

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

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de SENTENCING				de SENTENCING			
MISC - SENTENCING				DIVERSION			
FEES/ASSESSMENTS - ABILITY TO PAY - DUENAS - PRISON EARNINGS				DEFERRED SENTENCE - DEFERRED BY COURT - NO STATUTORY			
SAN DIEGO APPELLATE DIV: Even a person sentenced to prison has the ability to earn enough money to pay a \$70 fine under DUENAS. DUENAS does not apply to Restitution Fines.				SAN DIEGO APPELLATE DIV: Misd trial court is W/OUT authority to take a guilty plea and then continue sentencing for over a year with conditions that if met by def, case would be dismissed.			
ESTRADA	<i>P. v. ()</i>		SUPP	ROBINSON	<i>P. v. ()</i>		SUPP
6/14/2024				5/9/2024			
bc INSTRUCTIONS/ELEMENTS				bb EVIDENCE			
DUI'S				EXPERT			
DUI - EXPERT OPINION THAT ALL BAC 0.05's ARE IMPARED				EXERTS - EXPERT MAY GIVE FACTUAL OPINION CONTRARY TO LEGIS			
SAN DIEGO APPELLATE DIV: Notwithstanding a Statute that takes a contrary position, expert witness (for the DDA) may opine that EVERYONE is too impaired to drive at a BAC of 0.05.				SAN DIEGO APPELLATE DIV: Notwithstanding a Statute that takes a contrary position, expert witness (for the DDA) may opine that EVERYONE is too impaired to drive at a BAC of 0.05.			
TURNTINE	<i>P. v. ()</i>		SUPP	TURNTINE	<i>P. v. ()</i>		SUPP
6/24/2024				6/24/2024			
db APPELLATE ISSUES				cd MOTIONS			
MISC APPELLATE				DISCRIMINATORY PROSECUTION			
MISC - STAYS - STAYS TO PERMIT CRJA ISSUES TO LITIGATED				CRJA - STAY OF PENDING APPEAL IS NOT MANDATORY			
Petition for rehearing denied. Def sought a stay of the his direct appeal while he gathered evidence to support a Habeas based on CRJA violations. Since the CRJA issues are NOT limited to things that are in the Appellate Record, the direct appeal should proceed.				Petition for rehearing denied. Def sought a stay of the his direct appeal while he gathered evidence to support a Habeas based on CRJA violations. Since the CRJA issues are NOT limited to things that are in the Appellate Record, the direct appeal should proceed.			
NADEY	<i>P. v. ()</i>	9/13/2024	CAL	NADEY	<i>P. v. ()</i>	9/13/2024	CAL
ef PAROLE				dd PETITIONS TO RESENTENCE			
PAROLE DECISIONS				PETITIONS TO			
3055 PC - ELDERLY PAROLE				1172.6 PC - ELIGIBILITY - DEF'S GUILTY PLEA AFTER SB 1437 ENACTED			
While in prison, def commits new crime and gets a 3-strike sentence of 25-to-life. Def argues that since he "went" to prison on a non-3-strike sentence, he is eligible for an ELDERLY PAROLE under PC 3055. HELD: def is INELIGIBLE like all other 3-strike prisoners.				Def charged with aid/abet 187. Def pleads guilty to Vol Manslaughter. HELD: Because def's plea date was AFTER SB 1437 became effective, def is not eligible for PC 1172.6 relief.			
BROWN	<i>In Re ()</i>	9/4/2024	5:	GALLEGOS	<i>P. v. ()</i>		5:
				9/25/2024			
bd OTHER TRIAL ISSUES				bc INSTRUCTIONS/ELEMENTS			
JUROR/VERDICT ISSUES				ROBBERY / ASSAULTIVE CRIMES			
JUROR ADDRESSES AND PHONE NUMBERS				KIDNAPPING - MOVEMENT INCIDENTAL TO OTHER CRIME - SIMPLE KID			
Def's post-conviction request for juror phone number and addresses under CCP 237 was properly Denied. Def failed to make prima facie case of juror misconduct.				During a Home-Invasion Robbery, the victim is moved from room-to-room within the home. HELD: this movement did NOT increase risk of harm, was NOT substantial, and does NOT support a SIMPLE Kidnapping charge (PC 207).			
HALL	<i>P. v. ()</i>		4:3	HALL	<i>P. v. ()</i>		4:3
9/6/2024				9/6/2024			

