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<p style="text-align: right;"><i>ef</i> PAROLE</p> <p>PAROLE DECISIONS</p> <p style="text-align: center;">3051 PC PAROLE - DOES NOT APPLY TO LWOP'S</p> <p>Early parole hearings for youthful LIFERS -- PC 3051 -- does not apply to youthful LWOP'ers. HELD: this does NOT violate Equal Protection. Legislature could have a rational basis for making such a distinction.</p> <p>HARDIN <i>P. v. ()</i> CAL</p> <p style="text-align: right;">3/4/2024</p>	<p style="text-align: right;"><i>ab</i> CONSTITUTIONAL ISSUES</p> <p>DUE PROCESS / EQUAL PROTECTION</p> <p style="text-align: center;">EQUAL PROTECTION - 3051 PC PAROLE - LWOP DEF'S</p> <p>Early parole hearings for youthful LIFERS -- PC 3051 -- does not apply to youthful LWOP'ers. HELD: this does NOT violate Equal Protection. Legislature could have a rational basis for making such a distinction.</p> <p>HARDIN <i>P. v. ()</i> CAL</p> <p style="text-align: right;">3/4/2024</p>
<p style="text-align: right;"><i>bc</i> INSTRUCTIONS/ELEMENTS</p> <p>THEFT / FRAUD CRIMES</p> <p style="text-align: center;">AUTO - VIN TAMPERING - 10802 VC</p> <p>Notwithstanding the wording of the statute, VC 10802 can be violated by tampering with a single VIN number.</p> <p>KILLIAN <i>P. v. ()</i> 6:</p> <p style="text-align: right;">2/20/2024</p>	<p style="text-align: right;"><i>bc</i> INSTRUCTIONS/ELEMENTS</p> <p>THEFT / FRAUD CRIMES</p> <p style="text-align: center;">AUTO - VIN TAMPERING - 10802 VC</p> <p>Buyers as well as sellers can violate VC 10802 (tampering with VIN's). This case: buyer knew car was stolen. Buyer tampered with VIN after he took possession.</p> <p>KILLIAN <i>P. v. ()</i> 6:</p> <p style="text-align: right;">2/20/2024</p>
<p style="text-align: right;"><i>ae</i> MISC ODDS & ENDS</p> <p>ODDS & ENDS</p> <p style="text-align: center;">GOV OFFICIAL REMOVAL - 3060 GOVT</p> <p>Elected official RESIGNS in middle of Gov 3060 trial to remove them from office. HELD: trial may continue. It is NOT moot. Trial has additional consequence of removing official's right to vote.</p> <p>SMITH <i>P. v. ()</i> 6:</p> <p style="text-align: right;">3/15/2024</p>	<p style="text-align: right;"><i>cd</i> MOTIONS</p> <p>DOUBLE JEOPARDY</p> <p style="text-align: center;">DISMISSAL (1385) AFTER TWO HUNG JURIES / RE-FILE</p> <p>After two hung juries, court dismisses under PC 1385 saying there is not enough evidence to convict. Years later, improved DNA tech strengthens case. DDA refiles. HELD: Dismissal was NOT for LEGAL insufficiency of the evidence (which requires all inferences to go to the People)</p> <p>WOODWARD <i>P. v. SUP CT</i> 6:</p> <p style="text-align: right;">3/14/2024</p>
<p style="text-align: right;"><i>cd</i> MOTIONS</p> <p>WITHDRAW PLEA / STRIKE PRIOR</p> <p style="text-align: center;">1473.7 PC - DELAYED IMMIGRATION MOTIONS - ADMIT TO V/P</p> <p>Def's became deportable only after he was given an additional 90 days custody on a v/p (which he admitted) HELD: the decision to admit to the v/p w/ 90 additional days is a decision that def can seek to undo under PC 1473.7</p> <p>CARRILLO <i>P. v. ()</i> 5:</p> <p style="text-align: right;">3/15/2024</p>	<p style="text-align: right;"><i>cd</i> MOTIONS</p> <p>WITHDRAW PLEA / STRIKE PRIOR</p> <p style="text-align: center;">1473.7 PC - DELAYED IMMIGRATION MOTIONS - POST TRIAL</p> <p>Opinion discusses issues raised by a PC 1473.7 motion to vacate a jury trial verdict. -- this case, def failed to show prejudice by decision to go to trial.</p> <p>CARRILLO <i>P. v. ()</i> 5:</p> <p style="text-align: right;">3/15/2024</p>
