

**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. Guillen (H043189)

Panel attorney: Siri Shetty

Date: February 16, 2018

There was insufficient evidence that two of the charges were brought within the statute of limitations. (Staff attorney Jonathan Grossman)

**ERROR AT TRIAL OR HEARING**

A.G. v. Superior Court (H045413)

Attorney: Brian Matthews

Date: August 16, 2018

There was insufficient evidence to support the court's conclusion that the minor was not fit for juvenile court treatment. (SDAP did not participate in the matter)

People v. Marcus Ray (H041470)

Panel attorney: Allison Elhert

Date: August 16, 2018

While the appeal was pending, the law on transporting drugs was amended to apply only if it was for purposes of sales. Accordingly, appellant was entitled to reversal of the conviction. (Staff attorney William Robinson)

People v. Officer (H042964)

Panel attorney: Rudy Kraft

Date: August 13, 2018

The civil commitment order was reversed because the court improperly admitted hearsay evidence through the government expert witness. (Staff attorney Lori Quick)

People v. Phillips (H043225)  
Panel attorney: Steven Schorr  
Date: May 11, 2018

Appellant was convicted of oral copulation of a minor. Oral copulation was defined as any contact with the sexual organ of another. The evidence was that he made contact with the “mons area” of the girl, which is generally considered to be above the vulva. The court, however, provided several definitions of the mons area, one of which included it being part of the vulva. The court of appeal found this was erroneous and required reversal. (Staff attorney Lori Quick)

People v. Danny Brumsey  
Staff attorney: Lori Quick  
Date: May 11, 2018

Admission of the statements of an alleged domestic violence victim who did not testify violated the defendant’s right to confrontation.

People v. Timothy Gleason (H044116)  
Panel attorney: Caitlin Plummer  
Date: April 30, 2018

The finding that an occupant was present during a residential burglary did not apply to the crime of attempted residential burglary. Further, trial counsel was ineffective for not objecting to adding a personal use of a weapon allegation when there was insufficient evidence in the preliminary hearing to support the allegation. (Staff attorney William Robinson)

People v. David Johnson (H043996)  
Panel attorney: Michael Sampson  
Date: May 1, 2018

The great bodily injury finding was reversed because the court erroneously instructed the jury that it was essentially equivalent to the charge of serious bodily injury. (Staff attorney Jonathan Grossman)

People v. Felix Villar (H043028)  
Panel attorney: Carrie Kojimoto  
Date: April 3, 2018

The gang allegations were reversed due to error admitting hearsay under *People v. Sanchez*

(2016) 63 Cal.5th 665. (Staff attorney Jonathan Grossman)

People v. Guillen (H043189)

Panel attorney: Siri Shetty

Date: February 16, 2018

Appellant was convicted of several felonies and misdemeanors. The court of appeal agreed the misdemeanor charges were brought after the statute of limitations had expired, and they must be dismissed. (Staff attorney Jonathan Grossman)

### **PRETRIAL AND POSTTRIAL MOTIONS**

People v. Josephine Frias (H044757)

Staff attorney: Patrick McKenna

Date: August 14, 2018

Appellant had made a prima facie showing in the Proposition 47 petition that the value of the property taken was not more than \$950.

People v. Cheyanne Bear (H044609)

Staff attorney: Anna Stuart

Date: July 23, 2018

In a published opinion, the court of appeal decided the superior court erred in believing it did not have the discretion to consider a subsequent or amended petition for resentencing under Proposition 47.

People v. Alex Barrientos (H043137)

Panel attorney: Gordon Brownell

Date: June 13, 2018

Appellant was 17 years-old when the crime was committed. He was entitled to have the matter remanded to the juvenile court for a fitness hearing under Proposition 57. (Staff attorney Paul Couenhoven)

People v. Rion Redko (H044104)

