

RECENT WINS!

People v. Spillman, H051315
Kyle Gee
August 30, 2024

A trial court summarily denied appellant's Penal Code section 1172.6 resentencing, reasoning that the petition had renewed appellant's prior unsuccessful petition for recall of sentence under section 1170.91, subdivision (b). The Attorney General conceded error and the Court of Appeal concurred. The Court reversed the order denying appellant's section 1172.6 petition and remanded for further proceedings on that petition. (Randall Conner)

DiMaggio v. Superior Court, H051516
Juliet Peck
August 30, 2024

A Monterey County Sheriff's Office detective obtained a warrant to search a suspect's cellphone for information created within a one-month period in 2022 relevant to a sexual assault investigation. An analyst extracted data from the cellphone and created a report that included information lacking metadata indicating origin within the one-month period. This information included suspected child pornography. Pursuant to a second warrant, the detective obtained further child pornography evidence that the suspect had acquired prior to 2022. In a published decision, the Court of Appeal granted the suspect's petition for writ of mandate, reasoning that the search had exceeded the warrant's parameters, and that the good faith exception did not apply. In a dissenting opinion, acting presiding Justice Bamattre-Manoukian reasoned that the good faith exception applied. (SDAP did not participate in this matter)

People v. Howard, H050156
Joseph Doyle
August 27, 2024

After the jury verdict but before sentencing, appellant moved for a new trial alleging the prosecution violated the Racial Justice Act (RJA) by cross-examining him regarding his connection to East Palo Alto (EPA). The trial court took judicial notice of EPA's reputation but denied the motion. In a published decision, the Court of Appeal reviewed de novo the trial court's legal conclusion that appellant failed to show a prima facie RJA violation and found error, reasoning that courts have recognized that a person's place of residence may serve as a proxy for race and appellant's connection to EPA had marginal relevance. Thus, appellant had met his "initial minimal burden to produce facts that, if true, establish that there is more than a mere possibility of an RJA violation." The Court conditionally reversed the conviction and remanded for hearing on the RJA claim. (Michelle Spencer)

People v. Williams, H050555
David Walter Scoop

August 23, 2024

Following a jury trial, the trial court sentenced the defendant to serve five years eight months, consisting of two years for assault by means likely to cause great bodily injury (count 1), three years for a great bodily injury enhancement to count 1, and eight months ($\frac{1}{3}$ middle term) for resisting arrest (count 3.) The court also sentenced appellant to serve two years for battery with serious bodily injury (count 2), concurrently to counts 1 and 3. The trial court stayed execution of the sentence and placed appellant on probation. The Court of Appeal reasoned that Penal Code section 654 required the trial court to stay execution of the sentence on count 1's GBI enhancement or on count 2, because count 1's GBI enhancement and count 2 each arose from the same act of assault on the same victim. However, the Court found remand unnecessary because the record clearly indicated that the trial court would have stayed execution of sentence on count 2. It modified the order of probation to reflect imposition of sentence on count 2 with execution of sentence on that count stayed. (Anna Stuart)

People v. Sanchez, H051274
Eric Weaver
August 23, 2024

The trial court denied the defendant's request for Penal Code section 1172.75 resentencing on the grounds that the original sentencing court had stricken the punishment associated with a prior prison term enhancement. The Court of Appeal reversed and remanded, reasoning that section 1172.75 applies in cases where the judgment includes a prison prior that was imposed but stricken. (Michelle Spencer)

People v. Jimenez, H051253
J. Wilder Lee
August 23, 2024

The trial court denied the defendant's request for Penal Code section 1172.75 resentencing on the grounds that the original sentencing court had stricken the punishment associated with five prior prison term enhancements. The Court of Appeal reversed and remanded, reasoning that section 1172.75 applies in cases where the judgment includes a prison prior that was imposed but stricken. (Anna Stuart)

People v. Espino, H051258
Robert Angres
August 12, 2024

In exchange for a 26-year, four-month sentence, the defendant pled no contest to robbery, illegal firearm possession and witness dissuasion, and admitted several enhancements, including a prior prison term enhancement. In sentencing defendant to the agreed-upon sentence, the trial court imposed but struck punishment for the prior prison term enhancement. Defendant subsequently petitioned the court for section 1172.75 resentencing. The court denied the petition,

reasoning that section 1172.75 does not apply to prior prison term enhancements when a court has stayed or struck punishment for the enhancement. In an opinion certified for partial publication, the Court of Appeal reversed, finding that section 1172.75 applies to prior prison term enhancements when a court stayed or struck punishment for the enhancement and that the Attorney General cannot withdraw from its plea bargain if the trial court reduces the defendant's sentence. (Jonathan Grossman)

People v. Jordan, H047777, H047815
Solomon Wollack, Kyle Gee
July 29, 2024

A trial court sentenced two defendants to life without possibility of parole for first degree murder with a lying-in-wait special circumstance finding, among other counts and enhancements. The Court of Appeal upheld the convictions but reversed and remanded for possible retrial on gang and gang-related firearm allegations, as well as resentencing, reasoning that amendments to Penal Code section 186.22 relating to proof of gang allegations apply retroactively to the case. (Jonathan Grossman)

People v. Gonzalez, H051075
Richard Leslie Fitzer
July 16, 2024

As part of a 16-year four months sentence, the trial court sentenced the defendant to the upper term on a drug count, based on its finding that defendant had suffered prior convictions. The defendant argued that he did not admit any of those convictions and that no certified records of the convictions were submitted to the court. The Court of Appeal reversed and remanded, reasoning that it would elect to reach the issue on the merits, that the trial court had erred, and that the error was not harmless. (Anna Stuart)

