

**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. 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. 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. Raymond Reynoza, S273797

Nancy Brandt

April 22, 2024

The Supreme Court held dissuading a witness from assisting the prosecution under Penal Code section 136.1, subdivision (b)(2) applies to pre-complaint conduct. Since the evidence was that appellant's purported dissuasion occurred after the complaint was filed, there was insufficient evidence to support the conviction. (Jonathan Grossman)

ERROR AT TRIAL OR HEARING

People v. Franco, et al., H047195, H047398, H047442

Edward Haggerty (Chavez), John P. Dwyer (Franco)

December 26, 2024

A jury found defendants Gabriel Franco and Hugo Chavez guilty on two counts of attempted murder and one count of first-degree murder. The jury found Franco guilty on two additional counts of attempted murder and one count of shooting at an inhabited dwelling house. The jury found the attempted murders were deliberate and premeditated, and the jury found true gang and firearm allegations. As to Franco, the trial court imposed an aggregate sentence of 170 years to life consecutive to one year in prison. As to Chavez, the trial court imposed an aggregate sentence of 105 years to life in prison. In his appeal, Chavez claimed the trial court's admission of gangster rap lyrics violated Evidence Code section 352. Chavez had made and recorded music in a music studio in his grandmother's back yard. Chavez would provide background beats and rhythms, and other people would rap lyrics over them while Chavez recorded them. Chavez did not rap himself, and he did not write any rap lyrics. The lyrics at issue contained no specific references to the offenses and appeared on two CDs published at least three months prior to the offenses. The trial court found that Chavez's "production" of the music and promotion of the CDs made the lyrics more probative than prejudicial. The Sixth District disagreed and found that the error prejudiced Chavez. It reversed the judgment and vacated Chavez's convictions and sentence.

Franco contended that the trial court had erroneously instructed the jury on a "kill zone" theory of liability because it used CALCRIM No. 600, which the California Supreme Court subsequently disapproved in *People v. Canizales* (2019) 7 Cal.5th 591. The Sixth District agreed, reasoning that, as in *Canizales*, beyond the trial court's reference to a "particular zone of harm," the instruction had provided no further definition of the term "kill zone", and had not directed the jury to consider evidence regarding the circumstances of the attack when determining whether appellant intended to kill the secondary target by killing everyone in the kill zone, and had not required a finding that defendant intended to create a kill zone around the target of the attack in order to ensure his death. As a result, it gave no guidance as to how the jury should determine whether the victim was actually within the kill zone, as *Canizales* requires. Furthermore, the prosecutor's argument had, in summary, conflated the kill zone theory with an "indiscriminate killer scenario" in which the defendant does not specifically target a person, but rather applies lethal force indiscriminately to a group of persons. The Sixth District found a reasonable likelihood the jury understood the kill zone instruction in a legally impermissible manner, and therefore reversed Franco's conviction on one count of attempted murder. (Jonathan Grossman)

People v. Stubblefield, H048598
Joe Doyle
December 26, 2024

A victim reported to police that appellant, a Black man known publicly as a former professional football player, had threatened her with a gun and sexually assaulted her in his home. Police decided not to search appellant's house. In a subsequent trial, the prosecutor

introduced no gun into evidence but asserted in closing arguments that the police had decided not to search appellant's house based partly on the fact that he was a famous Black man. The prosecutor claimed a search would have opened up "a storm of controversy," and added, "Can you imagine in Morgan Hill when they search an African-American --," whereupon defense counsel objected. The trial court sustained the objection but gave the jury no admonishments or instructions with respect to this part of the prosecutor's arguments. The jury found appellant guilty of forcible rape, forcible oral copulation, and false imprisonment, and found that he personally used a firearm in the commission of the first two offenses. The trial court sentenced appellant to a term of 15 years to life in prison. Appellant contended in his appeal that the prosecutor's remarks in closing argument had violated the Racial Justice Act. In a published opinion, the Sixth District agreed, reasoning that the statements implied police might have searched the house and found a gun had appellant not been Black, and that appellant had therefore gained an undeserved advantage at trial because he was a Black man. The Court also found that the prosecution's claim that a search would "open up a storm of controversy" implicitly referenced the events that followed the controversial and then-recent killing of George Floyd, thereby appealing to racially biased perceptions of those events and associating appellant with them based on his race. The Court further concluded that Penal Code section 745, subdivision (e)(2)(A) precludes harmless error analysis of this violation and required the court to vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with subdivision (a). (Jonathan Grossman)

People v. Sampognaro, Jr., H050223
Jonathan Grossman
November 5, 2024

A jury convicted appellant of first-degree murder (count 1), evading a peace officer with wanton disregard for safety (count 2) evading a peace officer by traveling against the flow of traffic (count 3) and illegal possession of a firearm (count 4), and found true two firearm enhancements to count 1. The trial court sentenced appellant on count 1 to 25 years to life consecutive to a 10-year firearm use enhancement and two-year sentences on the remaining counts. Appellant argued on appeal that his two attorneys had provided ineffective assistance by not objecting to the admission of prejudicial character evidence and to misconduct by the prosecutor during closing argument. The Court of Appeal agreed that counsel's acquiescence to the admission of prejudicial character evidence constituted ineffective assistance requiring reversal. The court rejected the Attorney General's argument that counsel must have had a tactical reason for failing to object to recordings of statements barred by the trial court's pre-trial ruling on a motion in limine, reasoning that each of three potential tactical choices failed to meet counsel's duty to provide competent representation. The ineffective assistance prejudiced appellant with respect to count 1 because the jury may have relied on the character evidence to establish appellant's identity as the shooter, or to determine the degree of the crime, or to determine that he posed a danger to society requiring conviction on the greater crime as opposed to a lesser-included offense. The court also found prejudice with respect to count 4 because his alleged possession of

a firearm arose from evidence of his identity as the shooter. The court therefore reversed appellant's convictions on counts 1 and 4. The court also noted that a sexual affair between one of appellant's attorneys and a Sheriff's Department deputy serving as a bailiff during the trial "contributes to our lack of confidence in the verdict." Finally, the court found that section 654 required the trial court to stay punishment on count 2 or count 3 because those counts arose from the same criminal act.