<p style="text-align: right;"><i>eb</i> D. P. / SPEC. CIRC.</p> <p>SPECIAL CIRCUMSTANCES</p> <p style="text-align: center;">GANG MURDER - HOW AFFECTED BY AB 333</p> <p>AB 333 does NOT directly amend GANG-Spec Circ - PC 190.2. BUT, when 190.2 refers to PC 186.22, it refers to the POST-AB 333 version of 186.22. --- aid/abetter need only intend to help the killer kill while the killer intends to further GANG purposes.</p> <p>ROJAS <i>P. v. ()</i> 5:</p> <p style="text-align: right;">3/27/2024</p>	<p style="text-align: right;"><i>dd</i> PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p style="text-align: center;">1172.6 PC - GENERAL - APPLICABILITY OF 170.6 CCP</p> <p>Def files PC 1172.6 petition. HELD: IF the trial judge (or the judge that took the guilty plea) are available, the petition MUST go to them. AND, the def may NOT use a CCP 170.6 on that judge as it would be UNTIMELY as to them. 1172.6 is not a new case. It is continuation of old case.</p> <p>GOMEZ <i>P. v. SUP CT</i> 4:3</p> <p style="text-align: right;">3/15/2024</p>

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<p style="text-align: right;"><i>cd</i> MOTIONS</p> <p>170.6</p> <p style="text-align: center;">TIMELINESS - 1172.6 PETITION BEFORE ORIGINAL JUDGE</p> <p>Def files PC 1172.6 petition. HELD: IF the trial judge (or the judge that took the guilty plea) are available, the petition MUST go to them. AND, the def may NOT use a CCP 170.6 on that judge as it would be UNTIMELY as to them. 1172.6 is not a new case. It is continuation of old case.</p> <p>GOMEZ <i>P. v. SUP CT</i> 3/15/2024 4:3</p>	<p style="text-align: right;"><i>bc</i> INSTRUCTIONS/ELEMENTS</p> <p>ADULT SEX CRIMES</p> <p style="text-align: center;">RAPE - RESISTANCE OVERCOME BY DRUGS/ALCOHOL</p> <p>Reasonable jury could find that while V was able to walk, and talk, she was still too intoxicated to be able to exercise judgment about consenting to sex. Def's conviction for rape by intoxication stands. PC 261(a)(3)</p> <p>LEWIS <i>P. v. ()</i> 3/7/2024 4:3</p>
<p style="text-align: right;"><i>bc</i> INSTRUCTIONS/ELEMENTS</p> <p>HOMICIDE</p> <p style="text-align: center;">FELONY 187 - POST SB 1437 - AID CRIME vs AID KILLING</p> <p>Post changes in felony murder -- An aid/better need not do an ACT that aids the killing. It is enough if the aid/better does an ACT that aids the underlying felony WHILE having the INTENT to kill.</p> <p>MORRIS <i>P. v. ()</i> 3/22/2024 4:3</p>	<p style="text-align: right;"><i>cd</i> MOTIONS</p> <p>QUASH SUBPEONAS</p> <p style="text-align: center;">SUB DT - SUBDT'S BY DDA MUST MEET SAME STANDARD AS DEF SUBDT'S</p> <p>DDA SubDT's def's "C-File" from CDCR for upcoming PC 1172.75 resentencing. Def moves to quash. HELD: (1) the "facebook" factors that apply to defense SubDT's apply equally to DDA SubDT's. (2) C-files contain lots of different stuff. Upon objection, each type of stuff is evaluated separately.</p> <p>LUNSTED <i>def v. SUP CT</i> 3/1/2024 4:2</p>
<p style="text-align: right;"><i>ed</i> JUVENILE</p> <p>UNFITNESS</p> <p style="text-align: center;">AB 2361 - CLEAR AND CONVINCING</p> <p>Effective 1/1/2023, AB 2361 raised DDA's burden of proof on juvi unfitness hearing (W&I 707) to Clear and Convincing. Eff. 1/1/2024 SB 545 mandated eval of ALL factors --- But, it does NOT mandate that any one factor be given greater weight than other factors.</p> <p>MIGUEL R. <i>In Re ()</i> 3/1/2024 4:2</p>	<p style="text-align: right;"><i>ed</i> JUVENILE</p> <p>UNFITNESS</p> <p style="text-align: center;">SB 545 - EVALUATE ALL FACTORS - NONE TRUMP THE OTHERS</p> <p>Effective 1/1/2023, AB 2361 raised DDA's burden of proof on juvi unfitness hearing (W&I 707) to Clear and Convincing. Eff. 1/1/2024 SB 545 mandated eval of ALL factors --- But, it does NOT mandate that any one factor be given greater weight than other factors.</p> <p>MIGUEL R. <i>In Re ()</i> 3/1/2024 4:2</p>
