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bc INSTRUCTIONS/ELEMENTS

HOMICIDE

VEHICULAR MANSL - CALCRIM 3494 - ACCIDENT W/O FAULT

SAN DIEGO APPELLATE DIV: Misd Vehicular Manslaughter case. Def asked for CALCRIM 3404 (accident w/out fault). Court denied. UPHELD. In this case it was clear that def violated a traffic infraction - VC 21591. Therefore there is no basis for CALCRIM 3404.

HAMIDI *P. v. ()* 10/2/2023 **SUPP**

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.6 PC - SUMMARY DENIALS - SPEC CIRC / INTENT TO KILL FINDINGS

Summary denial of PC 1172.6 petition REVERSED. Yes, def's GANG 187 Spec Circ conviction conclusively showed def had intent to kill, BUT, it did not establish that def did an ACT necessary for conviction as a direct aid/abettor, and did not establish def knew of shooter's intent to kill.

CURIEL *P. v. ()* 11/27/2023 **CAL**

db APPELLATE ISSUES

MISC APPELLATE

REMAND PROCEDURE - NO REMAND IF DCA KNOWS WHAT TRIAL CT

Cal Supreme Ct reverses DCA in its decision that a sentencing REMAND was not required because the record was clear that the trial court would impose the same sentence notwithstanding being given NEW discretion to give lower sentence. No new law.

SALAZAR *P. v. ()* 11/20/2023 **CAL**

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.75 PC - 667.5 PRIORS - IMPOSED, BUT STAYED

At original sentencing, def's one-year prior under PC 667.5(b) was imposed, and then STAYED. HELD: 1172.75 still applies. Def is entitled to a FULL resentencing. --- DCA's in conflict

RENERIA *P. v. ()* 10/18/2023 **6:**

cd MOTIONS

1385

ENHANCEMENTS - 1385(c) - SHALL IS NOT REALLY SHALL

The "shall" in PC 1385(c) does not mean shall. Court can deny request to dismiss in the interest of Public Safety. or in the interest of Justice.

RENERIA *P. v. ()* **6:**

10/18/2023

cd MOTIONS

1385

ENHANCEMENTS - 1385(c) - SHALL IS NOT REALLY SHALL

The "shall" in PC 1385(c) does not mean shall. Court can deny request to dismiss in the interest of Public Safety. or in the interest of Justice.

COTA *P. v. ()* **5:**

11/17/2023

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.75 PC - 667.5 PRIORS - CDCR REFERRAL NOT YET MADE

Trial ct had jurisdiction to Resentence Def under PC 1172.75 even though (1) appeal was still pending in the DCA, and (2) CDCR had not yet notified the court of def's eligibility. --- Court should have denied request for reason #2, but #2 does not affect jurisdiction.

COTA *P. v. ()* 11/17/2023 **5:**

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.6 PC - ELIGIBILITY - DEF'S CONVICTED AFTER SB 1437 ENACTED

Def enters plea bargain to 2nd degree 187 in 2021 -- AFTER SB 1437 went into effect. 15 months later def files a PC 1172.6 petition. HELD: There has been no change in the law re: 187 since def plead. 1172.6 does NOT APPLY to def.

REYES *P. v. ()* 11/16/2023 **5:**

bc INSTRUCTIONS/ELEMENTS

HOMICIDE

PREMED & DELIB - PROVOCATION MUST COME FROM VICTIM

In order for PROVOCATION to be able to reduce a 1st degree 187 to a 2nd, the Provocation must come from the victim. --- CALCRIM 522 is silent on this. Issue came up in question from jury. DCA acknowledges they are the 1st court to say this.

