

CaseBank: Cases added during December 2024 (sorted by Court)

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db APPELLATE ISSUES

MISC APPELLATE

MISC - STAYS - PARTIES CAN'T STIP TO IGNORE THE STAY

If an Appellate Stay is in place, the trial court is without Jurisdiction to do anything on the case even if both sides STIP to the requested action. (This case: settle the matter with a guilty plea while case on pretrial appellate review.)

MITCHELL P. v. SUP CT 12/12/2024 CAL

db APPELLATE ISSUES

MISC APPELLATE

APPEALABLE ORDERS - 17(b) REDUCTION OF WOBBLEERS

Trial Ct improperly grants PC 17(b) request week before trial. HELD: People may NOT appeal the order. BUT, People may seek relief via WRIT, and the DCA has discretion to accept the WRIT and rule on the merits.

MITCHELL P. v. SUP CT 12/12/2024 CAL

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.75 PC - 667.5 PRIORS - FULL RESENTENCE - DDA STUCK W/ PLEA

2013: Def enters into plea bargain for UPPER TERM with lots of dismissed counts. 2023: def get resentencing under 1172.75. (and def is a really bad guy) HELD: Def does NOT get UPPER TERM again unless the requirements of newly enacted PC 1170(b) are met.

GONZALEZ P. v. () 12/10/2024 6:

bb EVIDENCE

HEARSAY

CRAWFORD - TESTIMONIAL - PRELIMINARY QUESTIONS IN FIELD

1st responder to a domestic violence 911 call asks basic "what's going on?" questions of children found at the scene. HELD: the answers to these questions are NOT TESTIMONIAL under CRAWFORD.

HALL P. v. () 12/5/2024 5:

bb EVIDENCE

HEARSAY

CRAWFORD - DEF WAIVES IF HE CAUSES WIT UNAVAILABILITY

Subpoena for def's minor children is served on Def's spouse (who def lives with). At trial, neither children nor spouse appears. Trial court finds def partially responsible for their absence. Therefore, def's (wrongful) conduct WAIVES any CRAWFORD claim he may have to kid's hearsay.

HALL P. v. () 12/5/2024 5:

cc GRAND JURY / PRELIMS

17b

17(b) PC - CAN ONLY BE EXERCISED AT SPECIFIC TIMES OF CASE

PC 17(b) authority can ONLY be used at two moments in a case. (1) at the preliminary hrg. (2) at Sentencing. Use at any other time is not authorized.

MITCHELL P. v. SUP CT CAL

12/12/2024

db APPELLATE ISSUES

WRITS

WRIT BY PEOPLE - UNAUTHORIZED USE OF 17(b) PC

Trial Ct improperly grants PC 17(b) request week before trial. HELD: People may NOT appeal the order. BUT, People may seek relief via WRIT, and the DCA has discretion to accept the WRIT and rule on the merits.

MITCHELL P. v. SUP CT CAL

12/12/2024

cd MOTIONS

DISCRIMINATORY PROSECUTION

CRJA - NO CRJA VIOLATION IS HARMLESS

In closing, DDA makes a Racial Comment that did NOT reflect badly on def. Def atty objects. Ct sustains, but did not admonish jury to disregard. CONVICTION REVERSED due to CRJA violation. (Comment implied police were too nice to def because he was famous BLACK football player.)

STUBBLEFIELD P. v. () 12/26/2024 6:

bb EVIDENCE

HEARSAY

UNAVAILABILITY - WIT UNDER DEF'S CONTROL - CHILDREN

Subpoena for def's minor children is served on Def's spouse (who def lives with). At trial, neither children nor spouse appears. Trial court finds def partially responsible for their absence. Therefore, they are UNAVAILABLE for hearsay purposes.

HALL P. v. () 12/5/2024 5:

ed JUVENILE

UNFITNESS

707 UNFITNESS - TRANSFER TO JAIL - NEED FOR PROBATION REQUEST

Juvi Ct orders "Minor" (age 19) to Adult Court. HELD: Minor may not be transferred to JAIL until the Probation Dept requests such a move under W&I 208.5 and a hrg is held.

