

CaseBank: *Cases added during February 2024 (sorted by Court)*

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<i>bc INSTRUCTIONS/ELEMENTS</i>				<i>bc INSTRUCTIONS/ELEMENTS</i>			
ENHANCEMENTS				ENHANCEMENTS			
GANG - 186.22 PC - POST AB 333 - PREDICATES				GANG - 186.22 PC - POST AB 333 - CRIME NEXUS TO GANG			
PC 186.22, as amended by AB 333, does NOT require the DDA to prove the predicate crimes were committed by TWO or more gang members. One gang member, acting alone, MAY suffice. but, the predicate must have a connection to the primary activities or common goals of the Gang.				PC 186.22, as amended by AB 333, requires the DDA to prove a "nexus" between the charged crime and the gang "as a collective enterprise". --- good luck crafting a concise jury instruction from this opinion.			
CLARK	<i>P. v. ()</i>	2/22/2024	CAL	CLARK	<i>P. v. ()</i>	2/22/2024	CAL
ab CONSTITUTIONAL ISSUES				ae MISC ODDS & ENDS			
DUE PROCESS / EQUAL PROTECTION				ODDS & ENDS			
DUE PROCESS - NOTICE REQUIREMENTS - 667.61 PC ENHANCEMENTS				1203.01 PC - CREATING RECORD FOR FUTURE CDCR USE			
Most likely reading of One-Strike PC 667.61 complaint was that def was facing 15-to-life for multiple victims. At sentencing, DDA sought 25-to-life under 667.61(j)(2). The complaint did not mention 667.61(j)(2). --- 25-to-life sentence REVERSED due to lack of NOTICE				PC 1203.01 permits DDA to file with the court a report on the def to assist CDCR in any future decisions CDCR may make regarding the def. This case: the 1203.1 report included copies of police reports and statement that DDA considers def to be a SexVioPredator. UPHELD			
VAQUERA	<i>In Re ()</i>	2/5/2024	CAL	FERENZ	<i>P. v. ()</i>	1/26/2024	6:
cd MOTIONS				dd PETITIONS TO RESENTENCE			
MARSDEN				PETITIONS TO			
GROUND - DISAGREEMENTS OVER MERITS OF PLEA BARGAIN				1172.6 PC - ELIGIBILITY - TRANSFERRED INTENT CASES			
While maintaining his innocence, def agrees to plea bargain on advise of counsel. After plea, def changes mind and makes a MARSDEN motion. HELD: Atty did nothing wrong. No basis on which to grant Marsden.				1995: Def intends to kill X, unintentionally kills Y. Convicted under theory of Transferred Intent. HELD: Theory of Transferred Intent survives SB 1437. Def is NOT eligible for PC 1172.6 relief.			
FERENZ	<i>P. v. ()</i>	1/26/2024	6:	LOPEZ	<i>P. v. ()</i>	2/27/2024	5:
dd PETITIONS TO RESENTENCE				cd MOTIONS			
PETITIONS TO				1385			
1172.6 PC - POST GRANT - FELONY 187's - ADDING SUBSTITUTE CHARGES				ENHANCEMENTS - 1385(c) - WHAT IS NOT AN ENHANCEMENT			
2011: Def convicted of felony murder. Jury instructed the alleged underlying felony was ROBBERY. 2021: Def gets PC 1172.6 resentencing. Court drops 187 and adds Robbery AND Residential Burglary (as proved by trial transcript). REVERSED. 1172.6 only permits adding Robbery.				New PC 1385(c) applies ONLY to enhancements. It does NOT apply to alternative sentencing schemes (like 3-strikes, or 667.61 one-strike sex cases). This case: it does NOT apply to human trafficking sentences under 236.1(c)(2).			
PATTERSON	<i>P. v. ()</i>	2/26/2024	5:	McDOWELL	<i>P. v. ()</i>	2/23/2024	4:3
ee MENTAL HEARINGS				de SENTENCING			
1368				DIVERSION			
MISDEMEANOR DUI DEF - INCOMPETENT DEF - 1370.01 PC				DIVERSION - MENTALLY ILL - INCOMPETENT MISD DEF - 1370.01 PC			
VC 23640 (no diversion for DUI defs) does NOT prevent a misd DUI def from being placed in Mental Health Diversion after being found to be Incompetent to stand trial under PC 1370.01.				VC 23640 (no diversion for DUI defs) does NOT prevent a misd DUI def from being placed in Mental Health Diversion after being found to be Incompetent to stand trial under PC 1370.01.			