People v. Clayton, H051277
Sara Elizabeth Coppin
July 16, 2024

The trial court denied the defendant's request for Penal Code section 1172.75 resentencing on the grounds that the original sentencing court had stayed the punishment associated with a prior prison term enhancement. The Court of Appeal reversed and remanded, reasoning that section 1172.75 applies in cases where the judgment includes a prison prior that was imposed but stayed. (Lori Quick)

People v. Arellano, S277962
Peter F. Goldscheider
July 11, 2024

A successful Penal Code section 1172.6 petitioner who was charged with murder “generically, and the target offense was not charged” is entitled to have the murder conviction “redesignated” as “the target offense” of the natural and probable consequences theory — or the “underlying felony” of the felony murder — and to be resentenced accordingly. The Attorney General argued to the Supreme Court that in resentencing such a petitioner, a superior court has the “flexibility” to add to the redesignated conviction uncharged and unproven offense-specific sentencing enhancements or allegations it deems “appropriate.” The Supreme Court, affirming the Court of Appeal, held that the limited resentencing procedure under section 1172.6, subdivision (e) does not permit a court to impose a sentencing enhancement or allegation unless the enhancement or allegation was pled and either proven to the trier of fact or by the defendant’s admission in open court. (Lori Quick)

People v. Calvo, H050649
Jason Joseph Szydlik
July 9, 2024

A defendant pled no contest to various counts, including three counts relating to possession of the same firearm, in exchange for dismissal of a firearm enhancement to an involuntary manslaughter count and a prison sentence of not more than five years four months. The trial court sentenced the defendant to serve five years four months, rejecting defendant’s argument that Penal Code section 654 required the court to stay punishment for two firearm counts. The Court of Appeal modified the judgement to stay punishment for the two firearm counts at issue. (Randall Conner)

People v. Agaton-Hernandez, H051008
Solomon Wollack
July 5, 2024

Following a bench trial held in 2011, the trial court found the defendant guilty of murder and sentenced him to 15 years to life in prison. Defendant subsequently sought Penal Code section 1172.6 resentencing. Following an evidentiary hearing, the court denied defendant’s petition, finding him guilty of murder under current law as a direct aider and abettor of a deliberate premeditated murder who harbored an intent to kill. The Court of Appeal reversed and remanded, reasoning that no substantial evidence supporting the aiding and abetting theory of murder liability. (Lori Quick)

People v. McCowan, H049125
Geoff Jones
July 5, 2024

A jury found the defendant guilty of 44 counts of sexual abuse, perpetrated against a single teenage victim during the span of about two years. The trial court imposed 44 consecutive upper term sentences, totaling 430 years when combined with a middle term sentence for

attempting to dissuade a witness from reporting a crime. The Court of Appeal reversed and remanded, reasoning that three of counts lacked sufficient evidence. (Anna Stuart)

People v. Dillard, H050900
Kevin Dennis Sheehy
July 3, 2024

The trial court denied the defendant's request for Penal Code section 1172.6 resentencing based upon the Court of Appeal's factual summary set forth in its opinion addressing his direct appeal from the judgment of conviction. The Court of Appeal reversed and remanded, reasoning that the trial court had erred by engaging in factfinding at the prima facie state of review. (Randall Conner)

People v. Perez, H051260
Sara Elizabeth Coppin
July 2, 2024

The trial court denied defendant's request for Penal Code section 1172.75 resentencing on the grounds that the original sentencing court had stayed the punishment associated with a prior prison term enhancement. The Court of Appeal reversed and remanded, reasoning that section 1172.75 applies in cases where the judgment includes a prison prior that was imposed but stayed. (Jonathan Grossman)

People v. Angel Bass, H049528
Candace Hale
June 28, 2024

The jury convicted the defendant of the lesser included offense of misdemeanor assault. The conviction must be reversed because the charges were brought after the statute of limitations for assault expired. Further, the matter must be remanded for a new sentencing hearing due to changes in the law concerning Penal Code sections 1170 and 654. (Paul Couenhoven)

People v. Bracamontes, H48925
Randy Baker
June 28, 2024

The complaining witness said appellant penetrated her twice but was not sure if there was a third time. The Court of Appeal concluded there was insufficient evidence to support a third conviction. (Michelle Spencer)

People v Cofer, H050122
Mary Jo Strnad

June 28, 2024

In a published decision, the court held a defendant is entitled to presentence credits on all cases imposed in a single hearing to be served concurrently, disagreeing with *People v. Jacobs* (2013) 220 Cal.App.4th 67. (Anna Stuart)

Molina v. Superior Court, H050669
Athena Reis
June 28, 2024

The defendant was required to share an interpreter with the codefendant at the preliminary hearing. In a published decision, the Court of Appeal decided this required reversal of the holding order. (SDAP was not involved)

In re A.H., H051738
Sarah Vaona
June 25, 2024

The matter was remanded for the court to comply with the Indian Child Welfare Act because there was insufficient investigation regarding the child's possible Indian ancestry through the mother. (Anna Stuart)

People v. Juan Cruz, H050340
Ed Mahler
June 18, 2024

The court erred in summarily denying a petition for resentencing under SB 1437. Although his plea included him admitting an enhancement for personal use of a firearm, it was stipulated at the time of his plea he was not the actual shooter. (Patrick McKenna)

People v. Raul Gonzalez Arroyo, H049202
Julie Caleca
June 6, 2024

The defendant was entitled to a new sentencing hearing to reconsider the imposition of the upper term under Penal Code section 1170, subdivision (b)(2). (Jonathan Grossman)