Panel attorney: Julie Caleca

Date: May 31, 2018

Appellant was serving a seven year sentence for a case from Santa Cruz County for petty theft with a prior conviction and a prior strike. He then entered a plea bargain in a Santa Clara County to serve no more than 32 months in that case. The court imposed a 16 month consecutive sentence. He then filed a Proposition 47 petition in Santa Cruz County and had the petty theft conviction reduced to a misdemeanor. Santa Clara County modified its sentence to be five years. The court of appeal agreed that pursuant to the plea bargain, the sentence could be no longer than 32 months. (Staff attorney Lori Quick)

People v. Billy Washington (H045208)

Panel attorney: Anna Dorn

Date: April 17, 2018

Appellant was convicted of receiving stolen property in 1988 for taking a motor scooter. The court denied his Proposition 47 petition because the crime would qualify under Penal Code section 496d, which was enacted after he was convicted. The court of appeal reversed. (Staff attorney Paul Couenhoven)

People v. Miguel Ruiz (H044598)

Panel attorney: Sylvia Ronnau

Date: March 21, 2018

Proposition 47 applies to auto theft. (Staff attorney Jonathan Grossman)

People v. Emmanuel Baquiran (H044676)

Panel attorney: Kevin Lindsley

Date: January 19, 2018

A conviction for auto theft qualifies for resentencing under Proposition 47. (Staff attorney William Robinson)

#### **SENTENCING.**

People v. Armando Canchola (H044154)

Panel attorney: Gordon Brownell

Date: August 28, 2018

The sentencing court stated it did not believe it had discretion to dismiss a gang enhancement. Because this was erroneous, the matter was remanded for the court to exercise its discretion. (Staff attorney Patrick McKenna)

People v. Kirk Renshaw (H044418)  
Staff attorney: Patrick McKenna  
Date: August 20, 2018

The abstract of judgment must be amended to reflect that the court stayed the punishment for two of the counts.

People v. Delgado (H043481)  
Panel attorney: Alex Coolman  
Date: August 13, 2018

The trial court erred in believing that consecutive sentences were required under the One Strike Law for certain crimes committed before 2010. (Staff attorney Lori Quick)

People v. Jeremy Garcia (H043355)  
Panel attorney: Sara Ruddy  
Date: August 7, 2018

A juvenile was convicted in adult court. The matter was remanded to the juvenile court to hold a fitness hearing. (Staff attorney Lori Quick)

People v. Mario Torres (H043671)  
Panel attorney: Peggy Headley  
Date: July 20, 2018

A defendant cannot be convicted of both assault by a prisoner (Pen. Code, § 4501) and assault by a life prisoner (Pen. Code, § 4500) for the same attack on the same victim. Further, Penal Code section 654 prohibited punishing him for also possessing a weapon in prison (Pen. Code, § 4502, subd. (a)). (Staff attorney Patrick McKenna)

People v. Jason Kacznowski (H04555)  
Panel attorney: Jason Szydlik  
Date: July 3, 2018

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

People v. Jose Cortes and Juan Guerra  
Panel attorney: Randy Kravis

Staff attorney: Paul Couenhoven  
Date: July 2, 2018

The court remanded the matter so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620.

People v. Paula Hernandez (H045001)  
Panel attorney: Michael Sampson  
Date: June 21, 2018

The court agreed that a probation condition to attend “self-help” programs as directed by probation was unconstitutionally vague. (Staff attorney William Robinson)

People v. Edgin (H043305)  
Panel attorney: Heather Mackay  
Date: June 19, 2018

The judgment was modified to reflect the correct penalty assessments and to strike a stay order in the abstract of judgment that was never ordered. (Staff attorney Lori Quick)

People v. Fidel Soto (H042397)  
Panel attorney: Alexis Haller  
Date: June 13, 2018

Appellant was convicted of murder and denied presentence conduct credits under Penal Code section 2933.2. This was error because the murder was committed before section 2933.2 was enacted. The court also remanded the matter so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney William Robinson)

People v. Cotichacaj (H043974)  
Panel attorney: Alex Coolman  
Date: June 8, 2018

The punishment for false imprisonment should have been stayed under Penal Code section 654. (Staff attorney Patrick McKenna)

People v. Cody Sakoman (H043933)

Panel attorney: Hilda Scheib  
Date: June 6, 2018

The trial court had an obligation to calculate presentence conduct credits. (Staff attorney Lori Quick)