PERSIANI	<i>def v. SUP CT</i>	2/28/2024	4:3	PERSIANI	<i>def v. SUP CT</i>	2/28/2024	4:3

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<i>bc INSTRUCTIONS/ELEMENTS</i>		<i>bb EVIDENCE</i>	
DUI'S DIVERSION - MENTAL HEALTH - INCOMPETENT DEF - 1370.01 PC VC 23640 (no diversion for DUI defs) does NOT prevent a misd DUI def from being placed in Mental Health Diversion after being found to be Incompetent to stand trial under PC 1370.01. PERSIANI <i>def v. SUP CT</i> 4:3 2/28/2024		EXPERT KELLY - TruNarc DEVICE - POINT LASER AT DRUGS The TruNarc device determines the chemical make up of a pill (or powder) by pointing a laser at it. HELD: this is new technology that requires a full KELLY hearing before it's results are admissible. RIOS <i>P. v. ()</i> 4:3 2/23/2024	
1101 (b) / 1108 / 1109 1109 EV - DOMESTIC VIOLENCE - PROOF BY DOCUMENTS OF CONVICTION Ev 1109 evid (prior Domestic Violence) can be admitted by documentary proof of conviction. The prior victim need not testify. ROBINSON <i>P. v. ()</i> 4:3 2/27/2024	bb EVIDENCE	PETITIONS TO 1172.6 PC - SUMMARY DENIALS - USE OF PRELIM TRANSCRIPT Ct used prelim transcript in summarily denying def's PC 1172.6 petition. UPHELD. Def plead guilty in 2018. No trial. Prelim used solely to show that DDA's theory of case was that def acted alone. Def was actual killer, w/ no accomplices. -- That was the case def plead guilty to. MARES <i>P. v. ()</i> 4:2 2/23/2024	dd PETITIONS TO RESENTENCE
PETITIONS TO 1172.6 PC - SUMMARY DENIALS - NO CO-DEF'S - DEF ACTED ALONE Def took plea bargain in case were DDA's theory of case was def was actual killer and had no accomplices. HELD: None of the law changes in SB 1473 could possibly affect def's case, therefore def is NOT eligible for PC 1172.6 relief. MARES <i>P. v. ()</i> 4:2 2/23/2024	dd PETITIONS TO RESENTENCE	DISCRIMINATORY PROSECUTION CRJA - DETENTION DECISIONS - "IMPLICIT" BIAS At 1538.5 hearing, officer said he did not know the RACE of the individual at the time the decision to detain was made. Trial Ct denies CRJA motion. DCA REVERSES and REMANDS. Trial Ct to rule on claim of "implicit" bias. -- Did the officer "assume" or "suspect" the individual was Black? BONDS <i>def v. SUP CT</i> 4:1 2/14/2024	cd MOTIONS
PETITIONS TO 1172.6 PC - SUMMARY DENIALS - GUILTY PLEAS - THEORIES OF LIABILITY Both Def and Co-def took plea bargain and admitted "they" killed the victim. HELD: this record does NOT make def summarily ineligible for PC 1172.6 relief. The record does NOT establish what theory of liability def was admitting to. GAILLARD <i>P. v. ()</i> 4:1 2/26/2024	dd PETITIONS TO RESENTENCE	1368 MEDICATING DEF IN ORDER TO MAKE HIM COMPETENT DDA asks court for order forcing 1368 def to take anti-psychotic medication against her will. Both sides concede burden of proof was Clear and Convincing. DCA accepts concession, but says there is no authority for it. -- Order UPHELD GARCIA <i>P. v. ()</i> 4:1 2/21/2024	ee MENTAL HEARINGS
WHEELIE CRJA - DDA PREEMPT - 231.7 - PRESUMPTIVE INVALID REASONS JUROR X (who is of the same minority race as def) says she thinks Cops lie to convict minorities, but that she can be fair. DDA uses Preempt on X. Trial ct held the Presumption under CCP 231.7 that preempt was for an invalid reason was Overcome. -- UPHELD JIMENEZ <i>P. v. ()</i> 4:1 1/23/2024	bd OTHER TRIAL ISSUES	HARMLESS ERROR HARMLESS ERROR - EVID ERROR - GANG EXPERT OPINIONS Gang drive-by shooting from car with many occupants. Investigating Officer permitted to give OPINION that def held the gun at the time of the shooting. REVERSED. Impermissible opinion, usurped role of jury, and NOT harmless. ROUSTON <i>P. v. ()</i> 4:1 2/20/2024	db APPELLATE ISSUES

