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dd PETITIONS TO RESENTENCE				dd PETITIONS TO RESENTENCE			
PETITIONS TO				PETITIONS TO			
1172.6 PC - POST GRANT - FELONY 187's - ADDING TWO SUBSTITUTE				1172.6 PC - POST GRANT - FELONY 187's - ADDING UNCHARGED			
After ct sustains def's PC 1172.6 petition re: felony-murder 187 conviction, at the resentencing, ct may ADD an uncharged count that was the underlying felony in the case. It MAY NOT add any uncharged enhancements (like GBI). Question: may it add TWO underlying felonies? Not answered in this opinion.				After ct sustains def's PC 1172.6 petition re: felony-murder 187 conviction, at the resentencing, ct may ADD an uncharged count that was the underlying felony in the case. It MAY NOT add any uncharged enhancements (like GBI). Question: may it add TWO underlying felonies? Not answered in this opinion.			
ARELLANO	P. v. ()	7/11/2024	CAL	ARELLANO	P. v. ()	7/11/2024	CAL
eb D. P. / SPEC. CIRC.				bb EVIDENCE			
SPECIAL CIRCUMSTANCES				352 / RELEVANCE			
GANG MURDER - AFFECTED BY AB 333 CHANGES TO 186.22 PC				MOTIVE			
AB 333 changes to Gang elements apply to the Spec Circ - Gang. Therefore, the only Spec Circ in this 2003 Death Penalty case must be Reversed.				Local TV news segment was extremely prejudicial to def, plus was unproven hearsay. BUT, the segment itself was the motive for the 187. Trial Ct admits the segment, but with limiting instruction that that NOTHING in it should be considered as being true. UPHELD.			
LAMB	P. v. ()	7/11/2024	CAL	LAMB	P. v. ()	7/11/2024	CAL
bb EVIDENCE				ee MENTAL HEARINGS			
352 / RELEVANCE				SexVioPredator			
352 GENERALLY - ADMIT ANYWAY WITH LIMITING INSTRUCTION				TRIAL - EVIDENCE - EXPERTS - DDA MUST USE ONLY DSH EXPERTS - NOT			
Local TV news segment was extremely prejudicial to def, plus was unproven hearsay. BUT, the segment itself was the motive for the 187. Trial Ct admits the segment, but with limiting instruction that that NOTHING in it should be considered as being true. UPHELD.				HELD: (1) DDA may retain own shrink to give opinions to the jury at a SexVioPredator trial. (2) DDA may share all discovery with the shrink. (3) Def may NOT be compelled to take any tests from DDA shrink or consent to any interview with DDA shrink			
LAMB	P. v. ()	7/11/2024	CAL	NEEDHAM	def v. SUP CT	7/11/2024	CAL
dd PETITIONS TO RESENTENCE				ee MENTAL HEARINGS			
PETITIONS TO				1368			
1172.6 PC - SUMMARY DENIALS - JURY FINDINGS RE: CONSPIRACY				CAP ON HOSPITALIZATION - WHAT TOLLS TIME			
1995: Def convicted of aid/abet murder under CONSPIRACY to commit 1st degree 187 instructions. 2022: def files PC 1172.6 petition Summarily denied. UPHELD: Jury found def had intent to kill.				Held: (1) the two-yr max confinement for PC 1368 def runs until trial court rules def has been returned to competency. (2) the 2-yr clock is TOLLED during any delay caused by def. (this case: def atty requested continuances to prepare for post-hospital hearing.)			
NGUYEN	P. v. ()	7/11/2024	6:	RODRIGUEZ	def v. SUP CT	7/10/2024	6:
db APPELLATE ISSUES				dd PETITIONS TO RESENTENCE			
MISC APPELLATE				PETITIONS TO			
MISC - JURISDICTION OF DCA AFTER CASE IS FINAL				1172.6 PC - SUMMARY DENIALS - NO FACT FINDING - DEF WAS SOLE DEF			
2008: Def tried, convicted, and sentenced. 2022: def files PC 1172.6 petition which is denied. On APPEAL of 1172.6 denial, def raised issue that his sentence was illegal. HELD: DCA has no jurisdiction to address this issue on appeal. Def may seek relief via HABEAS.				2010: Def is sole defendant. At prelim, victim said def personally shot him. Def then takes plea bargain for ATT 187. 2022: Def files boilerplate PC 1172.6 petition. HELD: Ct engaged in impermissible fact finding when it found No Prima Facie case. Full evidentiary hearing needed. strong dissent.			
HERNANDEZ	P. v. ()	7/25/2024	5:	WILLIAMS	P. v. ()	6/28/2024	5:

dd PETITIONS TO RESENTENCE**PETITIONS TO****1172.75 PC - 667.5 PRIORS - FULL RESENTENCE - DDA STUCK W/ PLEA**

2013: Def enters into plea bargain that includes 667.5(b) one-yr priors. 2023: def gets a PC 1172.75 resentencing. Trial Ct strikes a GBI enhancement per New PC 1385(c). HELD: (1) New PC 1385(c) applies. (2) DDA is NOT entitled to seek to cancel plea bargain.