People v. Juan Salazar (H041724)  
Panel attorney: Shannon Chase  
Date: May 31, 2018

The punishment for the gang crime must be stayed in lieu of the punishment for the gang enhancement. The court also remanded the matter so that the superior court can exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620 and to conduct a *Franklin* hearing. (Staff attorney William Robinson)

People v. Johnell Carter (H042977, H43545)  
Panel attorney: Frank McCabe  
Date: May 22, 2018

Appellant was convicted of one crime and then escaped from jail. He received no presentence credits in either case for the time between his arrest and conviction for escape, which was error. (Staff attorney Paul Couenhoven)

People v. Shane Miller (H043845)  
Panel attorney: J.J. Hamlyn  
Date: May 22, 2018

Appellant entered into a plea bargain which included a *Cruz* waiver that permitted the court to impose any punishment if he failed to appear for sentencing. He traveled to Nebraska in violation of the terms of his OR, but he appeared at sentencing. The court found he violated the *Cruz* agreement. The court of appeal reversed. The *Cruz* waiver only required him to appear at sentencing, which he did. He was thus entitled to enforcement of the plea bargain. (Staff attorney Paul Couenhoven)

People v. Abel Perez (H044887)  
Panel attorney: Randy Kravis  
Date: May 16, 2018

Conditions of probation were modified to avoid problems with vagueness and overbreadth.

(Staff attorney Lori Quick)

People v. Marques Gaines (H043645)

Panel attorney: Stephen Bedrick

Date: May 1, 2018

The court remanded the matter so that the superior court can exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney William Robinson)

People v. Han Hoang (H042876)

Staff attorney: Lori Quick

Date: April 27, 2018

The court remanded the matter so that the superior court can exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620.

People v. Moises Tejeda (H044442)

Panel attorney: Lauren Dodge

Date: April 20, 2018

The matter was remanded to hold a Franklin hearing. (Staff attorney William Robinson)

People v. Andrew Rodriguez (H042931)

Panel attorney: Maureen Fox

Date: April 17, 2018

The court remanded the matter so that the superior court can exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney Lori Quick)

People v. Barton Williams (H042903)

Panel attorney: Siri Shetty

Date: April 2, 2018

Appellant was sentenced to life under the three strikes law, the strikes being from Oregon. He argued the Oregon priors cannot be found to be strikes in California without adjudicating the facts of the prior conviction, which is forbidden under the Sixth Amendment. The court of appeal initially affirmed, but it granted rehearing when People v. Gallardo (2017) 4 Cal.5th 120 was decided. The court reversed the findings that the priors were strikes. (Staff attorney William



Robinson)

People v. Andrew Butler (H044344)

Panel attorney: Stephen Bedrick

Date: March 28, 2018

The court remanded the matter so that the superior court can exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney Lori Quick)

People v. Luis Espinoza (H043052)

Staff attorney: Patrick McKenna

Date: March 20, 2018

The court remanded the matter so that the superior court can exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620.

People v. Jesus Ruelas (H042776)

Panel attorney: Randy Kravis

Date: March 14, 2018

The matter was remanded for the juvenile court to hold a transfer hearing under Proposition 57, and if the matter is transferred to adult court, it shall hold a Franklin hearing and exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney William Robinson)

People v. Marcus Casillas (H042131)

Panel attorney: Michelle Peterson

Date: March 12, 2018

The matter was remanded to hold a Franklin hearing and exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney William Robinson)

People v. Saul Garcia (H043647)

Panel attorney: Michelle Peterson

Date: March 8, 2018

The matter was remanded to hold a Franklin hearing. (Staff attorney William Robinson)

People v. Jared Henry (H043252)  
Panel attorney: William Hassler  
Date: February 21, 2018

Appellant was convicted of assault with a deadly weapon in count one, domestic violence in count two, driving under the influence with injury in count three, and driving with a 0.08 percent alcohol level or more with injury in count four. The punishment for count four must be stayed under Penal Code section 654. The punishment for count three must also be stayed because the injury occurred when appellant tried to batter the victim. (Staff attorney Jonathan Grossman)

