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cd MOTIONS

SPEEDY

TRIAL DELAY - MISD - NEED TO SHOW PREJUDICE - EASILY DONE

ORANGE APPELLATE DIV: Def's misd case was continued over def's objection beyond PC 1382 limit. Def convicted after trial held one-day late. HELD: Since a misd could not be refiled, def's prejudice is obvious. -- Different outcome if def entered into plea deal after 1382 limit was passed.

DAVISBRAGDON P. v. () 8/9/2023 SUPP

bc INSTRUCTIONS/ELEMENTS

DEFENSES

MISTAKE OF LAW - STRICT LIABILITY CRIMES

LOS ANGELES APPELLATE DIV: If the crime is a STRICT LIABILITY crime, then MISTAKE of LAW or MISTAKE of FACT is NOT a defense. This case: leasing your building to an unlicensed MJ dispensary is a strict liability crime (in LA).

WHEELER P. v. () 7/17/2023 SUPP

ee MENTAL HEARINGS

SexVioPredator

PROCEDURE - TIMELINESS OF TRIAL - 10+ YEARS - CAL SUPREME CT

Def's SexVioPredator RENEWAL trial continued over 10 years. Def moves to DISMISS. Supreme Ct applies BARKER v. WINGO balancing test: motion DENIED. -- main factor: Def's atty, asked for, or consented to, all the continuances. --- trial courts URGED to be more Pro Active to avoid long delays.

CAMACHO def v. SUP CT 8/31/2023 CAL

cd MOTIONS

SPEEDY

TRIAL DELAY - SexVioPredator (SVP) TRIAL

Def's SexVioPredator RENEWAL trial continued over 10 years. Def moves to DISMISS. Supreme Ct applies BARKER v. WINGO balancing test: motion DENIED. -- main factor: Def's atty, asked for, or consented to, all the continuances. --- trial courts URGED to be more Pro Active to avoid long delays.

CAMACHO def v. SUP CT 8/31/2023 CAL

eg V/P'S

V/P'S

V/P HRG EVID - HEARSAY - TRADITIONAL HEARSAY EXCEPTIONS

Just because an established, evid code hearsay exception applied, that does NOT mean court hearing a V/P hearing should automatically admit the hearsay. It must first do the DUE PROCESS analysis required of ALL hearsay admitted at a V/P hearing.

GRAY P. v. () 8/14/2023 CAL

ab CONSTITUTIONAL ISSUES

FIRST AMENDMENT

1ST AMEND - SPEECH - BAIL BOND INFORMATION - 10 CCR 2076

Cal Code of Regulations Title 10, section 2076 prohibits bail bond agents from hiring INMATES to tip them off of new arrestees needing a bail bond. -- DCA found 2076 to violate the 1st Amend. -- CAL reverses DCA. 2076 is proper regulation of Bail Bond industry (on its face).

MARTINEZ P. v. () 8/24/2023 CAL

db APPELLATE ISSUES

HARMLESS ERROR

HARMLESS ERROR - ALTERNATIVE LEGAL THEORIES - KILL ZONE

Long discussion of HARMLESS ERROR in context of improperly given KILL ZONE instruction. (1) CHAPMAN beyond R. D. standard applies. --- issue is not what court would do, it is what a rational juror MIGHT do. --- this case: Att 187 conviction reversed.

MUMIN P. v. () 8/17/2023 CAL

bc INSTRUCTIONS/ELEMENTS

HOMICIDE

IMPERFECT SELF DEFENSE - EVID THRESHOLD NEEDED

If evidence was such that IMPERFECT self-defense instruction should have been given (a rational jury would "consider" the issue), then it is HARD to see how the failure to give could be HARMLESS ERROR. (Beyond R.D. rational jury would reject it) -- REMANDED to DCA

SCHULLER P. v. () 8/17/2023 CAL

db APPELLATE ISSUES

HARMLESS ERROR

HARMLESS ERROR - OMITTING IMPERFECT SELF-DEFENSE

If evidence was such that IMPERFECT self-defense instruction should have been given (a rational jury would "consider" the issue), then it is HARD to see how the failure to give could be HARMLESS ERROR. (Beyond R.D. rational jury would reject it) -- REMANDED to DCA

SCHULLER P. v. () 8/17/2023 CAL

bc INSTRUCTIONS/ELEMENTS

MISC -

BRIBERY - 67 & 68 PC - BRIBE BENEFITS OFFICE, NOT INDIVIDUAL

UnderSheriff withheld CCW permit from applicant unless the Applicant's employer (Apple) donated 200 iPads to the Sheriff's Department. HELD: the UnderSheriff solicited a bribe under PC 68(a), and if offer accepted, the applicant promised a bribe under PC 67.

