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cd MOTIONS

WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - POST DIVERSION

LOS ANGELES APPELLATE DIV: 2017: sought and completed a diversion program after a No Contest plea. Case ultimately dismissed. 2022: Def seeks to w/draw plea under PC 1473.7. HELD: Def never convicted. There is nothing to Dismiss. There is nothing for 1473.7 to remedy.

KUZMICHEY P. v. () 10/28/2024 **SUPP**

cd MOTIONS

WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - DDA MAY STILL

2009: enters plea bargain including dismissed counts. 2016: felonies reduced to misd and dismissed per PC 1203.04. 2021: Def's PC 1473.7 motion to w/draw plea is GRANTED. DDA resumes prosecution. 2022: def seeks DISMISSAL under 1473.7. Denied. UPHELD. Original information is active.

MARTINEZ def v. SUP CT 10/31/2024 **6:**

ae MISC ODDS & ENDS

ODDS & ENDS

GUN POSSESSION RESTRAINING ORDERS - 18175 PC

MOUNTAIN VIEW POLICE DEPT v. KREPCIN: Police Dept seeks and gets 3-yr no-gun restraining order against def under PC 18175. UPHELD. (1) does NOT violate 2nd Amend. (2) detective qualified as "threat eval" expert. (3) Hearsay admissible at hrg.

KREPCIN OTHER 11/4/2024 **6;**

ad ATTORNEY / JUDGE DUTIES & ETHICS

ATTY DUTIES & ETHICS

CONFLICT OF INTEREST - ATTY BECOMES BASIS FOR CRJA MOTION

During unsuccessful plea negotiations, white DepPubDef makes a racial comment to non-white DDA. Def same race as DDA. (In-jest? Sarcasm? Other?) ULTIMATELY, court removes the DPD over the def's objection because DPD had (unwaivable?) Conflict of Interest in potential def motion under CRJA.

SANCHEZ def v. SUP CT 10/22/2024 **4:2**

cd MOTIONS

DISCRIMINATORY PROSECUTION

CRJA - DEF ATTY CONFLICT OF INTEREST

During unsuccessful plea negotiations, white DepPubDef makes a racial comment to non-white DDA. Def same race as DDA. (In-jest? Sarcasm? Other?) ULTIMATELY, court removes the DPD over the def's objection because DPD had (unwaivable?) Conflict of Interest in potential def motion under CRJA.

SANCHEZ def v. SUP CT 10/22/2024 **4:2**

ab CONSTITUTIONAL ISSUES

DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - 1170(d)(2) / 3051 - LIFE TERMS FOR MINORS

2006: 15 year old def commits a gang murder and gets 107-to-life adult sentence. 2023: def seek new sentencing under PC 1170(d). HELD: (1) Although 1170(d) only applies to LWOP's, Equal Protection extends it to def. (2) Def now gets benefits of changed juvi law. Therefore, def goes FREE.

BAGSBY P. v. () 11/21/2024 **4:1**

dd PETITIONS TO RESENTENCE

PETITIONS TO

1170(d)(2) PC - UNDER AGE 16 DEFENDANTS

2006: 15 year old def commits a gang murder and gets 107-to-life adult sentence. 2023: def seek new sentencing under PC 1170(d). HELD: (1) Although 1170(d) only applies to LWOP's, Equal Protection extends it to def. (2) Def now gets benefits of changed juvi law. Therefore, def goes FREE.

BAGSBY P. v. () 11/21/2024 **4:1**

bc INSTRUCTIONS/ELEMENTS

HOMICIDE

ATTEMPT 187 - KILL ZONE - DEF UNAWARE OF ALL INSIDE

Defs chase V1, V1 runs into shed (where V2 is), defs shoot many times into shed, not knowing V2 is there. HELD: KILL ZONE instruction inappropriate unless defs had knowledge there were people other than V1 in shed. Reckless Disregard is not enough. Knowledge of others is required.

IBARRA P. v. () 11/21/2024 **4:1**

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.6 PC - HEARING - EVID - GRAND JURY TRANSCRIPT

2011: Def indicted by Grand Jury. Def pleads No Contest to att 187 and admits personal use enhancement. 2022: Def seeks PC 1172.6 resentencing. HELD: Grand Jury transcript is part of Record of Conviction and Ct may rely on it to deny any resentencing. --- DCA's are split

ROBINSON P. v. () 11/18/2024 **3:**

cd MOTIONS

PITCHES

PROTECTIVE ORDERS - DON'T IMPOSE ON PUBLIC (FOIA) MATERIAL

PITCHESS motion granted with standard protective order. HELD: Protective order should NOT be placed on info that is subject to public inspection pursuant to PC 832.7(b)(1)(C) (effective 1/1/2019) and CalPublicRecordsAct. Gov 7920 et seq.