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dd PETITIONS TO RESENTENCE				bc INSTRUCTIONS/ELEMENTS			
PETITIONS TO				ROBBERY / ASSAULTIVE CRIMES			
1172.6 PC - HEARING - INTENT TO KILL + AID TO UNDERLYING FELONY				DOMESTIC VIOLENCE - 273.5 PC - TRAUMATIC CONDITION - CHOKING			
A jury finding that def aided the perpetrator in committing the underlying felon, while having an Intent to Kill, is NOT enough to make def INELIGIBLE for PC 1172.6 relief. Def must also aid in commission of the 187. --- DCA's are split.				In domestic violence situation, def chokes V, impeding V's ability to breathe for about 30 seconds. V felt dizzy and faint. HELD: the hand on the throat was Corporal Injury, and impeding breathing (even though temporary) was a Traumatic Condition. Def violated PC 273.5.			
KELLY	<i>P. v. ()</i>	9/18/2024	4:3	REID	<i>P. v. ()</i>	9/25/2024	4:3
ef PAROLE				ab CONSTITUTIONAL ISSUES			
PAROLE DECISIONS				DUE PROCESS / EQUAL PROTECTION			
1170(D) PC - EARLY PAROLE FOR LWOP MINORS				EQUAL PROTECTION - 3051 PC PAROLE - YOUNG ONE-STRIKE LIFERS			
PC 1170(d) makes LWOP prisoners who were sentenced as MINORS eligible for early parole after they have served 15 years in prison. HELD: the 15 yr clock starts ticking on the day of sentencing, not the first day def went into custody.				Under age 25 def gets 145-to life sentence for multiple One-Strike sex crimes. HELD: it does not violate Equal Protection for def to NOT receive any benefit from PC 3051 early parole for lifers statute.			
RUIZ	<i>P. v. ()</i>	9/5/2024	4:3	ELLIS	<i>P. v. ()</i>	9/30/2024	4:1
cd MOTIONS				dd PETITIONS TO RESENTENCE			
MOTION PROCEDURE				PETITIONS TO			
ALL MOTIONS - EVIDENCE - INFORMAL STIPS, OR ADMISSIONS, DONT				1172.6 PC - SUMMARY DENIALS - INFORMAL STIP'S ARE USELESS			
1ST HRG on def's PC 1172.6 petition. DDA: I've read trial jury instructions. Def is not eligible. Def Atty: I've read the instructions, DDA is correct. "I'll Submit." HELD: this is NOT a formal stipulation, nor a w/drawal. Therefore: Ct must independently read the instructions and make a finding.				1st hrg on def's PC 1172.6 petition. DDA: I've read trial jury instructions. Def is not eligible. Def Atty: I've read the instructions, DDA is correct. "I'll Submit." HELD: this is NOT a formal stipulation, nor a w/drawal. Therefore: Ct must independently read the instructions and make a finding.			
GALLARDO	<i>P. v. ()</i>	9/23/2024	4:1	GALLARDO	<i>P. v. ()</i>	9/23/2024	4:1
bc INSTRUCTIONS/ELEMENTS				bc INSTRUCTIONS/ELEMENTS			
HOMICIDE				GENERAL INSTRUCTIONS			
PROXIMATE CAUSE - WITHHELD MEDICAL CARE TO VICTIM				SPECIALS GENERALLY - INCOMPLETE, VAGUE LEGAL JARGON			
Def attacks V. As a result, V is in permanent coma. Family pulls plug, V dies. HELD: Family's decision was NOT an independent intervening cause of death. 187 conviction UPHELD.				Def pinpoint instruction rejected as Vague and incomplete. Instruction used legal jargon without defining them in terms jury would understand.			
JONES	<i>P. v. ()</i>	9/13/2024	4:1	JONES	<i>P. v. ()</i>	9/13/2024	4:1
bc INSTRUCTIONS/ELEMENTS				bc INSTRUCTIONS/ELEMENTS			
ADULT SEX CRIMES				CHILD AS VICTIM CRIMES			
PENETRATION DEFINED - LABIA MAJORA				288.5 PC vs MANY 288(a)'S - CHARGING BOTH - MUST BE ALTERNATIVE			
During deliberations, jury asks: Must def "penetrate" the Labia Marjora, or the Labia Minora. Court answers: Labia Marjora. UPHELD.				Jury convicts def of BOTH Continuous Child sex abuse (PC 288.5) and individual acts of PC 288 during the same time period. HELD: Duplicate convictions cannot stand. Trial ct has discretion as whether to dismiss the 288.5 charge, or dismiss the 288 charges.			
MARTINEZ	<i>P. v. ()</i>	9/18/2024	4:1	MARTINEZ	<i>P. v. ()</i>	9/18/2024	4:1