NUNEZ *P. v. ()* 11/20/2023 **4:3**

dd PETITIONS TO RESENTENCE

PETITIONS TO

1172.75 PC - 667.5 PRIORS - IMPOSED, BUT STAYED

At original sentencing, def's one-year prior under PC 667.5(b) was imposed, and then STAYED. HELD: 1172.75 does NOT apply. Def is NOT entitled to a FULL resentencing. --- DCA's in conflict

RHODIUS *P. v. ()* 11/13/2023 **4:2**

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<p>MISC -</p> <p>1387.1 PC - 3rd REFILING FOR EXCUSABLE NEGLECT</p> <p>In early days of COVID, def's case was mistakenly dismissed for failure to get timely prelim (due to court error). HELD: for purposes of PC 1387.1, this dismissal was due to "excusable neglect".</p> <p>TURNER <i>P. v. ()</i> 4:2</p> <p>11/28/2023</p>	<p>cd MOTIONS</p> <p>PETITIONS TO</p> <p>1172.75 PC - 667.5 PRIORS - IMPOSED, BUT STAYED</p> <p>At original sentencing, def's one-year prior under PC 667.5(b) was imposed, and then STAYED. HELD: 1172.75 still applies. Def is entitled to a FULL resentencing. --- DCA's in conflict</p> <p>CHRISTIANSON <i>P. v. ()</i> 4:1</p> <p>11/17/2023</p>
<p>PETITIONS TO</p> <p>1172.6 PC - ELIGIBILITY - PROVOCATIVE ACT CONVICTIONS</p> <p>Def is not eligible for PC 1172.6 relief because this non-shooter def was convicted of PROVOCATIVE ACT murder.</p> <p>FLORES <i>P. v. ()</i> 4:1</p> <p>11/2/2023</p>	<p>dd PETITIONS TO RESENTENCE</p> <p>1385</p> <p>ENHANCEMENTS - 1385(c) - SHALL IS NOT REALLY SHALL</p> <p>The "shall" in PC 1385(c) does not mean shall. Court can deny request to dismiss in the interest of Public Safety. or in the interest of Justice.</p> <p>MAZUR <i>P. v. ()</i> 4:1</p> <p>11/21/2023</p>
<p>PETITIONS TO</p> <p>1172.75 PC - 667.5 PRIORS - DEF RIGHT TO BE PRESENT</p> <p>Def has a right to personally attend his hearing under PC 1172.75 to strike his one-year prior. No waiver taken in this case. Case remanded. (def can ask for a full resentencing under 1172.5 if he wishes.)</p> <p>VELASCO <i>P. v. ()</i> 4:1</p> <p>11/29/2023</p>	<p>dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p>1172.75 PC - 667.5 PRIORS - DEF'S CASE PENDING IN DCA</p> <p>Fact that def's case was still before the DCA on appeal does NOT affect the trial court's ability to resentence def under PC 1172.75.</p> <p>VELASCO <i>P. v. ()</i> 4:1</p> <p>11/29/2023</p>
<p>DRUGS</p> <p>PRISON CRIME - DRUGS IN MAIL ADDRESSED TO DEF</p> <p>Def is prison inmate. Two pieces of mail are addressed to def. Each contained drugs. Unknown sender. Each intercepted before def ever saw them. Def denied any knowledge of them. HELD: this is insufficient evid to discipline def.</p> <p>BANKS <i>In Re ()</i> 3:</p> <p>11/27/2023</p>	<p>bc INSTRUCTIONS/ELEMENTS</p> <p>ce SEARCH & SEIZURE</p> <p>CONSENT</p> <p>VOLUNTARINESS - THREATENING TO (ILLEGALLY) IMPOUND CAR</p> <p>At traffic stop, officer mistakenly thought he had grounds to impound def's vehicle. Officer tells def that he would not impound if def gave consent for a search. Def consents. HELD: Consent was coerced. 1538.5 motion should be granted.</p> <p>BOITEZ <i>def v. SUP CT</i> 3:</p> <p>11/7/2023</p>
<p>ad ATTORNEY /JUDGE DUTIES & ETHICS</p> <p>ATTY DUTIES & ETHICS</p> <p>CONFLICT OF INTEREST - 1172.6 PC - REPRESENTING TWO DEF'S</p> <p>3 def case. Both non-shooters file PC 1172.6 petitions at the same time. Court appoints same atty for both. Motion granted for A, denied for B. HELD: B's denial REVERSED and remanded. The atty had Conflict of Interest that was not waived. (atty conceded A's petition was stronger than B's)</p> <p>FOLEY <i>P. v. ()</i> 3:</p> <p>11/29/2023</p>	<p>dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p>1172.6 PC - ATTY CONFLICT OF INTEREST - REPRESENTING TWO DEF'S</p> <p>3 def case. Both non-shooters file PC 1172.6 petitions at the same time. Court appoints same atty for both. Motion granted for A, denied for B. HELD: B's denial REVERSED and remanded. The atty had Conflict of Interest that was not waived. (atty conceded A's petition was stronger than B's)</p> <p>FOLEY <i>P. v. ()</i> 3:</p> <p>11/29/2023</p>