<p style="text-align: right;"><i>bb</i> EVIDENCE</p> <p>HEARSAY</p> <p style="text-align: center;">UNAVAILABILITY - DUE DILIGENCE - LATE START IN SEARCHING</p> <p>Yes, the DDA tried very hard to find missing witness. BUT, they knew witness was missing for years (during COVID delay) and did not START looking until two weeks before trial. Therefore, no DUE DILIGENCE. (facts suggested an earlier search would have been successful)</p> <p>AYALA <i>P. v. ()</i> 3/29/2024 4:1</p>	<p style="text-align: right;"><i>dd</i> PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p style="text-align: center;">1172.6 PC - HEARING - WHAT CONSTITUTES AN "EVID" HRG</p> <p>In def's presence, both sides submitted the PC 1172.6 issues to the court based on the record of conviction alone. After def lost, he appeals claiming he had no evidentiary hearing. HELD: Yes he did.</p> <p>McCLELLAND <i>P. v. ()</i> 3/27/2024 4:1</p>
<p style="text-align: right;"><i>ee</i> MENTAL HEARINGS</p> <p>1026</p> <p style="text-align: center;">MISC - SETTING MAX HOSPITAL CONFINEMENT TIME</p> <p>Def is found NGI for felony assault. Def also has strikes. Therefore, the max limit on def's NGI hospitalization is LIFE.</p> <p>BARNER <i>P. v. ()</i> 3/12/2024 3:</p>	<p style="text-align: right;"><i>ed</i> JUVENILE</p> <p>MISC - JUVENILE</p> <p style="text-align: center;">RECORDS - SEALING OF - 786 W&I</p> <p>Automatic sealing of juvi record under W&I 786 is NOT precluded by ANY subsequent wardship. Only wardships based on conduct involving moral turpitude.</p> <p>J. S. <i>In Re ()</i> 3/5/2024 3:</p>

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<p style="text-align: center;">ac STATUTORY CONSTRUCTION</p> <p>STATUTORY CONSTRUCTION RULE - RULES OF GRAMMAR - PUNCTUATION - SCOPE OF "OR" DCA turns to legislative history when the punctuation of the statute makes it ambiguous how much of the sentence is included by the word "or". J. S. <i>In Re ()</i> 3: 3/5/2024</p>	<p style="text-align: center;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.75 PC - 667.5 PRIORS - FULL RESENTENCE - PROP 36 OPTIONS 2007: gets 36-to-life for 3-strikes plus some 667.5(b) priors. 2022: new PC 1172.75 sentence is 25-to-life. Court refused to use Prop 36 to strike a strike. UPHELD: 1172.75 does NOT modify Prop 36's two-year window for def's to seek relief. (AG conceded issue) SANTOS <i>P. v. ()</i> 3: 3/14/2024</p>
<p style="text-align: center;">ce SEARCH & SEIZURE</p> <p>AUTOS / CONTAINERS DETAIN - AUTO - DURATION - QUESTIONS ABOUT UNRELATED ISSUES During traffic stop, officer asks unrelated questions of def WHILE officer was waiting for a Records Check to be completed. Therefore the questioning did NOT prolong the stop. FELIX <i>P. v. ()</i> 2:8 3/7/2024</p>	<p style="text-align: center;">ce SEARCH & SEIZURE</p> <p>AUTOS / CONTAINERS DETAIN - AUTO - DURATION - REASONS TO PROLONG During traffic stop, officer learns def does NOT own the vehicle his is driving. It is reasonable to prolong the stop long enough to have DISPATCH call the registered owner to confirm def had permission to drive. FELIX <i>P. v. ()</i> 2:8 3/7/2024</p>
<p style="text-align: center;">cb DEFENDANT'S STATEMENTS</p> <p>MIRANDA POST INVOKE - DEF TALKING TO CELLMATE - UNDERCOVER COP Def arrested, Mirandized, invokes, goes to jail. (Before counsel is appointed) undercover cop is placed in cell with def and informally asks def "what are you in for". HELD this is entirely NON-coercive questioning. It does NOT violate MIRANDA. FELIX <i>P. v. ()</i> 2:8 3/7/2024</p>	<p style="text-align: center;">ce SEARCH & SEIZURE</p> <p>DETAIN/ARREST/PAT-DOWN CONSENSUAL CONTACT v DETENTION - STOPPING NEAR PARKED CAR At midnight, officer pulls up next to parked car so close that the driver could not exit car from driver's side door. Officer then gets out with flashlight to look inside. HELD: reasonable driver would NOT have thought he was free to drive away. HELD: this is a detention. JACKSON <i>P. v. ()</i> 2:8 3/15/2024</p>