HERNANDEZ *P. v. ()* 7/22/2024 4:3

dd PETITIONS TO RESENTENCE**PETITIONS TO****1172.6 PC - SUMMARY DENIALS - GUILTY PLEAS**

2018: Def pled guilty to attempt 187 as an aid/abettor. Def admitted he had intent to kill. 2023: def files PC 1172.6 petition. Summarily denied due to on-the-record admission of intent to kill. UPHELD.

RAMOS *P. v. ()* 6/12/2024 4:3

bd OTHER TRIAL ISSUES**WHEELIE****CRJA - PREEMPT - DEF ATTY PREEMPTS WHITE JURORS**

Trial court SUSTAINS two objections from the DDA to two Defense peremptory challenges of WHITE Female jurors per CCP 231.7. Court found that the stated reasons (body language, evasive answers) were NOT what the court observed. At that point, the objection MUST be sustained.

CAPARROTA *P. v. ()* 7/16/2024 4:1

bc INSTRUCTIONS/ELEMENTS**ENHANCEMENTS****GBI - 12022.7 PC - INJURY - CALCRIM 630 UPHELD**

CalCrim 630 re: what is GBI is UPHELD against assertions it is ambiguous and misleading.

CAPARROTA *P. v. ()* 7/16/2024 4:1

bd OTHER TRIAL ISSUES**WHEELIE****CRJA - PREEMPT - IN-COURT BEHAVIOR - CT MUST SEE**

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CAPARROTA *P. v. ()* 7/16/2024 4:1

ab CONSTITUTIONAL ISSUES**RETROACTIVE****BENEFIT TO DEF - PLEA BARGAINS, EFFECT ON - 1172.75 PC**

2013: Def enters into plea bargain that includes 667.5(b) one-yr priors. 2023: def gets a PC 1172.75 resentencing. Trial Ct strikes a GBI enhancement per New PC 1385(c). HELD: (1) New PC 1385(c) applies. (2) DDA is NOT entitled to seek to cancel plea bargain.

HERNANDEZ *P. v. ()* 7/22/2024 4:3

de SENTENCING**DIVERSION****DIVERSION - MENTALLY ILL - 1001.36 PC - 1368 IS PENDING**

While def's PC 1368 competency issue is pending, def asks for PC 1001.36 Mental Health diversion. HELD: Trial court need not wait until def is found competent before ruling on Diversion request

VELADOR *P. v. ()* 7/11/2024 4:2

bd OTHER TRIAL ISSUES**WHEELIE****CRJA - PREEMPT - IN-COURT BEHAVIOR - CT MUST SEE**

Atty gives two reasons for Preempt. One of which is presumptively invalid under CCP 231.7. IF the court's personal observations to NOT confirm the invalid reason factually exists, then GAME OVER. Even if the other reason is race neutral, objection to Preempt must be sustained.

CAPARROTA *P. v. ()* 7/16/2024 4:1

bd OTHER TRIAL ISSUES**WHEELIE****CRJA - PREEMPT - TWO REASONS GIVEN - ONE IS INVALID**

Atty gives two reasons for Preempt. One of which is presumptively invalid under CCP 231.7. IF the court's personal observations to NOT confirm the invalid reason factually exists, then GAME OVER. Even if the other reason is race neutral, objection to Preempt must be sustained.

CAPARROTA *P. v. ()* 7/16/2024 4:1

bd OTHER TRIAL ISSUES**WHEELIE****APPELLATE REVIEW - DEFERENCE TO TRIAL COURT - NOT**

SB 310 permits felons to be jurors. DDA uses Preempt on Juror X due to 2 felony convictions. WHEELER mtn denied. DCA REVERSES. Record does NOT support Ct finding that DDA's reason was race neutral. (DCA says CRJA does not apply, but it "informs" WHEELER.)