MOYER P. v. () 8/25/2023 6:

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<p style="text-align: center;"><i>bc</i> INSTRUCTIONS/ELEMENTS</p> <p>MISDEMEANORS AND INFRACTIONS RESISTING - 148 PC - DEF SHOULD HAVE KNOWN HE WAS DETAINED Officer approaches group of minors smoking MJ on a street. One-at-time minors are patted-down and ordered to sit on the curb. BEFORE any specific order is given to Def, def runs. HELD: this is PC 148 violation. A Reasonable Person would have known he was not free to leave.</p> <p>T. F.-G. <i>In Re ()</i> 8/24/2023 6:</p>	<p style="text-align: center;"><i>ce</i> SEARCH & SEIZURE</p> <p>DETAIL/ARREST/PAT-DOWN CONSENSUAL CONTACT v DETENTION - REASONABLE PERSON TEST Officer approaches group of minors smoking MJ on a street. One-at-time minors are patted-down and ordered to sit on the curb. BEFORE any specific order is given to Def, def runs. HELD: this is PC 148 violation. A Reasonable Person would have known he was not free to leave.</p> <p>T. F.-G. <i>In Re ()</i> 8/24/2023 6:</p>
<p style="text-align: center;"><i>ab</i> CONSTITUTIONAL ISSUES</p> <p>MISC CONSTITUTIONAL ISSUES BEAR ARMS, RIGHT TO - POST-BRUEN - POSSESSION LAWS SURVIVE Ex-felon with a gun - PC 30305 - survives BRUEN.</p> <p>CEJA <i>P. v. ()</i> 4:3</p> <p style="text-align: right;">8/30/2023</p>	<p style="text-align: center;"><i>ed</i> JUVENILE</p> <p>SENTENCING SYTF - 733 W&I - "MOST RECENT CRIME" RULE Juvenile Ct says def should be sent to a SYTF (secure youth treatment facility) but the most recent crime does not qualify. DDA moves to dismiss only the most recent crime. MINOR asserts entire most recent petition must be dismissed, not just one allegation. HELD: Minor is wrong.</p> <p>J. P. <i>In Re ()</i> 8/3/2023 4:2</p>
<p style="text-align: center;"><i>db</i> APPELLATE ISSUES</p> <p>WAIVER OF APPEAL WAIVER - FAILURE TO OBJECT - 1172.6 HRG - USE OF APPELLATE OPINION At Def's 1172.6 hearing, DDA relies on State of Facts in prior Appellate opinion affirming the conviction. Def failed to object. HELD: Issue is WAIVED on appeal.</p> <p>VANCE <i>P. v. ()</i> 4:2</p> <p style="text-align: right;">8/7/2023</p>	<p style="text-align: center;"><i>db</i> APPELLATE ISSUES</p> <p>HARMLESS ERROR HARMLESS ERROR - 1172.6 PETITIONS - WRONG STANDARD USED At Def's 1172.6 hearing, petition was denied after the trial court said that "substantial evid" supports finding def is still guilty of 187 under new law. HELD: (1) that was error. Standard is Beyond Reasonable Doubt. (2) Error is HARMLESS.</p> <p>VANCE <i>P. v. ()</i> 8/7/2023 4:2</p>
<p style="text-align: center;"><i>dd</i> PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - NOTICE TO DEF OF NEW UNDERLYING CRIME Def convicted of 2 counts of FELONY MURDER in 1977. Files PC 1172.6 petition in 2019. The Information did NOT specify the Underlying Felony. HELD: Def must be given advance Notice of what Underlying Felony the DDA (or Court) intends to use if petition is granted.</p> <p>DEL RIO <i>P. v. ()</i> 8/2/2023 4:1</p>	<p style="text-align: center;"><i>dd</i> PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - EVID - OLD PROBATION RPT - HEARSAY Def convicted of 2 counts of FELONY MURDER in 1977. Files PC 1172.6 petition in 2019. Trial & prelim transcript are NOT available. Opinion discusses factors to consider when DDA attempts to use HEARSAY found in old Probation Report as Record of Conviction. It is not cut-and-dried.</p> <p>DEL RIO <i>P. v. ()</i> 8/2/2023 4:1</p>
<p style="text-align: center;"><i>dd</i> PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - EVID - EFFECT OF NO EVID - NO TRANSCRIPTS Def convicted of 2 counts of FELONY MURDER in 1977. Files PC 1172.6 petition in 2019. Trial transcript is NOT available. Information failed to specify Underlying Felony. OUTCOME: Def walks. 187 counts dismissed, replaced with NOTHING.</p> <p>DEL RIO <i>P. v. ()</i> 8/2/2023 4:1</p>	<p style="text-align: center;"><i>ab</i> CONSTITUTIONAL ISSUES</p> <p>RETROACTIVE BENEFIT TO DEF - MENTAL DIVERSION - 1001.36 PC - AMENDMENTS TO Trial court denies Mental Health Diversion. Def appeals. During appeal, PC 1001.36 is amended tweaking the criteria. HELD: the tweak is RETROACTIVE. Remanded back to trial court.</p> <p>DORON <i>P. v. ()</i> 8/9/2023 4:1</p>