BANUELOS def v. SUP CT 10/25/2024 **2:8**

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de SENTENCING				bc INSTRUCTIONS/ELEMENTS			
ONE-STRIKE SEX				GENERAL INSTRUCTIONS			
ONE STRIKE - 667.61 PC - MULTIPLE VICTIMS - PRE-667.61 VICTIM				CALCRIM - 252 - GENERAL/SPECIFIC INTENT - ARCHAIC JARGON			
Def abused his first victim BEFORE One-Strike law was enacted. Therefore, that victim does NOT qualify as a Victim when determining if the multiple-victim provisions of One-Strike law apply.				Def charged with both PC 288(a) violations and PC 288.5 violations. A version of CALCRIM 252 was given re: intent. DCA does not find error, but uses the opinion to urge that CALCRIM 252 be rewritten to eliminate the legally archaic terms SPECIFIC and GENERAL intent.			
CANALES	<i>P. v. ()</i>		2:8	CANALES	<i>P. v. ()</i>	11/25/2024	2:8
11/25/2024							
dd PETITIONS TO RESENTENCE				cd MOTIONS			
PETITIONS TO				DISCOVERY			
1172.6 PC - HEARING - DISCOVERY				MISC - DISCOVERY FOR 1172.6 PC HEARING			
GARCIA v SUP CT (CITY OF L.A.) Def files PC 1172.6 petition for resentencing. Once court set petition for full evidentiary hrg, def has normal pretrial discovery rights, including power to issue subpoenas and SubDT's.				GARCIA v SUP CT (CITY OF L.A.) Def files PC 1172.6 petition for resentencing. Once court set petition for full evidentiary hrg, def has normal pretrial discovery rights, including power to issue subpoenas and SubDT's.			
GARCIA	<i>OTHER</i>		2:7	GARCIA	<i>OTHER</i>	11/20/2024	2:7
11/20/2024							
bd OTHER TRIAL ISSUES				bc INSTRUCTIONS/ELEMENTS			
MISC - TRIAL				HOMICIDE			
DEF PRESENCE - DEF REFUSES TO LEAVE CELL - MAKING A RECORD				HEAT OF PASSION - AID/ABETTERS			
Before trial can proceed in Def's absence, the voluntariness of the absence must be CLEARLY ESTABLISHED. Opinion discusses if that standard is met by 3rd-level hearsay that said Def refused to leave his cell.				If V does something to enflame A to attack V in a Heat-of-Passion and B decides to aid/abet A, then B is NOT entitled to Heat-of-Passsion instruction. B himself must be understandably enraged by something V said or did.			
MARTINEZ	<i>P. v. ()</i>		2:3	MARTINEZ	<i>P. v. ()</i>	11/19/2024	2:3
11/19/2024							
bc INSTRUCTIONS/ELEMENTS				ef PAROLE			
HOMICIDE				PAROLE DECISIONS			
HEAT OF PASSION - HOMOSEXUAL SEX ADVANCE - PC 192(f)(1)				COMPASSIONATE RELEASE - PC 1170(e)			
The legislature has determined that certain acts cannot produce a legally cognizable HEAT-OF-PASSION. To wit: a reaction to a homosexual sexual advance. -- PC 192(f)(1)				Def has incurable CANCER that will kill him someday, but, at the moment, medication has slowed its progression. HELD: def is NOT on an end-of-life-trajectory and therefore he is NOT eligible for a Compassionate Release under PC 1172.2.			
MARTINEZ	<i>P. v. ()</i>		2:3	MULTANI	<i>P. v. ()</i>	11/26/2024	2:3
11/19/2024							
ab CONSTITUTIONAL ISSUES				cd MOTIONS			
DUE PROCESS / EQUAL PROTECTION				1385			
EQUAL PROTECTION - 3051 PC v. 3046 PC PAROLE - GOOD/WORK/TIME				ENHANCEMENTS - 1385(c) - WHAT IS NOT AN ENHANCEMENT			
Def has a normal Parole Hearing date under PC 3046, and special Young-Offender parole hearing date under PC 3051. GoodTime/WorkTime credits can advance the Regular Parole date, but not the Young offender Parole date. HELD: This does NOT violate Equal Protection.				PC 1385 (c) applies to "enhancements". 3-Strike Law is NOT an enhancement. it is an alternative sentencing scheme. ROMERO motions to dismiss a 3-strike allegation is NOT affected by the enactment of 1385(c).			
NGUYEN	<i>In Re ()</i>	11/27/2024	2:3	DOWDY	<i>P. v. ()</i>	11/26/2024	1:5

bd OTHER TRIAL ISSUES				dc NEW TRIAL MOTIONS			
ARGUMENT				NEW TRIAL - MISC			
DDA OK - CALLING VICTIM A VICTIM (NOT ALLEGED VICTIM)				ADMISSIBILITY OF JUROR DECLARATION - 1150 EV			
In opening statement DDA was ordered to refer to victim as the "alleged" victim.				Post-verdict, juror files declaration saying she was confused by the court's			
In closing argument, DDA said "alleged" was no longer appropriate. Victimhood				instructions re: X. HELD: Such a declaration falls under PC 1150 prohibition.			
was proved. HELD: Nothing improper in DDA closing argument.				Declaration should be stricken and not considered for any purpose.			
JONES	P. v. ()		1:1	JONES	P. v. ()		1:1
11/21/2024				11/21/2024			