kenneth Mendenhall (H042749)

Panel attorney: Jean Marinovich
Date: March 30, 2017

There was insufficient evidence appellant drove with a suspended license because there was no evidence that the license was suspended during the period he drove. Further, penalty assessments under Penal Code sections 1205, subdivision (d), and 1463.07 were unauthorized. (Staff attorney Jonathan Grossman)

People v. Duc Do (H042914)
Staff attorney: Patrick McKenna
Date: March 24, 2017

A jury convicted appellant of transporting marijuana but acquitted him of possession for sale. Because an amendment to Health and Safety Code section 11360 now requires transportation to be for sales, the conviction must be reversed.

ERROR AT TRIAL OR HEARING

People v. Rojas (H043116)
Panel attorney: Gordon Brownell
Date: June 28, 2017

A jury convicted appellant because of DNA evidence. The prosecution expert testified she reviewed the report of another who found a match. This was different from reviewing another's data. It was inadmissible hearsay to testify about the opinion of another expert. (Staff attorney Jonathan Grossman)

People v. Dave Newman (H042192)
Panel attorney: Catherine White
Date: June 2, 2017

The conviction was reversed because the trial court failed to properly instruct the jury to begin deliberations over again when an alternate juror replaced a sitting juror. (Staff attorney William Robinson)

People v. Thomas (H042200)
Panel attorney: Peggy Headley
Date: April 21, 2017

Appellant was charged with making criminal threats against a correctional officer. Months

later, he was charged with assault by force likely to cause great bodily injury while at the jail. The two cases were consolidated over objection. The court of appeal reversed, finding that the evidence was not cross-admissible and inflammatory, and the criminal threats case was weaker. (Staff attorney Paul Couenhoven)

People v. Vincent Eppstein (H040606)
Panel attorney: Jill Kent
Date: March 6, 2017

Appellant was tried for theft from a dependent adult. The prosecution introduced over hearsay objections a spreadsheet that included a column describing who ‘allegedly’ took the money in each line item, most often appellant. The evidence was hearsay and should not have been admitted. Because the prosecution case relied on the spreadsheet, reversal was required. (Staff attorney Paul Couenhoven)

People v. Angel Torres (H040966)
Panel attorney: Solomon Wollack
Date: January 17, 2017

Appellant was convicted of first degree murder. One of the prosecution theories was that he was guilty as an aider and abettor under the natural and probable consequences theory. Because such a theory is not a valid route to a first degree murder conviction, the judgment was reversed. (Staff attorney William Robinson)

PRETRIAL AND POSTTRIAL MOTIONS

People v. Lua (H043567)
Panel attorney: Edward Mahler
Date: August 28, 2017

A three strikes sentence does not disqualify a defendant from resentencing under Proposition 47. (Staff attorney Patrick McKenna)

People v. Joseph Garcia (H043552)
Staff attorney: William Robinson
Date: August 23, 2017

A three strikes sentence does not disqualify a defendant from resentencing under Proposition 47.

People v. Laurie Montoya (H043419)
Panel attorney: Carla Castillo
Date: August 23, 2017

Expunging a conviction does not disqualify a defendant from relief under Proposition 47.
(Staff attorney Paul Couenhoven)

People v.. David Brentlinger (H043893)
Panel attorney: Jill Kent
Date: July 28, 2017

A defendant with two prior strike convictions qualifies for relief under Proposition 47. (Staff attorney William Robinson)

People v. Ariel Andon (H042488)
Panel attorney: Edward Mahler
Date: July 14, 2017

Proposition 47 applies to auto theft if the defendant can show he took a vehicle worth less than \$950. (Staff attorney William Robinson)

People v. Jose Ortiz (H042850)
Panel attorney: Jonathan Gettleman
Date: July 14, 2017

Proposition 47 applies to auto theft and receiving a stolen vehicle if the defendant can show the vehicles were worth less than \$950. (Staff attorney Lori Quick)