GABRIEL M. def v. SUP CT 4:2

12/17/2024

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ed JUVENILE			ee MENTAL HEARINGS		
UNFITNESS			1368		
707 UNFITNESS - APPEALS - MANDATORY STAY			MISDEMEANOR DEF'S - DEF AS BOTH MISD AND FELONY PENDING		
Juvi Ct orders "Minor" (age 19) to Adult Court. Minor files appeal. W&I 800 and Rule 5.770(e) REQUIRES that Juvi Ct grant request for a STAY.			Def is charged with both felonies and misdemeanors. Doubts arise re: def's competency. HELD: Only the felony 1368 procedure applies. The 1370.1 misdemeanor procedure does NOT.		
GABRIEL M.	<i>def v. SUP CT</i>	4:2	MENDEZ	<i>def v. SUP CT</i>	4:2
12/17/2024			12/23/2024		
bc INSTRUCTIONS/ELEMENTS			de SENTENCING		
CHILD AS VICTIM CRIMES			MISC - SENTENCING		
285 PC - INCEST			CRUEL AND UNUSUAL - LWOP FOR FORCIBLE SEX W/ CHILD		
Def charged with INCEST, PC 285. On appeal, def asserts proof of paternity must comply with Family Code 7555 (which requires DNA testing). HELD: Family Code 7555 has no application in criminal INCEST cases.			Father has sex by DURESS with 14 yr old daughter many times. V gets pregnant, def insists on abortion. Ultimately, def gets LWOP plus 22 years. HELD: this is not Cruel and Unusual.		
TORRES	<i>P. v. ()</i>	4:2	TORRES	<i>P. v. ()</i>	4:2
12/18/2024			12/18/2024		
dd PETITIONS TO RESENTENCE			db APPELLATE ISSUES		
PETITIONS TO			MISC APPELLATE		
1172.75 PC - 667.5 PRIORS - PRIOR BASED ON OUT-OF-STATE SEX CRIME			MISC - MOOTNESS - PROBATION ISSUES		
PC 1172.75 PC does NOT apply to ALL PC 667.5(b) priors. It does NOT apply to violent SEX priors. and, HELD here: it does NOT apply to out-of-state priors for violent SEX crimes.			Def is found of have violated his probation. But, he was replaced on probation. Def appeals. Before appellate decision, def completes probation. HELD: Appeal is not MOOT. Appeal Dismissed.		
VICENCIO	<i>P. v. ()</i>	4:2	ARMAS	<i>P. v. ()</i>	4:1
12/5/2024			12/11/2024		
bd OTHER TRIAL ISSUES			bb EVIDENCE		
WHEELIE			1101 (b) / 1108 / 1109		
CRJA - PREEMPT - CT CAN'T VOLUNTEER NEW REASONS			1108 EV - SEX CRIMES - LIMITED BY 352 - NO SUA SPONTE DUTY		
DDA preempts juror X (a minority) for her "tone" during questioning. Def objects under CCP 231.7. Trial ct finds that X's "tone" was NOT noticeably different that others, BUT upheld the Preempt for a different reason. CONVICTION REVERSED.			While Ev 1108 evidence (prior sex acts) can be excluded under Ev 352, there is NO SUA SPONTE duty for the Court to do an on-the-record 352 evaluation.		
BARNES	<i>P. v. ()</i>	4:1	CARATACHEA	<i>P. v. ()</i>	4:1
12/18/2024			12/13/2024		
bb EVIDENCE			ee MENTAL HEARINGS		
352 / RELEVANCE			MISC - MENTAL HRGS		
GANG EVIDENCE - REVERSAL DUE TO			MURPHY CONSERVATORSHIP - CAN'T HOUSE IN JAIL		
Two gang members (who were friends outside the gang) commit a robbery/187 together. Gang allegations Bifurcated. HELD: Gang Evid admitted in Phase One should have been excluded under Ev 352. Evid was only marginally relevant, was cumulative, and was very prejudicial.			Def times out on his PC 1368 hospital commitment. Def is ordered committed to State Hosp on a Murphy Conservatorship. HELD: There is no statutory authority to hold def in JAIL awaiting an open Hospital bed.		
GARCIA	<i>P. v. ()</i>	4:1	LERKE	<i>In Re ()</i>	4:1
12/12/2024			12/19/2024		