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cd MOTIONS

DISCRIMINATORY PROSECUTION

CRJA - DISCOVERY ORDERS - NEED FOR PENDING PETITION

2008: Def convicted. 2024: Def files Habeas petition alleging CRJA violations and Requested CRJA Discovery. HELD: Once Habeas Denied due to no Prima Facie case, court lost jurisdiction to order Discovery.

MONTGOMERY *In Re ()* 4:1
9/6/2024

cd MOTIONS

DISCRIMINATORY PROSECUTION

CRJA - APPEALABLE ORDERS

2008: Def convicted. 2024: Def files Habeas petition alleging CRJA violations. DENIED. Request for CRJA Discovery also denied. HELD: like all Habeas petitions, denial is NOT appealable. Request for Discovery Denial is also NOT appealable.

MONTGOMERY *In Re ()* 4:1
9/6/2024

ee MENTAL HEARINGS

SexVioPredator

MISC - CONDITIONAL RELEASE - CRITERIA

SVP def seeks conditional release. Def expert agreed Def needed close supervision, but opined such supervision could be provided after release. HELD: if def needs constant supervision, def is NOT ready for conditional release.

INGRAM *P. v. ()* 3:
9/12/2024

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.6 PC - HEARING - EVID - DEF'S STATEMENTS AT PAROLE HRGS

2010: Def convicted of aid/abet attempt 187. 2020: def has Parole Hrg where def admits intent to kill. 2022: def seeks PC 1172.6 resentencing. HELD: Def is NOT entitled to any USE IMMUNITY for parole hrg statements.

ZAVALA *P. v. ()* 3:
9/25/2024

de SENTENCING

DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - ELIGIBILITY - DEF'S ATTITUDE

Trial Ct denied Def's request for Mental Health Diversion (PC 1001.35) because court thought def was NOT amenable to treatment because of his attitude towards treatment. HELD: this is NOT a statutory grounds to deny diversion. REVERSED.

VAUGHN *def v. SUP CT* 2:7
9/17/2024

bc INSTRUCTIONS/ELEMENTS

ROBBERY / ASSAULTIVE CRIMES

KIDNAPPING - MOVEMENT INCIDENTAL TO OTHER CRIME - SIMPLE KID

Robbers move Victims from the public area of the store to the windowless BACK ROOM. Distance was approx 35 feet. Acquitted of Aggravated kidnap (PC 209) but convicted of Simple Kidnap (PC 207). UPHELD: Movement increased risk of harm, increased stress/anxiety of victims.

HUGHEY *P. v. ()* 2:6
9/19/2024

ed JUVENILE

UNFITNESS

PROP 57 - APPELLATE REVIEW - ABUSE OF DISCRETION STANDARD

Decision to find minor UNFIT for juvi Ct and order def to adult court is reviewed on ABUSE of DISCRETION standard. This case: ct found def unlikely to be rehabilitated by by age 25. UPHELD.