People v. Marcus Casillas (H042131)  
Panel attorney: Michelle Peterson  
Date: February 14, 2018

The matter was remanded for a *Franklin* hearing. (Staff attorney William Robinson)

People v. Jose Sanchez (H042713)  
Panel attorney: Ronald Boyer  
Date: February 8, 2018

Appellant was convicted of assault with a firearm and making criminal threats. The jury also found he personally used a firearm. The punishment for making criminal threats must be stayed pursuant to Penal Code section 654. Further, the matter must be remanded for the court to exercise its discretion whether to strike the firearms enhancement under the new law. (Staff attorney Lori Quick)

People v. Saul Zabala (H043328)  
Panel attorney: Gabriel Bassan  
Date: January 11, 2018

The court of appeal agreed the prior drug trafficking enhancement must be stricken due to a change in the law. (Staff attorney Jonathan Grossman)

People v. Adalberto Aparicio (H043689)  
Panel attorney: Hilda Scheib  
Date: January 8, 2018

The court operations fee cannot be increased upon a violation of probation. Further, an emergency medical air transportation fee cannot be imposed for crimes committed before

Government Code section 76000.10 was enacted. (Staff attorney Paul Couenhoven)

### **DEPENDENCY CASES**

In re I.R. (H045308)

Panel attorneys: Matthew Thue (alleged father)  
                                Alexis Collentine (minor)

Date: August 16, 2018

The court changed the minor's placement from the presumed father to the mother and alleged father. The presumed father appealed and retained private counsel. The court of appeal affirmed, holding that the juvenile court did not abuse its discretion in reunifying the minor with the mother. (Staff attorney Jonathan Grossman)

In re T.H. (H044837)

Panel attorney: Daniel Rooney

Date: July 3, 2018

T.H. was in foster care. The juvenile court order provided for visitation between T.H. and the half-sibling, T.S., who was placed with the maternal grandmother. Mother's parental rights to T.H. were later terminated, and the Department stopped the sibling visitation. Section 388 petitions were also filed by the grandmother and T.S. to resume visitation between T.S. and T.H. The juvenile court denied the petitions, and they appealed. The court of appeal decided the Department could not unilaterally end sibling visitation. (Staff attorney Paul Couenhoven)

In re J.R. (H045127)

Panel attorneys: Matthew Thue (father)  
                                Daniel Rooney (minor)

Date: May 30, 2018

The juvenile court erred in ruling that appellant could not be found to be the presumed father because he was homeless, not the biological father, and was not involved in the minor's life for the first few months after birth. (Staff attorney Patrick McKenna)

In re J.R. (H045040)

Panel attorneys: Jamie Moran for the father  
                                Daniel Rooney for the minor

Date: April 17, 2018

The court agreed with father that remand is necessary to comply with the notice requirement

of ICWA but found his argument, that the minor should have been placed with him, was forfeited. (Staff attorney Patrick McKenna)

In re K.P. (H045170)  
Panel attorney: Jamie Moran  
Date: March 1, 2018

The juvenile court lacked the authority to appoint a non-parent to hold educational rights over the minor without divesting the parent of the educational rights. (Staff attorney Patrick McKenna)

### **HABEAS CORPUS**

In re Shedrick Henry (H044227)  
Staff attorney: Paul Couenhoven  
Date: August 27, 2018

Appellant was a life prisoner who was convicted of assaulting another prisoner while not serving a life sentence. (Pen. Code, § 4501.) Because there was insufficient evidence to support the allegation that he was not a life prisoner, the conviction was reduced to a violation of Penal Code section 245, subdivision (a)(1).

In re Jaime Ayala (H045079)  
Panel attorney: Laurie Wilmore  
Date: February 21, 2018

Appellant was convicted of felony failure to appear with the intent to evade the judicial process for missing a certain court date. It was shown on habeas corpus trial counsel failed to present evidence that appellant arrived late, and he immediately made a new court date the same day. The court of appeal issued an order to show cause. (Staff attorney Lori Quick)

### **MISCELLANEOUS**