People v. Rafael Figueroa (H043204)
Panel Attorney: Laura Wilmore
Date: May 9, 2017

In a published decision, the court decided that the case should have been dismissed for failure to hold a timely preliminary hearing. (Staff attorney Lori Quick)

People v. Renee Martinez (H043160)
Panel attorney: Kevin Lindsley
Date: May 4, 2017

Proposition 47's definition of shoplifting includes entering a store to commit theft by false pretenses. (Staff attorney Paul Couenhoven)

People v. Ryan Salazar (H043601)
Panel attorney: Edward Mahler
Date: April 27, 2017

The defendant is entitled to have a commercial burglary conviction for purchasing goods with counterfeit money reduced to misdemeanor shoplifting under Proposition 47. (Staff attorney William Robinson)

People v. Mitchell Sharpe (H043196)
Panel attorney: Edward Mahler
Date: April 11, 2017

Entering a store to purchase merchandise using counterfeit money qualified as shoplifting under Proposition 47. (Staff attorney Lori Quick)

People v. Adrian Sampaga (H043359)
Staff attorney: Anna Stuart
Date: April 5, 2017

When a commercial burglary is reduced to a misdemeanor under Proposition 47, the conviction must be changed to shoplifting. Excess custody time must be applied to the fines.

People v. Victor Vaca (H043456)
Panel attorney: Michael McCormick
Date: April 3, 2017

An expunged offense can be reduced to a misdemeanor under Proposition 47. (Staff attorney William Robinson)

People v. Peter Hernandez (H043551)
Panel attorney: Carla Castillo
Date: March 28, 2017

In a published decision, the court decided a defendant receiving a life sentence under the Three Strikes Law did not disqualify him from resentencing under Proposition 47. (Staff attorney

William Robinson)

People v. David Carmony (H043568)

Panel attorney: Carla Castillo

Date: March 28, 2017

A defendant receiving a life sentence under the Three Strikes Law did not disqualify him from resentencing under Proposition 47. (Staff attorney Paul Couenhoven)

People v. Marcos Perez (H042373)

Panel attorney: Carla Castillo

Date: March 2, 2017

Proposition 47 applied to receipt of a stolen vehicle (Pen. Code, § 496d). (Staff attorney Jonathan Grossman)

People v. Travis Harville (H043416)

Panel attorney: Carla Castillo

Date: March 13, 2017

The court should have granted the motion to reduce to a misdemeanor a conviction of petty theft with a prior when the prosecution did not allege the amount was at least \$950. (Staff attorney William Robinson)

People v. Lacorey Powell (H043181)

Panel attorney: Monica Stoner

Date: March 7, 2017

Shoplifting included entering a store to commit theft by fraud. (Staff attorney William Robinson)

People v. Leanna Williams (H043110)

Panel attorney: Jonathan Gettleman

Date: March 14, 2017

Entering a store to steal merchandise by fraud qualified as shoplifting. (Staff attorney William Robinson)

People v. Edgar Palustra (H043458)
Panel attorney: Rachel Sussman
Date: February 16, 2017

Proposition 47 applies to convictions that have been expunged under Penal Code section 1203.4. (Staff attorney Lori Quick)

People v. Charles Black (H043360)
Attorney: Stephen Siegel
Date: February 16, 2017

The defendant was charged with five counts of using false statements in the offer or sale of a security. In a published decision, the court of appeal ruled that a promissory note did not qualify as a security, affirming the decision of the superior court to set aside two of the counts. (SDAP was not involved in this appeal)

People v. Brian Lowry (H042551)
Panel Attorney: Laurie Wilmore
Date: February 10, 2017

In a published decision, the court of appeal ruled the value of a forged check made in the amount of \$1047 might be worth less than \$950 under certain circumstances and thus potentially covered by Proposition 47. (Staff attorney William Robinson)