People v. Pedrisco, H050368

Geoffrey Jones

October 30, 2024

Following a jury trial, the trial court sentenced appellant to serve 40 years to life for participating in a criminal street gang (count 1), assault with a deadly weapon (count 2) and witness intimidation by force or the threat of force (counts 3-5), with gang special allegations as to counts 2-5, two prior strikes, two prior serious felony convictions, and one prior prison term enhancement. In a resentencing following appeal, the trial court struck the prior prison term enhancement but made no further changes to the sentence. Following an opinion in a second appeal, the Supreme Court granted the Attorney General's petition for review, and the Sixth District reconsidered the matter. Applying *People v. Burgos* (2024) 16 Cal.5th 1, the Sixth District reasoned that section 1109, which requires bifurcation of gang enhancements from trial on the underlying offense upon request, did not apply retroactively to appellant's case and did not require retrial on counts 2-5. Finding that other post-conviction amendments to the gang statute applied retroactively, the Sixth District remanded the matter to the trial court with instructions to vacate and permit retrial on the count 1 conviction and the gang enhancements to counts 2-5. In appellant's resentencing the trial court will have discretion to dismiss his prior serious felony conviction enhancements pursuant to amended section 1385. (Lori Quick)

People v. Cruz, et al., H047687

People v. Martinez, H047386

Patricia Lai, Alex Coolman, Allen Weinberg

October 25, 2024

A jury convicted three defendants of murder, participation in a criminal street gang, and other crimes, and found true several gang-related enhancements and special circumstances. As relevant here, the defendants argued that post-trial changes to the criminal street gang statute enacted by the Legislature in Assembly Bill No. 333 (2021-2022 Reg. Sess.) required vacation of the gang convictions and findings. The Court of Appeal agreed, reasoning that Assem. Bill 333 had narrowed the definition of a criminal street gang to require that any gang be an "ongoing, organized association or group of three or more persons", and had amended the definition of "pattern of criminal gang activity" to require that "that any such pattern have been 'collectively engage[d] in' by members of the gang", and had required that the offenses needed to establish a pattern of criminal gang activity "commonly benefitted" the gang and that any common benefit

“be ‘more than reputational.’” These amendments applied retroactively to the defendants’ cases and the Attorney General failed to show absence of instruction on these requirements harmless beyond a reasonable doubt. (Lori Quick)

People v. Herena, et al., H042741

Jennifer Mannix

October 25, 2024

In a confrontation between two groups of three men, two of three defendants opened fire, with one defendant’s shots killing two victims and injuring another. At trial on murder and related charges, the court instructed the jury on theories of liability that the Legislature has since eliminated or narrowed: (1) murder as the natural and probable consequence of either (a) aiding and abetting assault with a firearm or (b) conspiring to commit such an assault, and (2) participation in a criminal street gang by acting for its common reputational benefit. The jury convicted the defendants of the murders, assault, firearm and gang offenses, finding true applicable firearm, injury, and gang enhancements and (as to two defendants) a multiple-murder special circumstance. Before the close of briefing in the defendants’ appeal, the Legislature amended Penal Code sections 188, 189, and 186.22 to abrogate the natural and probable consequences doctrine and require that the common benefit necessary to a gang offense or enhancement be more than reputational. The Court of Appeal found these amendments applicable to the defendants retroactively. The Court reversed the gang convictions and gang enhancements as to all defendants, reversed the murder convictions as to the defendants who did not shoot the victims, and affirmed the judgment as to all other offenses. (Jonathan Grossman)

People v. Burgos, et al., H045212

Laurie Wilmore, Jean Marinovich, Sol Wollack

October 23, 2024

A jury convicted three defendants on two counts of second-degree robbery with true findings on gang allegations and the trial court sentenced each defendant to serve 21 years. In a prior opinion, the Court of Appeal reversed appellants’ judgments based on a retroactive application of Penal Code section 1109, as amended by Assembly Bill No. 333, which took effect while this appeal was pending. The California Supreme Court granted review, reversed the judgment, and remanded the matter to the Court of Appeal for further proceedings. In the current matter, all three appellants contended that retroactive application of section 186.22 as amended by Assembly Bill 333 required vacation of the gang enhancements and that retroactive application of Senate Bill No. 1393 entitled them to resentencing. Two appellants contended that Senate Bill No. 567 entitled them to resentencing as youthful offenders. The Attorney General conceded the merits of these claims and the Court of Appeal accepted the concessions. As to one appellant, the Court of Appeal struck a prior prison term based upon retroactive application of Senate Bill 136. (Jonathan Grossman)

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. 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. 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. Matthew Slone, H048822
Paul Couenhoven
May 1, 2024

The gang findings were reversed in light of A.B. 333.