J. S. *In Re ()* 2:6
9/18/2024

de SENTENCING

STRIKE CASES

WHAT GETS DOUBLED - LWOP SENTENCES

A def with a Single Strike Prior commits an LWOP crime. HELD: 3-strike law does NOT require the LWOP sentence be Doubled. --- This is same DCA that earlier held the opposite in HARDY case. The opinion overrules HARDY.

MASON *P. v. ()* 2:2
9/25/2024

ab CONSTITUTIONAL ISSUES

DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - 3051 PC PAROLE - YOUNG LWOP DEF'S

Equal Protection demands that a def who is under age 26 who is non-shooter who aid/abets a 187 who gets an LWOP sentence MUST get the early parole benefits of PC 3051. -- These days, all felony 187 aid/abettors must be major participant just like Spec Circ. Those def's get 3051 benefits.

BRISCOE *P. v. ()* 1:4
9/25/2024

ab CONSTITUTIONAL ISSUES

DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - DIFFERING TYPES OF CIVIL COMMITMENTS

The W&I 6500 scheme permits renewal petitions to be filed on the last day of confinement, AND, def can STAY confined for 60 additional days awaiting trial. HELD: This is not a problem. No Equal Protection issues with other civil confinement schemes that do things differently,

COLE *def v. SUP CT* 1:3
9/12/2024

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ee MENTAL HEARINGS

MISC - MENTAL HRGS

MENTALLY RETARDED AND DANGEROUS - 6500 W&I

The W&I 6500 scheme permits renewal petitions to be filed on the last day of confinement, AND, def can STAY confined for 60 additional days awaiting trial.

HELD: This is not a problem. No Equal Protection issues with other civil confinement schemes that do things differently,

COLE *def v. SUP CT* 9/12/2024 1:3

bd OTHER TRIAL ISSUES

MISC - TRIAL

DEF PRESENCE - DEF REFUSES TO LEAVE CELL - MAKING A RECORD

2nd day of jury selection, def refuses to leave cell to come to court. Court

finishes picking jury without him. UPHELD. Opinion discusses the degree of Proof required as to def's WILLFULNESS before a finding of Voluntary Absence is made.

HERSOM *P. v. ()* 9/26/2024 1:1

ce SEARCH & SEIZURE

AUTOS / CONTAINERS

PRETEXT AUTO STOPS - ARE OKAY - VC 2806.5

Having PC for a pretext traffic stop, Officer calls for gun-sniffing dog. Stop not made until Dog was close by. HELD: (1) Pretext stops remain legal after new VC 2806.5. (2) Clock for prolonged detention starts at time of stop, not time of PC for stop. (3) Dog alerted before stop became too long.

VALLE *P. v. ()* 9/18/2024 1:1

ce SEARCH & SEIZURE

AUTOS / CONTAINERS

DETAIN - AUTO - DURATION - CLOCK STARTS AT STOP - DELAYING STOP

Having PC for a pretext traffic stop, Officer calls for gun-sniffing dog. Stop not made until Dog was close by. HELD: (1) Pretext stops remain legal after new VC 2806.5. (2) Clock for prolonged detention starts at time of stop, not time of PC for stop. (3) Dog alerted before stop became too long.

VALLE *P. v. ()* 9/18/2024 1:1

ce SEARCH & SEIZURE

AUTOS / CONTAINERS

DETAIN - AUTO - DURATION - PROLONGING FOR DOG SNIFF

Having PC for a pretext traffic stop, Officer calls for gun-sniffing dog. Stop not made until Dog was close by. HELD: (1) Pretext stops remain legal after new VC 2806.5. (2) Clock for prolonged detention starts at time of stop, not time of PC for stop. (3) Dog alerted before stop became too long.

VALLE *P. v. ()* 9/18/2024 1:1