<p style="text-align: center;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - LAW CHANGES SINCE CRIME THAT HURT DEF At time of def's original crime, KIDNAPPING was not on list of felony-murder felonies. At the time of def's PC 1172.6 petition, it was. 1172.6 says to re-evaluate def's case under CURRENT LAW. HELD: this is NOT ex post facto. 1172.6 is act of lenity. Def has to ask for relief on 1172.6's terms. HILL <i>P. v. ()</i> 2:2 3/25/2024</p>	<p style="text-align: center;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - MAJOR PARTIC, RECK INDIFF - AGE, SUFF EVID Def's PC 1172.6 petition properly denied because def was a major participant acting with reckless indifference to life. HILL <i>P. v. ()</i> 2:2 3/25/2024</p>
<p style="text-align: center;">cd MOTIONS</p> <p>1385 ENHANCEMENTS - 1385(c) - WHAT IS NOT AN ENHANCEMENT Def charged with ATT 187. Additional jury finding of PreMed and Delib are NOT enhancements. It invokes an alternative sentence. Therefore, PC 1385(c) does NOT apply. SERRANO <i>P. v. ()</i> 1:5 3/28/2024</p>	<p style="text-align: center;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - EVID - FACT SUMMARY FROM APPELLATE OPINION SB 775 expressly prohibits PC 1172.6 courts from making factual findings based on the Statement of facts in earlier appellate opinions in Def's case. BEAUDREAUX <i>P. v. ()</i> 1:4 3/28/2024</p>

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<i>dd</i> PETITIONS TO RESENTENCE				<i>bc</i> INSTRUCTIONS/ELEMENTS			
PETITIONS TO				ENHANCEMENTS			
1172.6 PC - SUMMARY DENIALS - DEF ACTUAL KILLER				GANG - 186.22 PC - ORGANIZATION, LEVEL OF			
Def's 2009 jury expressly found def to be the actual killer. That finding cannot be revisited by a PC 1172.6 petition. Summary Dismissal is appropriate.				Even after AB 333, PC 186.22 does NOT require a qualifying GANG to have a formal organizational structure. In INFORMAL organizational structure still suffices.			
BEAUDREAUX	<i>P. v. ()</i>		1:4	FARLEY	<i>P. v. SUP CT</i>		1:4
		3/28/2024				3/5/2024	
<i>db</i> APPELLATE ISSUES				<i>db</i> APPELLATE ISSUES			
POST GUILTY PLEA				WRITS			
POST GUILTY PLEA - CERTIF OF PC - NEED FOR				HABEAS - DEATH PENALTY DEF'S - APPEALABILITY			
Def pled No Contest and then appeals failure of court to SUA SPONTE refer him to Mental Health Diversion. --- Appeal DISMISSED for def's failure to obtain a Certif of Probable Cause. --- This issue did Not arise after his plea.				D.P. def's Habeas is denied. PC 1509.1 permits def to seek a Certificate of Appealability (COA). DCA grants COA on some, but not all issues raised in Habeas. HELD: (1) no strict Timeliness rules for COA requests. (2) a "substantial" claim is one where reasonable minds could disagree			
ROBINSON	<i>P. v. ()</i>		1:4	SEUMANU	<i>In Re ()</i>		1:4
		3/1/2024				3/11/2024	
<i>db</i> APPELLATE ISSUES				<i>dd</i> PETITIONS TO RESENTENCE			
WRITS				PETITIONS TO			
HABEAS - DEATH PENALTY DEF'S - APPEALABILITY				1172.75 PC - 667.5 PRIORS - FULL RESENTENCE - DDA STUCK W/ PLEA			
D.P. def's Habeas is denied. PC 1509.1 permits def to seek a Certificate of Appealability (COA). DCA grants COA on some, but not all issues raised in Habeas. HELD: (1) the Constitutionality of PC 1509.1 can be raised as an issue in a COA request.				2018: def enters plea bargain that included two PC 667.5(b) priors. HELD: def entitled to FULL resentencing hearing under PC 1172.75. AND, DDA does NOT have the option of withdrawing Plea Bargain after the hearing.			
SEUMANU	<i>In Re ()</i>		1:4	MONTGOMERY	<i>P. v. ()</i>		1:3
		3/11/2024				3/15/2024	