People v. Tatum-Delacruz, H050291
Carrie Kojimoto
April 30, 2024

The court erred in instructing a car is an “inherently deadly” weapon, requiring reversal of the conviction for assault with a deadly weapon. (Paul Couenhoven)

People v. Paul Lacerda, H049690
Ed Mahler
March 1, 2024

The defendant’s conviction for assault with a deadly weapon was reversed due to instructional error. The instruction said a deadly weapon was one that was inherently deadly or used in such a way that is capable of causing great bodily injury. Since the alleged weapon was a car, however, the court needed to instruct the jury when an object that was not inherently deadly becomes a weapon. Further, the punishment for several counts should have been stayed under Penal Code section 654, and the maximum punishment for certain misdemeanors was six months, not one year. The defendant was entitled to resentencing under current law. (Lori Quick)

PRETRIAL AND POSTTRIAL MOTIONS

People v. Valenzuela, H050501
Joe Doyle
December 27, 2024

In 2018, two Norteño gang members got out of appellant’s vehicle, fired shots at two victims, and left the scene in appellant’s vehicle. Appellant subsequently pleaded no contest to one count of non-premeditated attempted murder and admitted a gang enhancement, and the trial court sentenced him to serve 17 years in state prison. In 2023, the trial court denied appellant’s petition for section 1172.6 resentencing. However, the Sixth District reversed and remanded the case for resentencing, reasoning that expert testimony regarding gang activity did not establish that appellant knew that his passengers had firearms and intended to shoot at any Sureño gang members they encountered. Appellant’s driving in Sureño gang territory, his use of paper “dealership” license plates on his vehicle, and his evasion of police officers after the shooting indicated intention to commit crimes against the victims and consciousness of guilt, but did not establish intent to kill the victims. Justice Bamattre-Manoukian dissented. (Julie Caleca)

People v. Lopez, H051271
Michelle Spencer
December 26, 2024

In 1997, a jury found appellant guilty of assault with a deadly weapon (count 1) and resisting arrest (count 2, a misdemeanor) and found eight prior strike offenses, four prior serious felonies enhancements and six prior prison term enhancements proven. The trial court sentenced appellant to 25 years to life for the assault conviction, consecutive to 20 years for the four prior serious felony enhancements, with a six-month concurrent sentence on count 2. The trial court stayed punishment on the six prior prison term enhancements. In April 2022, based on the prison priors included in his sentence, appellant moved for resentencing under Senate Bill No. 483, which is now codified in section 1172.75. After the trial court appointed counsel, appellant again moved for resentencing under section 1172.75. The trial court denied the motions, reasoning that section 1172.75 only “applies to persons for whom a section 667.5(b) enhancement was imposed and executed.” The Court of Appeal reversed the trial court’s order, reasoning that a sentence enhancement is “imposed” for purposes of section 1172.75 even if the punishment for the enhancement has been stayed.

People v. Rogers, H050926
Edward Mahler
December 26, 2024

Appellant resolved two cases in exchange for a nine-year sentence in case 1 and a consecutive four-year, eight-month sentence in case 2. The Court of Appeal subsequently remanded case 1 to the trial court with directions to vacate its denial of appellant’s pre-plea motion to suppress evidence. The trial court granted appellant’s motion to suppress evidence and appellant resolved case 1 in exchange for a seven-year sentence. Consistent with the plea agreement, the court sentenced appellant to seven years in prison in case 1 and reimposed the consecutive four-year, eight-month sentence in case 2. The trial court awarded conduct days accrued during “phase I”, which commenced with the date of appellant’s arrest and concluded with his original sentence. It directed CDCR to calculate conduct days accrued during “phase II”, which commenced from the date following the original sentencing date and concluded on the date the Court of Appeal filed its original opinion in case 1. It awarded conduct days accrued during “phase III”, which commenced the date after the Court of Appeal issued its opinion in case 1, and concluded on the resentencing date. Finally, it directed CDCR to calculate conduct credits for the period after the resentencing. On appeal, as in the trial court, appellant contended the trial court should calculate all of his actual credits, but only those presentence conduct credits to which he was entitled commencing with the date he first was held in custody until the date of his original sentencing. He asserted CDCR should award conduct credits after the date of his original sentencing because he was at all times thereafter serving a consecutive state prison sentence in case 2. The Court of Appeal agreed, reasoning that appellant’s case involves one sentencing on two cases, after which, he continuously served a prison term by virtue of the consecutive sentence imposed in case 2. Because case 2 had not been overturned on appeal, appellant had continued to serve the term on his sentence. After his original sentence, appellant remained in constructive custody of prison authorities, and subject to CDCR’s post-sentence credit awards. The Court of Appeal also accepted the Attorney General’s concession that a 10-

year protective order issued on the date of appellant's original sentencing cannot exceed the ten-year period starting from the date of issuance. (Anna Stuart)

People v. Matias, H051256
Matthew J. Watts
December 17, 2024

In 2013, in exchange for an 18-year, four-month sentence, appellant pleaded no contest to attempted murder, assault with a semiautomatic firearm and misdemeanor street terrorism, and admitted firearm enhancement allegations as to the attempted murder and assault counts. In 2023, appellant filed a section 1172.6 petition for resentencing on his attempted murder conviction. The trial court summarily denied the petition. The Court of Appeal reversed the trial court, reasoning that the record of conviction did not conclusively establish that appellant personally acted with the specific intent to kill, as an attempted murder conviction requires. Specifically, appellant's admission and the change of plea record did not eliminate the theoretical possibility that he personally used a firearm in the commission of the attempted murder under circumstances that would allow for a natural and probable consequences theory of liability based on aiding and abetting a target offense (such as an assault with a firearm) perpetrated by another person in the vehicle with appellant at the time of the shooting. The Court also reasoned that even if a trial court may rely upon a preliminary hearing transcript to summarily deny a defendant's section 1172.6 petition, the admissible (non-hearsay) evidence in the transcript at issue did not establish appellant's identity as the sole perpetrator and actual shooter in the attempted murder offense. (Michelle Spencer)

People v. Camacho, H051334
Michelle Spencer
December 13, 2024

In 2010, in exchange for a 15-year sentence, appellant pled to carjacking, unauthorized use of a vehicle, reckless driving, and transportation, sale, and distribution of cocaine, and admitted a prior strike conviction, a prior serious felony enhancement, a prior violent felony enhancement and a prior prison term enhancement. The trial court stayed the punishment for the prior violent felony enhancement and struck the punishment for the prior prison term enhancement. The court subsequently denied appellant's section 1172.75 resentencing petition on the grounds that his sentence included a prior prison term enhancement with the punishment stricken rather than imposed. The Court of Appeal reversed the trial court's order, reasoning that a sentence enhancement is "imposed" for purposes of section 1172.75 even if the punishment for the enhancement has been struck.