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<p>ef PAROLE</p> <p>PAROLE DECISIONS</p> <p>PROP 57 - DEPT OF CORRECTIONS REGULATIONS</p> <p>Def in prison for both violent and non-violent felonies. Per CDCR regulations, def is NOT eligible for early parole under Art I, section 32(a) (Prop 57). HELD: 32 (a) is ambiguous. CDCR is authorized to create regulations to implement 32(a). CDCR regulations are reasonable.</p> <p>KOENIG <i>In Re ()</i> 11/28/2023 3:</p>	<p>ab CONSTITUTIONAL ISSUES</p> <p>MISC CONSTITUTIONAL ISSUES</p> <p>BEAR ARMS, RIGHT TO - POST-BRUEN - POSSESSION LAWS SURVIVE</p> <p>Yes, California's CCW permit system is unConstitutional under BRUEN. But, that does NOT void California's gun possession laws.</p> <p>MOSQUEDA <i>P. v. ()</i> 11/20/2023 3:</p>
<p>cd MOTIONS</p> <p>MISC -</p> <p>FACTUAL INNOCENCE FINDING - 851.8 PC</p> <p>Def's successful PC 1172.6 petition to have 187 conviction reversed has NO effect on his later petition for a PC 851.8 finding of Factual Innocence. In 1172.6 the DDA has the burden, in 851.8 the def has the burden.</p> <p>HOLLIE <i>P. v. ()</i> 11/6/2023 2:7</p>	<p>dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p>1172.6 PC - ELIGIBILITY - CONSPIRACY TO COMMIT 1ST DEGREE 187</p> <p>Def's 1172.6 petition properly Summarily Denied. Neither Felony-Murder nor Nat/Prob Conseq used in def's trial. Def convicted of CONSPIRACY to commit 187.</p> <p>ALLEN <i>P. v. ()</i> 10/26/2023 2:6</p>
<p>ce SEARCH & SEIZURE</p> <p>STANDING</p> <p>NO - PIMP OVER "WORK" PHONE HE BOUGHT FOR VICTIM</p> <p>Pimp claims standing to object to the search of his trafficking victim's cell phone since he paid for it and it was primarily a "work" phone for his business. HELD: Def had no third-party standing to object. Phone was in Victim's possession.</p> <p>BANKS <i>P. v. ()</i> 11/20/2023 2:6</p>	<p>ef PAROLE</p> <p>PAROLE DECISIONS</p> <p>PROP 57 - DEPT OF CORRECTIONS REGULATIONS</p> <p>Def in prison for both violent and non-violent felonies. Per CDCR regulations, def is NOT eligible for early parole under Art I, section 32(a) (Prop 57). HELD: 32 (a) is ambiguous. CDCR is authorized to create regulations to implement 32(a). CDCR regulations are reasonable.</p> <p>HICKS <i>In Re ()</i> 11/17/2023 2:2</p>
<p>de SENTENCING</p> <p>RESTITUTION</p> <p>ITEM - NON-ECONOMIC DAMAGES IN CHILD ABUSE CASES - 1202.4(f)</p> <p>Def plead guilty to PC 288. Court ordered \$100,000 restitution for non-economic damages to victim. REVERSED and remanded. There was zero evidence in the record re: victim's damages. Court cannot ASSUME such damages. The record must support the award.</p> <p>GOMEZ <i>P. v. ()</i> 11/14/2023 1:5</p>	<p>bc INSTRUCTIONS/ELEMENTS</p> <p>MISC -</p> <p>ARSON - INHABITED DWELLING</p> <p>Def burns his own dwelling. Therefore he no longer intended to use it as a residence at the time he lit the match. Nonetheless, def is guilty of PC 451(b) - arson of an inhabited dwelling. The structure was USED as a residence before the fire.</p> <p>BUCKNER <i>P. v. ()</i> 11/30/2023 1:4</p>
<p>db APPELLATE ISSUES</p> <p>WAIVER OF APPEAL</p> <p>WAIVER - FAILURE TO OBJECT - SENTENCING - ABILITY TO PAY - DUENAS</p> <p>Def may NOT raise his "inability to pay" a fine or fee for the first time on appeal. If he does not object below, it is waived on appeal.</p> <p>EVERS <i>P. v. ()</i> 11/28/2023 1:4</p>	<p>de SENTENCING</p> <p>RESTITUTION</p> <p>CRIMES - TRAFFICKING - 236.1 PC - V's INCOME FROM PROSTITUTION</p> <p>H. B. v. SUPERIOR CT (HALL): Trafficking (PC 236.1) victim brings writ after court refused to order restitution for the prostitution earnings def took from her. HELD: PC 1202.4 authorizes such restitution. Fact that the earnings were from illegal activity is NOT a bar to restitution.</p> <p>HALL <i>OTHER</i> 11/17/2023 1:4</p>