People v. Stacy Quezada (H042829)
Panel attorney: Tania Rose
Date: February 7, 2017

Shoplifting under Proposition 47 includes commercial burglary to commit forgery. (Staff attorney Paul Couenhoven)

Robert Sanchez (H042971)
Panel attorney: Edward Mahler
Date: January 26, 2017

A commercial burglary conviction for entering a store with the intent to commit credit card forgery qualified as shoplifting under Proposition 47. (Staff attorney Patrick McKenna)

People v. Zachary Daniels (H043202)
Panel attorney: Garrick Byers
Date: January 12, 2017

A commercial burglary conviction for entering a store with the intent to commit credit card forgery qualified as shoplifting under Proposition 47. (Staff attorney Paul Couenhoven)

SENTENCING

People v. Devon English (H043575)
Panel attorney: Elisa Brandes
Date: August 23, 2017

The court could not punish the defendant for residential burglary, assault with a deadly weapon, and false imprisonment during a residential robbery under Penal Code section 654. (Staff attorney Jonathan Grossman)

People v. Flores (H041903)
Staff attorney: Lori Quick
Date: August 28, 2017

Probation conditions concerning socializing with certain people and frequenting certain areas were deemed to be unconstitutionally vague.

People v. Christopher Herrera (H041877)
Panel attorney: Gene Vorobyov
Date: August 3, 2017

Appellant was convicted of murder, which was committed when he was still a juvenile. The court agreed to remand the matter for a hearing under *People v. Franklin* (2016) 63 Cal.4th 261. (Staff attorney Patrick McKenna)

People v. Jedidiah Oropeza (H043634)
Panel attorney: Jennifer Sheetz
Date: July 31, 2017

The court of appeal modified a condition of probation concerning attending court. It also ordered that the minute order of the sentencing hearing be amended to reflect changes the sentencing court orally made to some of the recommended probation conditions. (Staff attorney Jonathan Grossman)

People v. Armando Guizar (H042370)
Panel attorney: Alexis Haller
Date: July 31, 2017

The crime prevention program fine (Pen. Code, § 202.5) did not apply to a non-theft related offense. (Staff attorney William Robinson)

People v. Lovato (H041328)
Panel attorney: Maggie Shrout
Date: July 31, 2017

Probation conditions concerning with whom the defendant may socialize and where he may frequent were modified. (Staff attorney Paul Couenhoven)

In re M.M. (H044356)
Panel attorney: Harry Cheng
Date: July 26, 2017

The juvenile court did not have the authority to send an 18 year-old ward to the county jail. (Staff attorney Lori Quick)

People v. Jose Rincon (H043354)
Staff attorney: Anna Stewart
Date: July 13, 2017

The court struck the booking fee because there was no evidence the fee reflected the administrative cost of booking defendants.

People v. Paul Hurtado (H043572)
Staff attorney: William Robinson
Date: July 10, 2017

A three strikes sentence does not disqualify the defendant from resentencing under Proposition 47.

People v. Vilchis (H043960)
Staff attorney: Lori Quick

Date: June 28, 2017

The clerk's transcript of the sentencing hearing was amended to correspond to the court's oral pronouncement.

People v. Kelly Carter (H043251)
Panel attorney: Heather Mackay
Date: June 28, 2017

The minute order of the sentencing hearing was amended to reflect the court orally pronounced a fee of \$40 per month, not \$50. The appellate court determined the drug lab fee and drug program fee were fines subject to penalty assessments, but the amount of the assessments was incorrect. Finally, payment of the \$4 Emergency Medical Aid Transportation fee should not be a condition of probation. (Staff attorney Lori Quick)

People v. Katharina Ferguson (H043164)
Panel attorney: Jonathan Roberts
Date: June 28, 2017

The court miscalculated the amount of presentence credits. (Staff attorney Lori Quick)