People v. Gonzalez, H050752

Michelle Spencer
December 10, 2024

In 2013, appellant pled no contest to two charges involving domestic violence against two different victims. He also admitted to an enhancement for personally inflicting great bodily injury as well as various prior convictions including two prior strike convictions and one prior conviction that resulted in a prison term. The trial court sentenced appellant to a total term of 15 years in state prison. In 2022, the trial court struck the prior prison term enhancement and reduced appellant's sentence by one year, but denied the request to further reduce his sentence. On appeal, appellant argued that the trial court erred in refusing to reduce his upper-term sentence on count 1 as contemplated under section 1172.75 and section 1170, subdivision (b). In a published opinion, the Court of Appeal agreed, reasoning that section 1170, subdivision (d)(4) does not state an exception to the rule that an upper term sentence requires aggravating factors proven beyond a reasonable doubt or admitted by the defendant. The Court disagreed with the Third District's conclusion that section 1172.75, subdivision (d)(4) "carves out an exception to the general rule that all ameliorative changes to the law must be applied at a section 1172.75 resentencing and does not require aggravating factors to be found true beyond a reasonable doubt if the upper term was previously imposed." (People v. Brannon-Thompson (2024) 104 Cal.App.5th 455, 458.)

People v. Gastelum, H051460
Jyoti M. Malik
December 4, 2024

Following a jury trial, the trial court sentenced appellant to 50 years to life for drug and firearm offenses with four prior strikes, consecutive to five years for a prior serious felony conviction enhancement. The court struck punishment on a prior prison term enhancement. The court subsequently denied appellant's section 1172.75 resentencing petition on the grounds that his sentence included a prior prison term enhancement with the punishment stricken rather than imposed. The Court of Appeal reversed the trial court's order, reasoning that a sentence enhancement is "imposed" for purposes of section 1172.75 even if the punishment for the enhancement has been struck. Justice Lie dissented for the reasons stated in People v. Espino (2024) 104 Cal.App.5th 188, 202-206 (dis. opn. of Lie, J.) (Randall Conner)

People v. Kroger, H051467
Jennifer Bruno
November 18, 2024

Following a jury trial, the trial court sentenced appellant to 15 years in prison for inflicting corporal injury on a cohabitant, with a prior strike and various enhancements. The court struck the punishment for a prior prison term enhancement. The court subsequently denied appellant's

section 1172.75 resentencing petition on the grounds that his sentence included a prior prison term enhancement with the punishment stricken rather than imposed. The Court of Appeal reversed, reasoning that a sentence enhancement is “imposed” for purposes of section 1172.75 even if the punishment for the enhancement has been struck. (Jonathan Grossman)

People v. Sandoval, H051298
William Melcher
November 18, 2024

Appellant pled to various counts and admitted a prior strike and several enhancements, including a prior prison term enhancement. In addition to a one-year four-month sentence in a second case, the trial court sentenced appellant to serve 18 years, four months, with the punishment struck for the prior prison term enhancement. The court subsequently denied appellant’s section 1172.75 resentencing petition on the grounds that his sentence included a prior prison term enhancement with the punishment stricken rather than imposed. The Court of Appeal reversed, reasoning that a sentence enhancement that is part of a judgment is “imposed” for purposes of section 1172.75 even if it has been stayed, or the punishment for the enhancement has been struck. (Randall Conner)

People v. Barragan, H051284
Robert Angres
November 8, 2024

Appellant pled to various counts and admitted a prior strike and several enhancements, including a prior prison term enhancement. The trial court sentenced appellant to serve 18 years, four months, with the punishment struck for the prior prison term enhancement. The court subsequently denied appellant’s section 1172.75 resentencing petition on the grounds that his sentence included a prior prison term enhancement with the punishment stricken rather than imposed. The Court of Appeal reversed, reasoning that a sentence enhancement is “imposed” for purposes of section 1172.75 even if punishment for the enhancement has been struck. The Court also found that the Attorney General could not withdraw from the plea bargain. (Anna Stuart)

People v. Chavez, H051088
Alex Green
November 8, 2024

In exchange for an eight-year prison sentence, appellant pled no contest to attempted murder with a gang enhancement and admitted a prior strike. He subsequently filed a section 1172.6 resentencing petition. In an evidentiary hearing, the trial court found that appellant had punched the victim while another gang member stabbed the victim. The court denied relief, reasoning that

appellant had participated as a direct aider-and-abettor of other gang members in the attempted murder of another county jail inmate. The Court of Appeal disagreed and reversed, reasoning that no sufficient evidence had established an intent to kill. (Anna Stuart)

People v. Soria, H051278
Mary Jo Strnad
November 7, 2024

Appellant pled to various counts and admitted various enhancements, including four prior prison term enhancements. The trial court sentenced appellant to serve 28 years, with punishment on the prior prison term enhancements stricken. The court subsequently denied appellant's section 1172.75 resentencing petition on the grounds that his sentence included prior prison term enhancements with the punishment stricken rather than imposed. The Court of Appeal reversed, reasoning that a sentence enhancement is "imposed" for purposes of section 1172.75 even if it has been stayed, or the punishment for the enhancement has been struck. Justice Lie dissented for the reasons he stated in *People v. Espino* (2024) 104 Cal.App.5th 188, 202-206. (Lori Quick)