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bc INSTRUCTIONS/ELEMENTS				bc INSTRUCTIONS/ELEMENTS			
ROBBERY / ASSAULTIVE CRIMES				ROBBERY / ASSAULTIVE CRIMES			
ASSAULT - 245 PC - GUN, POINTING UNLOADED - AMMO NEARBY				PRISON CRIME - 4500 PC & 4501 PC - HOW THEY DIFFER			
Def points an unloaded gun at V threatening to kill V. HELD: a jury "could" find this to be an assault IF the jury found def had readily available ammo with which to load the gun.				PC 4500 and 4501 both address assaults by inmates. PC 4500 applies to LIFE prisoners, and 4501 applies to all other prisoners. Neither applies to ALL prisoners. It is one or the other.			
LATTIN	<i>P. v. ()</i>	4:1	12/18/2024	NAVA	<i>P. v. ()</i>	3:	12/18/2024
ee MENTAL HEARINGS				bc INSTRUCTIONS/ELEMENTS			
MDO				HOMICIDE			
MDO TRIAL - EVID - DEF'S REFUSAL TO PARTICIPATE IN TREATMENT				MALICE (IMPLIED) - CONSCIOUS DISREGARD v RECKLESS INDIFFERENCE			
At MDO hrg, (1) ct finds that def is NOT in remission due to, in part, def's refusal to participate in treatment. UPHELD. (2) While def's Static-99 score was low, that did NOT prevent ct from finding def was a Substantial Risk to re-offend.				"Conscious Disregard" standard for Implied Malice is NOT the SAME as "Reckless Indifference" test for Special Circ's. Reckless Indifference requires a subjective awareness of a higher degree of risk than Conscious Disregard.			
ZWERENZ	<i>P. v. ()</i>	3:	12/20/2024	GUDIEL	<i>P. v. ()</i>	2:8	12/26/2024
dd PETITIONS TO RESENTENCE				dd PETITIONS TO RESENTENCE			
PETITIONS TO				PETITIONS TO			
1172.6 PC - SUMMARY DENIALS - DEF ACTUAL KILLER, DDA THEORY OF				1172.1 PC - CT MAY RESENTENCE - BUT DEF CAN'T ASK (LIKE 1385 PC)			
2018: Def plead No Contest to Att 187. 2023: Def files PC 1172.6 petition. Summarily Denied. UPHELD: Record of Conviction proves "the (sole) DA's theory of the case" at the time of plea was that def acted ALONE. --- no need for an evidentiary hearing. Trial Ct did NOT engage in "fact-finding".				Like PC 1385, PC 1172.1 does not give defendants the ability to ASK for a 1172.1 resentencing. Therefore, when a court denies a request, the denial is NOT APPEALABLE.			
MUHAMMAD	<i>P. v. ()</i>	2:3	12/9/2024	HODGE	<i>P. v. ()</i>	2:2	12/27/2024
db APPELLATE ISSUES				bc INSTRUCTIONS/ELEMENTS			
MISC APPELLATE				DUI'S			
APPEALABLE ORDERS - DENIAL OF REQUEST TO MODIFY SENTENCE -				MINIMUM JAIL TIME - RESIDENTIAL TREATMENT PROGRAMS			
Like PC 1385, PC 1172.1 does not give defendants the ability to ASK for a 1172.1 resentencing. Therefore, when a court denies a request, the denial is NOT APPEALABLE.				Def gets 4th DUI w/in 10 years. VC 23550 mandates at least 180 in jail. HELD: Time spent in live-in rehab, even if court ordered, is NOT JAIL. (while it "might" be eligible for CTS in some contexts, it cannot apply to 23550's 180 days.)			
HODGE	<i>P. v. ()</i>	2:2	12/27/2024	BILLY	<i>P. v. ()</i>	1:5	12/9/2024
de SENTENCING				cd MOTIONS			
CTS/GOOD TIME				DISCRIMINATORY PROSECUTION			
CTS - TIME SPENT IN RESIDENTIAL REHAB				CRJA - CLOSING ARGUMENT - CALLING DEF PREDATOR / MONSTER			
Def gets 4th DUI w/in 10 years. VC 23550 mandates at least 180 in jail. HELD: Time spent in live-in rehab, even if court ordered, is NOT JAIL. (while it "might" be eligible for CTS in some contexts, it cannot apply to 23550's 180 days.)				DDA called defs MONSTERS and PREDATORS during closing arguments in this violent kidnap-rape case. HELD: these terms were not used in any RACIAL context. No CRJA violation.			
BILLY	<i>P. v. ()</i>	1:5	12/9/2024	QUINTERO & LOPEZ-	<i>P. v. ()</i>	1:5	12/31/2024