People v. Mejia (H041852)
Panel attorney: Robert Angres
Date: June 28, 2017

There was insufficient evidence appellant had the ability to pay attorney fees. The claim was not forfeited by trial counsel's failure to object because there is a conflict of interest. (Staff attorney Jonathan Grossman)

People v. Jimenez (H042844)
Panel attorney: Matt Wilson
Date: June 20, 2017

The court lacked the authority to issue a stay away order of indeterminate length. (Staff attorney Jonathan Grossman)

People v. Ivan Vargas
Panel attorney: Peggy Headley

Date: May 17, 2017

The punishment for aiding in a burglary should have been stayed in light of the punishment for assault arising from the same conduct. Further, a prison prior should not have been imposed if the prior conviction had been reduced to a misdemeanor under Proposition 47 before the sentencing on the new matter. (Staff attorney Patrick McKenna)

People v. Wil Quintero (H042440)

Panel attorney: Kevin Lindsley

Date: May 10, 2017

The court modified an electronic search condition of probation. (Staff attorney William Robinson)

People v. Zeferino Espinosa (H042585)

Panel attorney: Paul Kleven

Date: May 10, 2017

The court modified an electronic search condition of probation. (Staff attorney Paul Couenhoven)

People v. Hernandez (H042918)

Panel attorney: Edward Haggerty

Date: May 2, 2017

Appellant could not be punished under the One Strike law where the provision was never alleged in the information for the two counts. (Staff attorney Jonathan Grossman)

People v. Irving Reyes (H041053)

Panel attorney: Julie Dunger

Date: June 1, 2017

The court of appeal agreed to remand the matter to give the defendant an opportunity to make an adequate record of factors relevant to him being a youthful offender under Penal Code section 3051. (Staff attorney William Robinson)

People v. Gary Silva (H043968)

Panel attorney: Jeffrey Kross

Date: May 24, 2017

The court erred in imposing a prison prior that was never admitted. (Staff attorney Jonathan Grossman)

People v. Joe Navarette (H042842)
Panel attorney: Victoria Stafford
Date: June 7, 2017

Two prison priors needed to be stricken. One of the priors was invalid because the same conviction was used as a prior serious felony conviction. The trial court purported to impose and stay the punishment for the other prison prior, but the correct procedure was to strike it, not stay it. (Staff attorney Jonathan Grossman)

People v. Gunter (H043635)
Panel attorney: Jared Coleman
Date: April 26, 2017

A probation condition not to possess pornographic or sexually explicit material as defined by the probation officer was vague. (Staff attorney William Robinson)

People v. Tucker Repass (H043420)
Panel attorney: Victoria Stafford
Date: April 25, 2017

After the defendant entered into a plea bargain, the court neglected to dismiss the remaining allegations as promised. The matter was remanded for the court to do so. (Staff attorney Lori Quick)

People v. Richard Davidson (H043005)
Staff attorney: William Robinson
Date: April 25, 2017

The court imposed the incorrect amount for the court security fee and the court facilities fee.

People v. Villalobos (H042886)
Panel attorney: Julie Jakubik
Date: April 24, 2017

A probation condition not to possess “surveillance equipment” was unconstitutionally vague.
(Staff attorney Jonathan Grossman)

People v. Socorro Franco (H043507)
Panel attorney: Robert Angres
Date: April 24, 2017

Electronic search conditions of probation were modified. (Staff attorney Lori Quick)

People v. Shaun Case (H043020)
Panel attorney: Michael Allen
Date: April 18, 2017

Conditions of mandatory supervision concerning controlled substances were modified. (Staff attorney Jonathan Grossman)

People v. Millendez (H041941)
Staff attorney: Lori Quick
Date: April 18, 2017

A probation condition not to have a romantic relationship with anyone with a minor was stricken.