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<p style="text-align: center;"><i>bc INSTRUCTIONS/ELEMENTS</i></p> <p>WEAPON</p> <p style="text-align: center;">GUN POSSESSION - 25400 PC - POST-BRUEN</p> <p>While the BRUEN decision likely means Calif "may issue" CCW permit system is unconstitutional, this DOES NOT mean California laws requiring a permit are void. This case: PC 25400 is still valid.</p> <p>MILLER <i>P. v. ()</i> 3:</p> <p style="text-align: right;">8/24/2023</p>	<p style="text-align: center;"><i>ab CONSTITUTIONAL ISSUES</i></p> <p>MISC CONSTITUTIONAL ISSUES</p> <p style="text-align: center;">BEAR ARMS, RIGHT TO - POST-BRUEN - POSSESSION LAWS SURVIVE</p> <p>While the BRUEN decision likely means Calif "may issue" CCW permit system is unconstitutional, this DOES NOT mean California laws requiring a permit are void. This case: PC 25400 is still valid.</p> <p>MILLER <i>P. v. ()</i> 3:</p> <p style="text-align: right;">8/24/2023</p>
<p style="text-align: center;"><i>ad ATTORNEY /JUDGE DUTIES & ETHICS</i></p> <p>JUDICIAL DUTIES & ETHICS</p> <p style="text-align: center;">JUDICIAL AUTHORITY - ONCE CCP 170.6 GRANTED, JUDGE CANT</p> <p>If Judge X mistakenly grants a CCP 170.6 petition, Judge X is then UNAVAILABLE to reconsider the decision. THEREFORE, a different Judge MAY reconsider it, Reverse it, and send case back to Judge X.</p> <p>TORRES <i>def v. SUP CT</i> 3:</p> <p style="text-align: right;">8/15/2023</p>	<p style="text-align: center;"><i>cd MOTIONS</i></p> <p>170.6</p> <p style="text-align: center;">MISC - ONCE ACCEPTED, ONLY DIFFERENT JUDGE CAN RECONSIDER</p> <p>If Judge X mistakenly grants a CCP 170.6 petition, Judge X is then UNAVAILABLE to reconsider the decision. THEREFORE, a different Judge MAY reconsider it, Reverse it, and send case back to Judge X.</p> <p>TORRES <i>def v. SUP CT</i> 3:</p> <p style="text-align: right;">8/15/2023</p>
<p style="text-align: center;"><i>cd MOTIONS</i></p> <p>170.6</p> <p style="text-align: center;">POST APPEAL USAGE - APPEAL OF 1172.6 PC DENIAL</p> <p>Judge X summarily denies def's PC 1172.6 petition. DCA reverses and remands. HELD: CCP 170.6(a)(2) does NOT give def opportunity to file 170.6 affidavit on Judge X. 170.6(a)(2) refers to DCA remands for a "new trial". 1172.6 hearings are not trials.