

# CaseBank: *Cases added during May 2023 (sorted by Court)*

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## ab CONSTITUTIONAL ISSUES

### RIGHT TO JURY TRIAL

#### SENTENCING FACTORS - CONSEC (FULL) vs 1/3 MID-TERM

APPRENDI does not apply to facts used by court to decide CONSEC / CONCURRENT decisions in sentencing. This case holds that APPRENDI also does not apply to facts used by the court to make FULL CONSEC / 1/3 midterm CONSEC decisions. --- DCA's in conflict.

CATARINO *P. v. ()* 5/25/2023 CAL

## db APPELLATE ISSUES

### HARMLESS ERROR

#### HARMLESS RETROACTIVE ERROR - GANG PREDICATE CRIMES

RETROACTIVE HARMLESS ERROR CASE: At trial, jury only told PREDICATE crimes were Robbery & Drug Sales. No expert opinion given re: "benefit to the gang". Jury was told robbery and drug sales were primary activity of the gang. HELD: this is NOT enough to find HARMLESS error.

COOPER *P. v. ()* 5/25/2023 CAL

## db APPELLATE ISSUES

### MISC APPELLATE

#### REMAND PROCEDURE - NO REMAND IF DCA KNOWS WHAT TRIAL CT

Juvenile Ct judge failed to expressly state if minor's wobbler conviction was Felony or Misd. DCA said no remand needed because it was clear what Court intended. --- Supreme Ct reverses DCA. -- same legal test used by both DCA and Supreme Ct.

F. M. *In Re ()* 5/4/2023 CAL

## ab CONSTITUTIONAL ISSUES

### RETROACTIVE

#### BENEFIT TO DEF - ELEMENT ADDED - GANGS - 186.22 PC - PRELIMS

AB 333 - re: new gang elements to PC 186.22 - applies retroactively to PRELIMS. But, PC 995a would permit court to remand back to magistrate for additional evid as opposed to having to dismiss under PC 995.

MENDOZA *def v. SUP CT* 5/3/2023 5:

## cc GRAND JURY / PRELIMS

### PRELIMS / 995

#### 995a - CORRECTING RETROACTIVE ERRORS

AB 333 - re: new gang elements to PC 186.22 - applies retroactively to PRELIMS. But, PC 995a would permit court to remand back to magistrate for additional evid as opposed to having to dismiss under PC 995.

MENDOZA *def v. SUP CT* 5/3/2023 5:

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.6 PC - HEARING - EVID - TRIAL TRANSCRIPT

Def asserts Ct must comply with requirements of PRIOR TESTIMONY hearsay exception before reading trial transcript in PC 1172.6 hearing. HELD: 1172.6 itself authorizes such evidence w/out need for Prior Testimony requirements. (i. e. a showing witness was unavailable)

CODY *P. v. ()* 5/11/2023 4:3

## ce SEARCH & SEIZURE

### S/W - AFF

#### PC - DNA WARRANT - BASED ON DEF'S RELATIVES' DNA

1980 rape/murder is reopened in 2020. DNA lab says def MIGHT be the guy due to family connection. (?Def's DNA is NOT in the database, but def's relatives are?). HELD: this is enough PC for warrant to collect def's DNA.

LEPERE *P. v. ()* 5/16/2023 4:3

## ab CONSTITUTIONAL ISSUES

### MISC CONSTITUTIONAL ISSUES

#### BEAR ARMS, RIGHT TO - POSSESSION BY FELONS

BRUEN decision did NOT invalidate California laws prohibiting convicted FELONS from possessing firearms.

ALEXANDER *P. v. ()* 5/11/2023 4:2

## cd MOTIONS

### 170.6

#### TIMELINESS - HABEAS PETITIONS AS CONTINUATION OF RELATED CASE

GARCIA v SUP CT (BIANCO) (sheriff): Def asks his criminal trial judge X for various orders re: jail conditions. They are denied. Def then raises same issues in HABEAS petition which is assigned to X. Def CCP 170.6's X. HELD: Habeas is continuation of criminal case. Therefore, 170.6 is UNTIMELY.

GARCIA *OTHER* 5/30/2023 4:2

## db APPELLATE ISSUES

### WRITS

#### HABEAS - GENERALLY - TRIAL COURT MAY NOT OPPOSE (USUALLY)

GARCIA v SUP CT (BIANCO) (sheriff): Habeas Judge denies def's CCP 170.6 challenge. Def seeks WRIT. Real Party in Interest files opposition, AND Court files opposition. HELD: Court opposition is stricken as improper. --- BUT, DCA takes judicial notice of relevant Exhibits in Ct opposition.