People v. Johnson, H051590
Monica McMillan
September 30, 2024

In 1998, appellant was convicted of rape, oral copulation, misdemeanor battery and failing to register as a sex offender, with two prior strikes, a prior serious felony and a prior prison term. The trial court sentenced the defendant to two consecutive and one concurrent life terms, with a combined period of parole ineligibility of 100 years, plus a five-year enhancement. The Sixth District subsequently affirmed. In 2020, the CDCR recommended that the trial court recall the sentence to consider new authority to dismiss the prior serious felony enhancement. The trial court found the defendant ineligible for relief, and the Sixth District reversed. On October 26, 2023, the trial court found that the District Attorney did not concur in any reduction of the counts of conviction to lesser included offense or lesser related offenses pursuant to Penal Code section 1172.1, subdivision (a)(3)(B), and that the court's unilateral authority to reduce the term of imprisonment under section 1172.1, subdivision (a)(3)(A) would still require a life term due to section 667.61. The court therefore accepted a stipulation to a new sentence requiring the same term of imprisonment but with modification of the fines and fees imposed at his original sentencing. On appeal, the defendant argued for remand on the grounds that, effective January 1, 2024, amended section 1172.1, subdivision (a)(3)(B) no longer required the District Attorney's concurrence prior to modification of the counts of conviction. The Attorney General agreed. The Sixth District remanded for resentencing. (Jonathan Grossman)

People v. Sanchez, H051266

Eric Weaver
September 20, 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. (Lori Quick)

People v. Carillo, H051143, H051743
Lori Quick
September 17, 2024

Pursuant to Penal Code section 1172.75, the trial court struck a defendant's two one-year prior prison term enhancements from his 35-year sentence but did not address aspects of the sentence subject to post-sentence reforms. Defendant did not attend the resentencing hearing. Defendant contended on appeal that he had received no notice regarding the hearing and that his counsel had not obtained his waiver of his right to attend the hearing. The Attorney General conceded reversible error. The Court of Appeal accepted the concession, finding that the trial court had overlooked its duty to consider post-sentence reforms and that nothing in the record suggests that counsel had advised defendant of his right to be present or that defendant had waived that right.

People v. Zamora, H050959
Patricia Lai
September 12, 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. Orlando, H051690
Richard Leslie Fitzer
September 5, 2024

The defendant pled no contest to attempted murder prior to Senate Bill 775's effective date. The trial court subsequently denied the defendant's Penal Code section 1172.6 petition without an evidentiary hearing. The DCA reversed, reasoning that the defendant had made a

prima facie showing of all three elements required to obtain relief under section 1172.6. First, due to a split of authority regarding application of section 1172.6 to attempted murder, the prosecution would have been allowed “to proceed under a theory of ... attempted murder under the natural and probable consequences doctrine” if the matter had gone to trial. Second, the defendant had accepted a plea offer in lieu of a trial at which he could have been convicted of attempted murder. And finally, because section 775 confirmed that the natural and probable consequences theory was no longer a valid theory for establishing intent in attempted murder charges, the defendant could not presently be convicted of attempted murder because of changes to section 188 or 189. The DCA further reasoned that the trial court had erred by engaging in factfinding at the prima facie stage when it found that testimony in the preliminary examination had established the defendant’s ineligibility for resentencing as a matter of law. (Randall Conner)

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 if 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. 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. 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 resentencing under Penal Code section 1172.6. 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. 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. 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. Jose Quiroz, H050637
Rachel Varnell
May 31, 2024

The denial of an SB 1437 petition after an evidentiary hearing was reversed because the court used the wrong standard of proof. (Paul Couenhoven)

People v. Pablo Pina, H050931
Aaron Schechter
May 23, 2024

The appellate court decided that when a petition is filed under S.B. 1437, the court can consider the trial transcripts at the prima facie stage. However, the trial court cannot make a factual determination from the “undisputed evidence” at trial that contradicts the defendant’s assertions in the petition. (Michelle Spence)

People v. Juan Torres, H051382
Jonathan Grossman
May 21, 2024

The defendant is entitled to resentencing under Penal Code section 1172.75 when the punishment for the prison prior was stayed.

People v. Eduardo Garcia, H050613
Rachel Varnell
May 16, 2024

In an appeal after an evidentiary hearing under Penal Code section 1172.6, there was insufficient evidence appellant acted as a major participant and with reckless indifference during the underlying felony, but the trial court did not consider whether appellant was the actual killer. The matter was remanded to make this determination. (Jonathan Grossman)

People v. Philip Garcia, H050280
Gordon Brownell

May 9, 2024

The summary denial of a petition under Penal Code section 1172.6 was reversed. Although there was evidence to support a valid theory under current law that defendant was guilty of murder, it was also possible the jury convicted him based on the natural and probable consequence theory of aiding and abetting. (Lori Quick)

People v. Mario Rivera, H050623
Michael Poole
April 22, 2024

The court's denial of a petition to vacate a conviction under Penal Code section 1473.7 was reversed because the trial court misunderstood the immigration consequences of the conviction. (SDAP was not involved in the matter)

People v. Raul Lopez, H050284
Patricia Lai
February 9, 2024

Appellant pled to voluntary manslaughter with a gang enhancement in a killing inflicted by a fellow gang member. The trial court erred in summarily denying appellant's petition under Penal Code section 1172.6. (Michelle Spencer)

People v. Rayshawn Ford, H050467
Lori Quick
January 10, 2024

A person is entitled to relief under Penal Code section 1172.75, even if the punishment for the prison priors was stricken.