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bd OTHER TRIAL ISSUES

ARGUMENT

DDA OK - CALLING A PREDATOR/MONSTER A PREDATOR/MONSTER - CRJA

DDA called defs MONSTERS and PREDATORS during closing arguments in this violent kidnap-rape case. HELD: these terms were not used in any RACIAL context. No CRJA violation.

QUINTERO & LOPEZ- P. v. () 1:5
12/31/2024

de SENTENCING

PROBATION

TERMS - CHILD SEX OFFENDERS - NO COMPUTERS, NO SEX OFFENDER

Child sex offender is Paroled with 3 terms: (1) Don't access computer devices; (2) don't associate with known sex offenders; and (3) Don't possess sexually stimulating devices. --- ALL UPHELD.

PERROT P. v. () 1:4
12/23/2024

cd MOTIONS

DISCOVERY

EXCULPATORY - BRADY - DDA DUTY TO HELP DEF FIND STUFF - NOT

DDA tells def atty V was once diagnosed w/ mental illness. (DDA knew no details). V refuses to talk to defense. HELD: DDA has NO duty to assist defense in learning details of V's illness. DDA disclosed what he knew, and that is all he need do.

BAUGH P. v. () 1:3
12/20/2024

cd MOTIONS

BAIL / OR

O.R. RELEASE - DEF'S CTS EXCEEDS MAX POSSIBLE SENTENCE

Once def's CTS (plus good time) exceeds the max possible sentence, it is an abuse of discretion to deny def's pretrial request to be released from jail on O.R. --- fact that def is a dangerous guy does not matter. -- this case: def was in jail over 5 years.

NUNEZ-DOSANGOS def v. SUP CT 1:3
12/10/2024

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.6 PC - APPELLATE REVIEW - REVIEW STANDARD

2010: Def charged with 187, def pled guilty to Vol Manslaughter. 2022: Evidence at def's PC 1172.6 hrg was conflicting and inconsistent. Trial Ct denied motion finding that def was actual killer. UPHELD: Appellate standard is "substantial evidence" in support of trial ct decision.

DAVIS P. v. () 1:2
12/10/2024

ce SEARCH & SEIZURE

CONSENT

AUTHORITY - BY PARENT OVER DEAB ADULT SON'S PHONE - ECPA

X dies of overdose. X's parents give X's phone to police. Police search it to find X's dealer (def). HELD: on these facts, the Parents became "authorized possessors" of X's phone and therefore could consent to the search under CalECPA -- PC 1546

CLYMER P. v. () 1:1
12/4/2024