GARCIA *OTHER* 5/30/2023 4:2

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|---|---|
| <p style="text-align: right;"><b>de SENTENCING</b></p> <p><b>STRIKE CASES</b><br/><b>QUALIFYING PRIOR - GANG - RETROACTIVE CHANGES TO GANG</b><br/>AB 333 changes to PC 186.22 do NOT affect the validity of 186.22 convictions before AB 333. They are STILL valid STRIKES.</p> <p><b>SCOTT</b> <i>P. v. ()</i> 4:2</p> <p style="text-align: right;">5/24/2023</p>  | <p style="text-align: right;"><b>dd PETITIONS TO RESENTENCE</b></p> <p><b>PETITIONS TO</b><br/><b>1172.6 PC - HEARING - MAJOR PARTICIPANT, RECK INDIFF - INSUFF EVID</b><br/>Very long discussion of the sufficiency of evid required to find a PC 1172.6 petitioner a Major Participant who acted with Reckless Indifference.</p> <p><b>MONTANEZ</b> <i>P. v. ()</i> 4:1</p> <p style="text-align: right;">5/8/2023</p>  |
| <p style="text-align: right;"><b>ab CONSTITUTIONAL ISSUES</b></p> <p><b>RETROACTIVE</b><br/><b>BENEFIT TO DEF REPEALED - IS REPEAL RETROACTIVE?</b><br/>In 2018, PC 1170.91(b) gave Military Vets with drug problems an opportunity to seek resentencing. In 2022, 1170.91 was amended to deny resentencing for def's with serious and violent felonies. Def's petition was filed in 2020. HELD: 2022 amendment applies to Def's petition.</p> <p><b>SHERMAN</b> <i>P. v. ()</i> 5/9/2023 4:1</p> | <p style="text-align: right;"><b>bd OTHER TRIAL ISSUES</b></p> <p><b>WHEELER</b><br/><b>231.7 PC - NEGATIVE EXPERIENCE W/ LAW ENFORCEMENT</b><br/>WHEELER under new PC 231.7 applied. Minority juror said she once complained about a negative experience with law enforcement. (as a child, the elected D.A. gave a talk to her school and mentioned her cousin's case. She thought that was wrong.) This was improper ground. Case REVERSED.</p> <p><b>JAIME</b> <i>P. v. ()</i> 5/19/2023 3:</p> |
| <p style="text-align: right;"><b>bd OTHER TRIAL ISSUES</b></p> <p><b>COURT SECURITY</b><br/><b>SHACKLING DEF - COURTROOM ARCHITECTURE IS NOT A VALID BASIS</b><br/>Due to COVID, jury selection was done in a large room with minimal security. HELD: Architectural Deficiencies are NOT a proper factor in determining whether or not to restrain def in jury's presence. -- the permissible factors must to personal to the defendant.</p> <p><b>GOVAN</b> <i>P. v. ()</i> 5/22/2023 2:7</p>    | <p style="text-align: right;"><b>bd OTHER TRIAL ISSUES</b></p> <p><b>MISC - TRIAL</b><br/><b>DEF PRESENCE - VERDICT, READING OF</b><br/>While jury deliberating, def placed in COVID quarantine by jail. Def unable to attend the reading of the verdict. HELD: (1) this is not a critical proceeding. Def has no RIGHT to be present. (2) this is Good Cause even if def had such a right.</p> <p><b>GOVAN</b> <i>P. v. ()</i> 5/22/2023 2:7</p>   |
| <p style="text-align: right;"><b>de SENTENCING</b></p> <p><b>654</b><br/><b>GENERALLY - COURT MAY IMPOSE THE SHORTER AND STAY THE LONGER</b><br/>Amendment to PC 654 permitting ct to select EITHER crime to sentence def on (and stay the other) applies even if one of the two crimes is a ONE-STRIKE sex crime under PC 667.61</p> <p><b>GOVAN</b> <i>P. v. ()</i> 5/22/2023 2:7</p>   | <p style="text-align: right;"><b>bd OTHER TRIAL ISSUES</b></p> <p><b>MISC - TRIAL</b><br/><b>DEF PRESENCE - DEF IN COVID QUARANTINE</b><br/>While jury deliberating, def placed in COVID quarantine by jail. Def unable to attend the reading of the verdict. HELD: (1) this is not a critical proceeding. Def has no RIGHT to be present. (2) this is Good Cause even if def had such a right.</p> <p><b>GOVAN</b> <i>P. v. ()</i> 5/22/2023 2:7</p>   |
| <p style="text-align: right;"><b>bc INSTRUCTIONS/ELEMENTS</b></p> <p><b>CHILD AS VICTIM CRIMES</b><br/><b>HUMAN TRAFFICKING - 236.1 PC - MISTAKE OF FACT (AGE OF V)</b><br/>Good faith belief that person being "trafficked" is an adult is NOT a defense PC 236.1, nor to an ATTEMPT violation of PC 236.1</p> <p><b>MIDDLETON</b> <i>P. v. ()</i> 5/18/2023 2:7</p>   | <p style="text-align: right;"><b>bc INSTRUCTIONS/ELEMENTS</b></p> <p><b>ADULT SEX CRIMES</b><br/><b>FORCE AND VIOLENCE - INCLUDES DURESS, MENACE, FEAR</b><br/>PC 264.1(a) refers to a Rape by "force or violence". HELD: this includes Rape by Duress, Menace, or Fear ...</p> <p><b>MIDDLETON</b> <i>P. v. ()</i> 5/18/2023 2:7</p>   |