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<p>bb EVIDENCE</p> <p>EXPERT</p> <p>GANG EXPERT - PERMISSIBLE SUBJECTS - NOT - WHO HELD GUN</p> <p>Gang drive-by shooting from car with many occupants. Investigating Officer permitted to give OPINION that def held the gun at the time of the shooting. REVERSED. Impermissible opinion, usurped role of jury, and NOT harmless.</p> <p>ROUSTON <i>P. v. ()</i> 2/20/2024 4:1</p>	<p>db APPELLATE ISSUES</p> <p>MISC APPELLATE</p> <p>MISC - STIPS - PARTIES CAN'T "STIP" TO WHAT STATUTE MEANS</p> <p>AG agrees with def that trial court committed error. DCA is NOT obligated to go along. Particularly in cases (like this one) where the issue is one of statutory interpretation. This case: both the AG and the def are wrong. Trial court was right.</p> <p>KIMBLE <i>P. v. ()</i> 2/9/2024 3:</p>
<p>dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p>PROP 36 - PROCEDURE - TIMELINESS OF REQUEST</p> <p>Prop 36 (3-strikes) set up it's own procedure, with only a two-year window, for prisoners to seek relief for a resentencing. That is the ONLY procedure that can be used. A later resentencing for other reasons does NOT re-open the window. (Def's 1st request denied for Dangerousness)</p> <p>KIMBLE <i>P. v. ()</i> 2/9/2024 3:</p>	<p>dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p>1172.6 PC - SUMMARY DENIALS - JURY FOUND DEF HAD INTENT TO KILL</p> <p>2010 jury found that def had intent to kill at the time he aided and abetted underlying felony that supported his felony murder conviction. This finding makes def summarily ineligible for PC 1172.6 relief.</p> <p>HOLLYWOOD <i>P. v. ()</i> 2/28/2024 2:6</p>
<p>bc INSTRUCTIONS/ELEMENTS</p> <p>THEFT / FRAUD CRIMES</p> <p>FALSE POLICE REPORT - 118.1 PC - MATERIALITY</p> <p>Officer writes report re: event that was video taped. DDA files felony PC 118.1 for discrepancies between report and tape. Prelim magistrate does NOT HTA. PC 871.5 motion DENIED. DCA REVERSES. -- Even if "materiality" is debatable, the case should get past Prelim.</p> <p>KIM <i>P. v. ()</i> 2/16/2024 2:5</p>	<p>cc GRAND JURY / PRELIMS</p> <p>PRELIMS / 995</p> <p>871.5 PC - SUFF OF EVID - CLOSE IS CLOSE ENOUGH</p> <p>Officer writes report re: event that was video taped. DDA files felony PC 118.1 for discrepancies between report and tape. Prelim magistrate does NOT HTA. PC 871.5 motion DENIED. DCA REVERSES. -- Even if "materiality" is debatable, the case should get past Prelim.</p> <p>KIM <i>P. v. ()</i> 2/16/2024 2:5</p>
<p>ce SEARCH & SEIZURE</p> <p>DETAIN/ARREST/PAT-DOWN</p> <p>CONSENSUAL CONTACT v DETENTION - APPROACHING PARKED CARS AT</p> <p>It's night. Police wish to approach and talk to a driver sitting in a parked car. Can they do so in a manner that is (1) Safe; and (2) will not not lead a reasonable person to conclude that they are being "Detained"? --- This opinion implies the answer is: NO.</p> <p>PAUL <i>P. v. ()</i> 2/14/2024 2:5</p>	<p>ab CONSTITUTIONAL ISSUES</p> <p>PREEMPTION</p> <p>PREEMPTION - FED/STATE - 478 PC FOR DEFRAUDING FED PROGRAM</p> <p>Def obtained Veteran's Benefits by false statements. Convicted of PC 487 - Theft. Def asserts conviction barred by Federal PREEMPTION since def's actions were also Fed Crimes. HELD: Affirmed. Federal Preemption will not be IMPLIED to prevent States from exercising traditional Police Powers.</p> <p>YEAGER-REIMAN <i>P. v. ()</i> 2/16/2024 2:5</p>
<p>de SENTENCING</p> <p>DIVERSION</p> <p>DIVERSION - MENTALLY ILL - 1001.36 PC - GROUNDS TO TERMINATE</p> <p>While in Mental Health Diversion - PC 1001.36 - def commits new crimes. Whether the new crimes are "criminal conduct rendering def unsuitable for diversion" under 1001.36(g)(3) is up to trial court. It need not be a serious felony. It need not endanger public safety.</p> <p>HALL <i>P. v. ()</i> 2/22/2024 2:1</p>	<p>de SENTENCING</p> <p>RESTITUTION</p> <p>GENERALLY - HEARING PROCEDURE - USE OF V's HEARSAY OPINIONS</p> <p>Victims' statements to police re: value of items stolen is enough to set a Prima Facie value for RESTITUTION. Def is free to present conflicting evidence. Def is free to Subpoena victim to testify at restitution hearing.</p> <p>PITTMAN <i>P. v. ()</i> 2/27/2024 1:4</p>