People v. Travis Williams, H050558
Jeffrey Kross
January 2, 2024

The court of appeal reversed the denial after an evidentiary hearing of a petition to vacate the conviction for attempted murder under Penal Code section 1172.6. The hearing was limited to certain documents. The defendant had pled no contest under *People v. West* (1970) 3 Cal.3d 595. The court of appeal held this meant the defendant did not admit to a factual basis for the plea. Further, the superior court erred in relying on a felony murder theory because felony murder

did not apply to attempted murder. Finally, there was insufficient evidence the defendant was a direct aider and abettor in attempted murder with the intent to kill. At most, the evidence showed the defendant intended to aid in the shooting of a house, but there was insufficient evidence he knew anyone was inside or had the intent to kill anyone inside. The court rejected the argument the kill zone theory applied. (Lori Quick)

SENTENCING

People v. Acosta, H050896
Edward Mahler
December 23, 2024

In 1995, a jury convicted appellant of second-degree murder. In 2022, the trial court summarily denied appellant’s petition for resentencing under what is now section 1172.6, reasoning that the sole theory of second-degree murder with which the jury in 1995 was instructed was direct aiding and abetting implied malice murder—a theory still valid under current law. The Sixth District disagreed, reasoning that, as in *People v. Langi* (2022) 73 Cal.App.5th 972, the jury had convicted appellant of second-degree murder after instruction per CALJIC Nos. 3.01 and 8.31, which permitted the jury to conclude that, to be guilty as an aider and abettor of second degree murder, appellant need only have “intended to encourage the perpetrator’s intentional act . . . whether or not appellant intended to aid or encourage [the] killing, and whether or not he personally knew of and disregarded the risk of such a killing.” (Id. at p. 983.) However, a conviction as a direct aider and abettor under a still valid theory would require appellant to know that the perpetrator’s shooting was dangerous to human life and act in conscious disregard for life. Therefore, the Sixth District remanded the matter with directions to issue an order to show cause and hold an evidentiary hearing. (Lori Quick)

People v. Lugos, H051087
Geoff Jones
November 27, 2024

A jury convicted appellant of two counts of oral copulation with a child 10 years of age or younger (counts 1-2) and 14 counts of forcible lewd acts upon a child (counts 3-16). The trial court sentenced defendant to consecutive sentences of 15 years to life on each of counts 1 and 2, and to consecutive middle term sentences of eight years on each of counts 3 through 16. The Sixth District found that the trial court erred by imposing full, consecutive term sentences for each of counts 3 through 16 because the victim’s testimony had not established that each of the charged acts occurred on separate occasions or that appellant had any reasonable opportunity for reflection between acts committed during the same overall episode. The Court remanded the matter for the trial court to determine whether any of the 14 counts of forcible lewd acts upon a child were committed on separate occasions within the meaning of section 667.6, subdivision (d) and instructed that, if the trial court determined that any of the 14 counts did not occur on

separate occasions, it could determine whether full, consecutive sentences on such counts remained appropriate under section 667.6, subdivision (c), with a statement of reasons required by that subdivision. (Michelle Spencer)

People v. Nuno, H051205

Eric Weaver

October 17, 2024

Defendant pled no contest to attempted murder and subsequently made a prima facie case for section 1172.6 resentencing. Prior to an evidentiary hearing, defendant filed a motion for discovery of peace officer personnel records regarding two former police officers who had testified at his preliminary hearing. After an in camera hearing, the court ordered disclosure of certain personnel information regarding each officer. The court denied the defendant's section 1172.6 petition after an evidentiary hearing and defendant appealed, requesting that the Court of Appeal review the officers' personnel records to ensure the correctness of the trial court's ruling under *Pitchess*. After requesting supplemental briefing, the Court of Appeal found in a published opinion that a petitioner may obtain disclosure of peace officer personnel information under *Brady* principles through *Pitchess* procedures in advance of a section 1172.6 evidentiary hearing. Because the record before the Court of Appeal did not demonstrate whether the trial court considered *Brady* principles when ruling on defendant's discovery motion, the Court conditionally reversed the trial court's order denying relief under section 1172.6 and remanded for further proceedings on the motion. (Anna Stuart)

People v. Hooks, H051081

Larenda Delani

October 4, 2024

A jury convicted appellant of one count of grand theft by false pretense (count 1) and one count of conspiracy to commit grand theft by false pretense (count 2). The trial court sentenced defendant to the upper term of three years on count 1 and a concurrent sentence of three years (the upper term) on count 2 for a total sentence of three years, with two of these years to be served in county jail and the remaining year to be served under mandatory supervision. Appellant argued that the trial court improperly imposed a concurrent sentence for count 2 instead of imposing and staying the punishment for count 2 under section 654. The Attorney General did not contest the issue. The Court of Appeal agreed with appellant and modified the judgement to impose and stay execution of the sentence for count 2 pursuant to section 654. (Lori Quick)

People v. Bay, H050767

Lori Quick

October 1, 2024

Defendant, convicted of one count of committing a lewd or lascivious act on a child and placed on probation for three years, contested the length of probation and a condition that “[t]he defendant [shall] not date, socialize, or form a romantic relationship with any person who has physical custody of a minor unless approved by the probation officer.” The Attorney General conceded that Penal Code section 1203.1 limited probation to two years, not three years, and conceded that the term “socialize” was both vague and overbroad. The Court of Appeal agreed that section 1203.1 limited probation to two years and that the term “socialize” was vague. It reduced defendant’s probation to two years and struck the term “socialize” from the probation condition.