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|  |                      |   |                      |
|--|----------------------|---|----------------------|
| <b>bb EVIDENCE</b>   |                      | <b>de SENTENCING</b>  |                      |
| <b>HEARSAY</b>   |                      | <b>MISC - SENTENCING</b>  |                      |
| <b>NON HEARSAY - CIRCUMSTANTIAL EVID - AD'S RE: VALUE OF ITEM</b>  |                      | <b>FEES/ASSESSMENTS - REPEAL OF 23 FINES/FEES - PC 1465.9</b>   |                      |
| (1)The advertised price of an item would be Hearsay to prove the value of the item. But, (2) fact that AMAZON advertises that they will sell item for \$X is admissible CIRCUMSTANTIAL EVID of items value -- (1) relies on advertisement being true. (2) Does NOT.                          |                      | Eff. 7/1/2021, AB 1869 (PC 1465.9) eliminated the authority of the court to impose and collect 23 different FEES and ASSESSMENTS. --- Including in this case: ordering def to pay the "cost of probation supervision."  |                      |
| <b>PORTILLO</b>  | <i>P. v. ()</i>      | <b>PORTILLO</b>   | <i>P. v. ()</i>      |
|  | 5/15/2023            |   | 5/15/2023            |
|  |                      |   | 2:7                  |
| <b>ef PAROLE</b>   |                      | <b>bb EVIDENCE</b>  |                      |
| <b>PAROLE DECISIONS</b>  |                      | <b>PROOF OF PRIORS</b>  |                      |
| <b>PAROLE DECISIONS - DCA REVERSES GOVERNOR - VAN HOUTEN</b>   |                      | <b>SCOPE OF RECORD - FOREIGN PRIORS - WASHINGTON ROBBERY</b>  |                      |
| After 50 years in prison, and 5 separate Parole Recommendations from the Parole Bd, and 5 separate rejections of Parole by the Governor, DCA holds there is NO EVID in support of Governor's rejection and orders def paroled. (Def was a MANSION follower.)                                 |                      | ROBBERY in State of Washington does NOT require intent to permanently deprive. Therefore def's Washington Robbery prior does not match a California felony. Plus, GALLARDO prevents Calif judge from making a factual finding re: def's Washington Conduct. UNLESS, def admitted intent to deprive. |                      |
| <b>VAN HOUTEN</b>  | <i>In Re ()</i>      | <b>HILLER</b>   | <i>P. v. ()</i>      |
|  | 5/30/2023            |   | 5/9/2023             |
|  |                      |   | 1:3                  |
| <b>bb EVIDENCE</b>   |                      | <b>ee MENTAL HEARINGS</b>   |                      |
| <b>PROOF OF PRIORS</b>   |                      | <b>1368</b>   |                      |
| <b>SCOPE OF RECORD - FACTUAL BASIS - DOC'S USED TO ESTABLISH</b>   |                      | <b>RESTORATION OF COMPETENCY - REJECTION OF HOSP</b>  |                      |
| Def pled NO CONTEST to out-of-state felony. Def also agreed that document X constituted a factual basis for plea. HELD: Def did NOT admit everything in X is true. X cannot be used to make out-of-state plea fit a California crime.  |                      | 2022 amendment to PC 1372(c) says a court may NOT reject Hospital finding that 1368 def has been restored to competency without 1st appointing a shrink for a new evaluation and getting a written report saying def is still incompetent. HELD: this does NOT violate Separation of Powers.        |                      |
| <b>HILLER</b>  | <i>P. v. ()</i>      | <b>McKNEELY</b>   | <i>def v. SUP CT</i> |
|  | 5/9/2023             |   | 5/25/2023            |
|  |                      |   | 1:2                  |
| <b>ab CONSTITUTIONAL ISSUES</b>  |                      |   |                      |
| <b>SEPARATION OF</b>   |                      |   |                      |
| <b>SEPARATION OF POWERS - JUDICIAL / LEGIS - 1368 PC - OVERRULING</b>  |                      |   |                      |
| 2022 amendment to PC 1372(c) says a court may NOT reject Hospital finding that 1368 def has been restored to competency without 1st appointing a shrink for a new evaluation and getting a written report saying def is still incompetent. HELD: this does NOT violate Separation of Powers. |                      |   |                      |
| <b>McKNEELY</b>  | <i>def v. SUP CT</i> |   |                      |
|  | 5/25/2023            |   |                      |