People v. Jonathan Guzman (H039286)
Panel attorney: George Schraer
Date: April 18, 2017

The matter was remanded for a hearing pursuant to *People v. Franklin* (2016) 63 Cal.4th 261.
(Staff attorney William Robinson)

In re J.L. (H043432)
Panel attorney: Jennifer Bruno
Date: April 13, 2017

A probation condition to report to the probation officer as directed was modified to eliminate language that transportation problems or bad weather would not be a legitimate excuse. (Staff attorney Jonathan Grossman)

People v. Frank Guerrero (H042947 et al.)
Panel attorney: Michael Sampson
Date: April 5, 2017

A criminal lab fee under Health and Safety Code section 11372.5 does not apply to a conviction for possessing drug paraphernalia under former Health and Safety Code section 11364.1. (Staff attorney Patrick McKenna)

People v. Mackey Phillips (H042441)
Panel attorney: Rudolph Alejo
Date: March 28, 2017

A prison prior was invalid because appellant did not serve a separate prison commitment for the conviction. Further, the court erred in imposing a restitution fine under Penal Code section 1202.45 because appellant was not subject to supervision upon the completion of his sentence. (Staff attorney William Robinson)

People v. Nathan Thomas (H042833)
Panel attorney: Teresa Biagini
Date: March 6, 2017

A condition of probation to stay away from the victim was modified to avoid problems with vagueness. (Staff attorney Lori Quick)

In re N.S. (H043128)
Panel attorney: Jonathan Gettleman
Date: March 14, 2017

Gang conditions of probation were unreasonable when the crime was not gang-related and there was no gang history in the record. (Staff attorney William Robinson)

People v. Jose Ramirez (H040730)
Panel attorney: Evan Greenberg
Date: January 23, 2017

Probation conditions not to possess or consume alcohol or illegal controlled substances, not to possess a deadly or dangerous weapon, and not to possess or display gang clothes or emblems were modified to require knowledge. (Staff attorney Patrick McKenna)

People v. Jesse Chacon (H041655)
Staff attorney: Nerissa Huertas
Date: January 23, 2017

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

People v. Felix Provencio (H043054)
Staff attorney: William Robinson
Date: January 11, 2017

Upon a violation of probation, appellant waived 134 days of presentence credits only for the purposes of having probation reinstated. The court held that when probation was later revoked, he was entitled to the restoration of the presentence credits.

DEPENDENCY CASES

In re Rita C. (H044295)
Panel attorney: Allison Cruz
Date: July 6, 2017

The matter was remanded for compliance with the notice requirement of the Indian Child Welfare Act. The father was not located until six months after the dependency had begun, and the social worker did not ask about his possible Indian ancestry. (Staff attorney Patrick McKenna)

In re S.H. (H044060)
Panel attorney: Rebekah Sass
Date: June 7, 2017

The court of appeal reversed because of a failure to comply with the Indian Child Welfare Act. The mother said she might have Indian ancestry and the maternal grandmother had the information, with whom the Department was in contact. However, the Department omitted in the ICWA notice information the maternal grandmother would obviously have. (Staff attorney Jonathan Grossman)

In re S.B. (H044052)
Panel attorney: James Haworth
Date: March 20, 2017

The court reversed the juvenile court order for failure to comply with the notice requirement

of the Indian Child Welfare Act. (Staff attorney Jonathan Grossman)

HABEAS CORPUS

In re Andre Delgado (H044450)

Panel attorney: Jill Kent

Date: June 30, 2017

A habeas corpus petition was filed claiming ineffective assistance of counsel for not moving to suppress evidence from a warrantless search of a cell phone. The search revealed evidence necessary to connect the defendant to the crime. The court of appeal issued an order to show cause. (Staff attorney Patrick McKenna)

MISCELLANEOUS

People v. Stuart Elders (H042189)

Attorney: Charles Bonneau

Date: April 26, 2017

Appellant was convicted of driving under the influence with injuries. The court could not impose enhancements both under Penal Code section 12022.7 and Vehicle Code section 23558 for the same victim. (SDAP did not participate in this case)