People v. Rugerio, H051521
Lisa Breakey
October 1, 2024

In 2014, the trial court sentenced defendant to 18 years in prison pursuant to a plea agreement in the instant case (No. F22952) and to a six-year concurrent term of six years in a separate case (No. F21009). The trial court stayed three prior prison term enhancements in the instant case, while the court apparently imposed four prior prison term enhancements in the separate case. In 2023 the court held a hearing in defendant’s two cases regarding resentencing under section 1172.75 on the now invalid prior prison term enhancements. At the hearing, defendant’s trial counsel did not request resentencing in the instant case for the invalid prior prison term enhancements and instead argued that the original sentencing court made an error that required correction. The trial court declined to resentence defendant in the instant case but struck the four prior prison term enhancements in the separate case (No. F21009). On appeal, the Sixth District remanded for resentencing, reasoning that the unauthorized sentence exception to the forfeiture rule applied and that the better authority holds that section 1172.75 applies to a previously stayed prior prison term enhancement. (Randall Conner)

In re W.B., H051543
Michael Reed
September 26, 2024

The juvenile court found that a minor had committed four counts of a lewd act on a child under the age of 14 and that he had understood the wrongfulness of his conduct. The court declared the minor a ward of the court, placed him under the probation officer’s supervision, and ordered him not to contact the victim. The juvenile court also ordered, among other conditions, that “the minor and his parent participate in a counseling or education program as determined by the Probation Officer.” The Court of Appeal found this condition an improper delegation of judicial decision-making authority and remanded the case with directions that the juvenile court specify the type of counseling or education programs the minor and his parent must attend. (Randall Conner)

People v. Ruizpaz, H051221
Kyle Gee
September 18, 2024

A jury convicted defendant of first-degree murder and found true a gang enhancement, a gang-murder special circumstance, and a gang firearm enhancement. The trial court sentenced defendant to life without the possibility of parole for the murder, consecutive to 25 years to life for the gang firearm enhancement and imposed and stayed the 10-year gang enhancement. In June 2021, the Court of Appeal remanded with directions to strike the 10-year gang enhancement, to reduce a restitution fine, and to consider its new discretion under section 1385 to strike the 25-years-to-life firearm enhancement. Prior to resentencing, counsel argued that the trial court must consider Assembly Bill No. 333, which amended section 186.22's definition of a criminal street gang and, by extension, multiple sentencing provisions incorporating section 186.22 by reference. The trial court declined to consider the applicability of Assembly Bill No. 333, finding that the Court of Appeal had remanded the judgment for the purposes specified in its order. The trial court then resentenced the defendant to life without the possibility of parole consecutive to 25 years to life, struck the gang enhancement, and reduced the restitution fine. The defendant appealed again. The Court of Appeal, differing with contrary authority, found that its limited remand did not preclude application of Assembly Bill No. 333's ameliorative changes to the defendant's case. It vacated the gang firearm enhancement and the gang-murder special circumstance, reasoning that the Attorney General could not meet his burden under Chapman of demonstrating beyond a reasonable doubt that the jury would have found the enhancement and special circumstance proven if instructed in accordance with currently applicable law. (Lori Quick)

People v. Vo, H050473
Katja Grosch
September 6, 2024

In a negotiated disposition, defendant pleaded no contest to one count of identity theft. The court granted her two years formal probation, which included a six-month county jail term and a general order of restitution holding her jointly and severally liable with her co-defendant in the amount of \$184,142. Vo challenged the restitution order, asserting the court miscalculated the restitution award. The Attorney General conceded that the court overstated the restitution award by \$250. The DCA reduced the award by \$250 and affirmed the judgment as modified. (Randall Conner)

People v. Alvarez, H049722
Julie Caleca
September 6, 2024

A jury convicted defendant of assault with intent to commit rape, false imprisonment, and criminal threats. The court sentenced him to serve four years for the assault and to concurrent terms for false imprisonment and criminal threats. The DCA rejected defendant's challenges to his convictions but reversed and remanded for resentencing because Penal Code section 654 required the court to stay the sentences for false imprisonment and criminal threats, when the three counts at issue arose from an indivisible course of conduct.

People v. Hurd, H050635
Robert Angres
September 3, 2024

Over a hearsay objection, the trial court admitted a PG&E employee's estimate, based on a PG&E database, that stolen copper wire had exceeded \$950 in value. The DCA reversed the defendant's conviction for grand theft, reasoning that Evidence Code section 1271's business record exception to the hearsay rule had not authorized admission of the testimony and that its admission had prejudiced the defendant. The DCA also reduced the defendant's vehicle theft conviction from a felony to a misdemeanor, reasoning that no sufficient evidence established that a stolen truck's value had exceeded \$950. (Jonathan Grossman)

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 (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 for resentencing under section 1172.75. 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. 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. 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. 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 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)

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)

People v. Jose Samayoa, H047865
Allen Weinberg
May 22, 2024

Resentencing is required to permit the court to exercise its new statutory discretion when it did not clearly state it would have imposed the same sentence had it been aware of its discretion. (Randall Conner)

In re C.R.. H051164
Michelle Spencer
May 3, 2024

A condition of probation to do counseling or education program if deemed appropriate by probation amounted to an unlawful delegation of judicial authority.

People v. Jose Torres, H050651
John Dwyer

April 9, 2024

The matter had been remanded for a new sentencing hearing. At that hearing, the court corrected the sentence as described in the previous appeal but refused to further consider resentencing the defendant due to changes in the law. In the second appeal, the order was reversed. AB 333 required reconsideration of the gang allegations. (Lori Quick)

People v. Jason Gray, H049267
Anna Stuart
April 4, 2024

The imposition of the upper term was no longer valid under S.B. 567 and administrative fees needed to be stricken.