</p> <p>TORRES <i>def v. SUP CT</i> 3:</p> <p style="text-align: right;">8/15/2023</p>	<p style="text-align: center;"><i>dd PETITIONS TO RESENTENCE</i></p> <p>PETITIONS TO</p> <p style="text-align: center;">1172.6 PC - APPELLATE REVIEW - REVIEW STANDARD</p> <p>In denying def's PC 1172.6 petition, court relied solely on trial transcript. HELD: Appellate review is still Substantial Evidence, not Independent Review. Also, trial court is NOT obligated to resolve all ambiguities/conflicts in the record in the def's favor.</p> <p>NJOKU <i>P. v. ()</i> 3:</p> <p style="text-align: right;">8/31/2023</p>
<p style="text-align: center;"><i>dd PETITIONS TO RESENTENCE</i></p> <p>PETITIONS TO</p> <p style="text-align: center;">1172.6 PC - HEARING - COURT DISCRETION TO RESOLVE CONFLICTS IN</p> <p>In denying def's PC 1172.6 petition, court relied solely on trial transcript. HELD: Appellate review is still Substantial Evidence, not Independent Review. Also, trial court is NOT obligated to resolve all ambiguities/conflicts in the record in the def's favor.</p> <p>NJOKU <i>P. v. ()</i> 3:</p> <p style="text-align: right;">8/31/2023</p>	<p style="text-align: center;"><i>db APPELLATE ISSUES</i></p> <p>MISC APPELLATE</p> <p style="text-align: center;">APPELLATE REVIEW STANDARD - 1172.6 PC - SUBSTANTIAL EVID</p> <p>In denying def's PC 1172.6 petition, court relied solely on trial transcript. HELD: Appellate review is still Substantial Evidence, not Independent Review. Also, trial court is NOT obligated to resolved all ambiguities in the record in the def's favor.</p> <p>NJOKU <i>P. v. ()</i> 3:</p> <p style="text-align: right;">8/31/2023</p>
<p style="text-align: center;"><i>db APPELLATE ISSUES</i></p> <p>MISC APPELLATE</p> <p style="text-align: center;">APPEALABLE ORDERS - 17(b) REDUCTION OF WOBBLERS</p> <p>PC 17(b) authority can ONLY be exercised (1) at prelim; (2) at sentencing. An IMPROPER reduction of a wobbler to a misd ENDS the felony case. Therefore, the people can APPEAL under PC 1238(a)(1) & (a)(8).</p> <p>MITCHELL <i>P. v. SUP CT</i> 2:6</p> <p style="text-align: right;">8/16/2023</p>	<p style="text-align: center;"><i>cd MOTIONS</i></p> <p>17b</p> <p style="text-align: center;">17(b) PC - CAN ONLY BE EXERCISED AT SPECIFIC TIMES OF CASE</p> <p>PC 17(b) authority can ONLY be exercised (1) at prelim; (2) at sentencing. An IMPROPER reduction of a wobbler to a misd ENDS the felony case. Therefore, the people can APPEAL under PC 1238(a)(1) & (a)(8).</p> <p>MITCHELL <i>P. v. SUP CT</i> 2:6</p> <p style="text-align: right;">8/16/2023</p>