HICKS *P. v. ()* 7/31/2024 4:1

<div>dd PETITIONS TO RESENTENCE</div> <div>PETITIONS TO</div> <div>1172.6 PC - 2ND PETITIONS - COLLATERAL ESTOPPEL</div> <div>2022: def files 2nd PC 1172.6 after 1st petition denied. 2nd petition raises new issue: def was too young (age 19) to form MALICE. HELD: New and evolving law on this issue EXCUSES atty's failure to raise it on 1st petition. Therefore, No Collateral Estoppel. Therefore, 2nd petition may proceed.</div> <div>JIMENEZ P. v. () 7/22/2024 4:1</div>				<div>ab CONSTITUTIONAL ISSUES</div> <div>RETROACTIVE</div> <div>BENEFIT TO DEF - WHEN DOES CASE STAY FINAL?</div> <div>Although def's case was FINAL, new legislation gave def a new opportunity to file an APPEAL. Def files a:n appeal. Therefore, case is no longer FINAL. HELD: Even if def loses appeal, he will be entitled to NEW sentencing due to all the statutory changes that have occurred.</div> <div>J. M. In Re () 7/12/2024 3:</div>			
<div>bc INSTRUCTIONS/ELEMENTS</div> <div>CHILD AS VICTIM CRIMES</div> <div>288.5 PC - MENS REA</div> <div>PC 288.5(a) has a different MENS REA than PC 288(a). Intent to sexually arouse is not required.</div> <div>CANALAS P. v. () 7/9/2024 2:8</div>				<div>bc INSTRUCTIONS/ELEMENTS</div> <div>290 PC</div> <div>SEX REGIS - 290 PC - TERMINATION - 290(e) / 290.5 PC</div> <div>Def convicted of sexual child abuse in 1991. 2022: def seeks end to PC 290 registration. HELD: def was eligible for relief, but Court did NOT abuse discretion when it found community safety is enhanced by requiring def to continue to register.</div> <div>MALBRY P. v. () 7/26/2024 2:8</div>			
<div>dd PETITIONS TO RESENTENCE</div> <div>PETITIONS TO</div> <div>1172.6 PC - SUMMARY DENIALS - DEF IS SOLE PERPETRATOR</div> <div>Def pled guilty attempt 187 in 2016. 2021: def files PC 1172.6 petition. HELD: Once court finds def was the SOLE perpetrator, game over. No other findings need be made. Def's guilty plea is an admission of all relevant issues.</div> <div>RODRIGUEZ P. v. () 7/1/2024 2:6</div>				<div>ab CONSTITUTIONAL ISSUES</div> <div>RETROACTIVE</div> <div>BENEFIT TO DEF - WHEN DOES CASE STAY FINAL? - HABEAS</div> <div>2022: def files successful HABEAS petition seeking a resentencing on one particular issue. Case was otherwise FINAL. HELD: Def is NOT entitled to a FULL resentencing.</div> <div>ESQUIVIAS P. v. () 7/18/2024 2:2</div>			
<div>cd MOTIONS</div> <div>SPEEDY</div> <div>TRIAL DELAY - CAUSE - COVID-19 PANDEMIC - BACKLOG</div> <div>San Francisco Superior Ct finally concedes it can no longer use COVID as an excuse for failure to criminal cases to trial in a timely fashion. This case is DISMISSED.</div> <div>MENDOZA def v. SUP CT 7/15/2024 1:4</div>				<div>bc INSTRUCTIONS/ELEMENTS</div> <div>MISC -</div> <div>EXECUTIVE OFFICER, RESIST OR THREATEN - 69 PC</div> <div>PC 69 requires resisting the officer using "force or violence". HELD: this does NOT necessarily mean application of force or violence on the person of the officer. This case: Def resisted by pulling out an unloaded gun and pointing it at the officer. UPHOLD.</div> <div>MORGAN P. v. () 7/18/2024 1:1</div>			
<div>de SENTENCING</div> <div>MISC - SENTENCING</div> <div>AGGRAVATING FACTORS - SB 567 - PRIOR CONVICTIONS AS</div> <div>Even after new PC 1170(b)(3), Court, not jury, may make findings of AGGRAVATION based on prior convictions including: def crimes are of increasing seriousness, and def's prior performance on probation was poor.</div> <div>MORGAN P. v. () 7/8/2024 1:1</div>				<div>de SENTENCING</div> <div>MISC - SENTENCING</div> <div>AGGRAVATING FACTORS - DUAL USE OF FACTS</div> <div>Court may NOT use the same fact to both impose an enhancement AND as Aggravating factor to impose Upper or Mid term.</div> <div>MORGAN P. v. () 7/8/2024 1:1</div>			