People v Julian Romero, H050553
Patricia Lai
March 28, 2024

The matter was remanded for the court to exercise its new discretion of which punishment to stay under Penal Code section 654. (Anna Stuart)

People v. James Correa, H050915
William Melcher
March 20, 2024

The court failed to provide a hearing on the amount of restitution owed to the Victim Compensation Board. (Lori Quick)

People v. Stephen Stewart, H051171
Lori Quick
March 20, 2024

The condition of probation, “Don’t bother anybody,” was unconstitutionally vague.

People v. Fernando Mateo Lopez, H050372, H050242
Mark Greenberg
March 5, 2024

Due to changes in the law, the gang enhancement and the firearms enhancement (dependent upon the offense being a gang crime) were reversed. Further, the trial court improperly summarily denied his SB 1437 petition as to the attempted murder conviction, which could have been based on a natural and probable cause theory. (Jonathan Grossman)

In re A.R., H051036
Michelle Spencer
February 20, 2024

The condition of juvenile probation to “participate in a counseling or education program as determined by the probation officer” amounted to an improper delegation of judicial authority. Under Welfare and Institutions Code section 729.6, subdivision (b), it is up to the juvenile court to determine what type of counseling or education programs the youth should be required to do.

Eduardo Gonzalez, H049857
Julie Caleca
February 15, 2024

The appellate court remanded the matter for the trial court to consider its new discretion under Penal Code section 654. (Lori Quick)

People v. Sepulvada, H051142
Brad Kaiserman
February 9, 2024

The sentencing court erred in concluding Penal Code section 654 did not apply to a one strike offense. (Paul Couenhoven)

People v. Samantha Torres, H048742
Frederick Schnider
January 24, 2024

Due to changes in the law, probation could not be longer than two years, and the probation supervision fee must be vacated. (Lori Quick)

DEPENDENCY CASES

In re A.G, H052284
Leslie Barry

December 18, 2024

In 2023, a juvenile court found that the beneficial parent-child relationship exception did not apply, ordered parental rights terminated, and selected a permanent plan of adoption for A.G. The Court of Appeal reversed the order terminating parental rights on February 20, 2024, reasoning that the juvenile court had abused its discretion in finding the beneficial parental exception did not apply because it had considered the prospect of future visitation between Mother and the child when deciding whether terminating the parental relationship would be harmful to the child. The remittitur issued on April 23, 2024, and the juvenile court held a hearing the same day to consider the beneficial parental relationship exception. The juvenile court again found the beneficial parent-child exception did not apply and reinstated its order terminating parental rights. In the current appeal, the parties jointly moved for summary reversal, arguing that the juvenile court had failed to properly examine the beneficial parental relationship exception to adoption. The Court of Appeal agreed, reasoning that the juvenile court did not undertake the careful decision making required by the exception because it failed to reappoint counsel for Mother, obtain evidence or argument, and conduct an actual hearing prior to reinstating its order terminating parental rights. The Court remanded the matter to the trial court for the limited purpose of vacating the finding of adoptability and holding a new permanency selection hearing to consider legal guardianship as a permanent plan. (Anna Stuart)

In re Da.M., H051836
Patricia Saucier
September 10, 2024

At the 12-month review hearing in dependency proceedings, the juvenile court terminated reunification services for appellant (Father) with his three minor children. Father appealed the court's findings and orders on the grounds respondent, Monterey County Department of Social Services (Department) had failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA). The Department conceded the issue. The DCA conditionally reversed the termination order and remanded the case for the limited purpose of ensuring compliance with ICWA's inquiry and notice requirements. (Anna Stuart)

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)

In re D.H., H051177
John Dodd
February 16, 2024

In an earlier dependency proceeding, the court determined ICWA did not apply. In the second dependency proceeding, there was no effort to obtain additional information. The court of appeal reversed for lack of making an adequate inquiry. (Anna Stuart)

In re A.H., H050792
Megan Schirn, Sarah Vaona
January 12, 2024

The court agreed to a stipulated reversal so that the department can comply with the Indian Child Welfare Act. (Anna Stuart and Jonathan Grossman)

HABEAS CORPUS

In re Hector Agüero, H051316
Brian McComas
May 24, 2024

The court issued an order to show cause concerning a claim of ineffective assistance of counsel for failing to investigate and present expert testimony on the cause of death. (Patrick McKenna)

Im re Mariana De La Rosa Burgara, H051440
Anna Stuart
April 10, 2024

The Court of Appeal issued an order to show cause the client received ineffective assistance of counsel when trial counsel failed to advise the client of the immigration consequences of the plea bargain, failed to negotiate an immigration-neutral plea bargain, and failed to determine if the plea was voluntary when it was part of a package deal with a codefendant.

In re Jesse Quiming, H050201
Alexis Haller
March 28, 2024

The murder conviction was reversed on habeas corpus because trial counsel was

ineffective for failing to investigate a mental health defense. (Anna Stuart)

MISCELLANEOUS

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)

People v. Rudy Gonzalez, H049335

Jason Szydlik

March 11, 2024

The two year maximum commitment of one found incompetent to stand trial does not end until the court finds the defendant to be competent. (Paul Couenhoven)

People v. Orrin Payne, H050013

Sara Ruddy

February 20, 2024

Appellant was convicted in a 1983 bench trial of murder with the felony murder special circumstance. At the time of the trial, it was not clear if the defendant or the actual killer needed to have the intent to kill. Consequently, the trial court erred in summarily denying the Penal Code section 1172.6 petition. (SDAP was not involved in this appeal)