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<i>cd</i> MOTIONS		<i>dd</i> PETITIONS TO RESENTENCE	
17b	17(b) PC - PEOPLE CAN APPEAL	PETITIONS TO	1172.6 PC - POST GRANT - USE OF EXCESS CTS
PC 17(b) authority can ONLY be exercised (1) at prelim; (2) at sentencing. An IMPROPER reduction of a wobbler to a misd ENDS the felony case. Therefore, the people can APPEAL under PC 1238(a)(1) & (a)(8).		Def's PC 1172.6 petition is Granted and def has years of excess CTS after new sentencing. HELD: it can be used to pay all fines and fees (including Restitution fine), but NOT Restitution owed to the victim. AND, cannot be used for time on PAROLE that was ordered.	
MITCHELL	<i>P. v. SUP CT</i>	ROJAS	<i>P. v. ()</i>
	2:6		2:4
	8/16/2023		8/31/2023
<i>ed</i> JUVENILE		<i>bd</i> OTHER TRIAL ISSUES	
MISC - JUVENILE	RECORDS - SEALING OF - 781 W&I - FOLLOW UP REQUESTS FOR MORE	ARGUMENT	DDA NO-NO - "WHERE IS X" - WHEN DDA PREVENTED X FROM COMING IN
Court grants motion to seal JUVENILE records under W&I 781. Minor identifies additional related records and asks for a 2nd sealing order. HELD: Nothing in W&I 781 prevents Court from making supplementary orders adding more records to sealing order.		DDA successfully keeps out evidence of X under PC 352. Then, in closing argument, DDA points out that defense presented no evidence of X. HELD: MISCONDUCT.	
A. B.	<i>In Re ()</i>	CASTANEDA-PRADO	<i>P. v. ()</i>
			1:4
	8/3/2023		8/30/2023
	1:5		
<i>bb</i> EVIDENCE		<i>cd</i> MOTIONS	
352 / RELEVANCE	352 - DEF EVID - DISPUTED REASON WHY VICTIM MIGHT LIE	DISCRIMINATORY PROSECUTION	CRJA - PRIMA FACIE STANDARD
Def charged with PC 288(a) with 2 victims. V2 told someone that she thought cooperating with police would help her mom get a special "U visa" to prevent deportation. (no evid this thought was accurate.) Court EXCLUDES under PC 352. REVERSED.		Def's 1538.5 re: search of his car is denied. Def then files motion under PC 317 saying the search was RACIALLY motivated (def is black). Court finds NO PRIMA FACIE case. REVERSED. At the Prima Facie stage, Court must assume the Truth of facts stated in the motion.	
CASTANEDA-PRADO	<i>P. v. ()</i>	FINDLEY	<i>def v. SUP CT</i>
			1:4
	8/30/2023		8/30/2023
	1:4		
<i>eg</i> V/P'S		<i>db</i> APPELLATE ISSUES	
V/P'S	MISC - DEF ON LIFETIME PAROLE - MUST BE REMANDED TO CDCR	MISC APPELLATE	STANDING - CDCR HAS STANDING TO SEEK MANDATE WRIT
CDCR v. SUPERIOR CT (ESCOBEDO): Def is on lifetime parole. Def commits new crime. DDA offers plea bargain of plead guilty (and get probation) and DDA will NOT file a Parole Violation. HELD: ILLEGAL BARGAIN. The COURT had duty to remand (convicted) def to CDCR per PC 3000.08(h).		CDCR v. SUPERIOR CT (ESCOBEDO): Def is on lifetime parole. Def commits new crime. DDA offers plea bargain of plead guilty (and get probation) and DDA will NOT file a Parole Violation. HELD: ILLEGAL BARGAIN. CDCR has standing to contest plea bargain.	
ESCOBEDO	<i>OTHER</i>	ESCOBEDO	<i>OTHER</i>
			1:3
	8/25/2023		8/25/2023
	1:3		1:3
<i>de</i> SENTENCING		<i>dd</i> PETITIONS TO RESENTENCE	
PROBATION	TERMS - NO POSSESS PORN - DEFINING PORN	PETITIONS TO	D.A. REQUESTS - 1172.1 PC
Probation term that def not possess "pornography" is unconstitutionally vague. "Material having a primary purpose of causing sexual arousal" should suffice.		1992: Def convicted of att 187. 2022: San Fran DA files request to resentence under PC 1172.1. Before request ruled on, DA is recalled, new DA moves to withdraw request. HELD: Trial Ct has discretion to grant such withdraw requests. BUT, new DA must state reasons. REMANDED for reasons.	
GRUIS	<i>P. v. ()</i>	VAESAU	<i>P. v. ()</i>
			1:1
	8/1/2023		8/4/2023

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db APPELLATE ISSUES

MISC APPELLATE

APPEALABLE ORDERS - D.A. WITHDRAWAL OF 1172.1 RESENTENCE

1992: Def convicted of att 187. 2022: San Fran DA files request to resentence under PC 1172.1. Before request ruled on, DA is recalled, new DA moves to withdraw request. Withdraw request granted. HELD: this is an appealable order.

VAESAU

P. v. ()

8/4/2023

1:1