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ab CONSTITUTIONAL ISSUES

RIGHT TO JURY TRIAL

SENTENCING FACTORS - PERFORMANCE ON PROBATION / PRIORS

Aggravating factors of "increasing seriousness of crimes" and "prior poor performance on probation" can be found by the court. NO need for stip, nor for jury finding. Both are included in PC 1170(b)(3)'s exception for prior convictions and related issues.

WILEY *P. v. ()* 11/29/2023 1:4

ab CONSTITUTIONAL ISSUES

SEPARATION OF

SEPARATION OF POWERS - LEGISLATIVE DELEGATION TO EXEC/JUDIC

PC 1170(b)(2) incorporates the "circumstances in aggravation" as found in Rule of Court 4.421 HELD: this does NOT violate separation of powers. It is a proper legislative delegation of authority.

ZEPEDA *def v. SUP CT* 11/13/2023 1:4

de SENTENCING

MISC - SENTENCING

AGGRAVATING FACTORS - RULE 4.421 FACTORS ARE NOT VAGUE

Rule 4.421's factors in aggravation are NOT too vague to be submitted to a jury.

ZEPEDA *def v. SUP CT* 11/13/2023 1:4

de SENTENCING

MISC - SENTENCING

AGGRAVATING FACTORS - RULE 4.421 FACTORS - NO PRELIM NEEDED

Rule 4.421's factors in aggravation are NOT too vague to be submitted to a jury. And, they can be submitted to a jury WITHOUT 1st proving them up a prelim.

ZEPEDA *def v. SUP CT* 11/13/2023 1:4

cd MOTIONS

DOUBLE JEOPARDY

SENTENCE IMPOSED / RE-SENTENCING AFTER APPEAL

Def appeal sentence of 12 years. DCA finds two minor errors and remands. After full new sentencing hearing, def gets 12 years, 4 months. REVERSED. Except in cases where the original sentence was illegally too low, def cannot be sentenced to MORE after an appeal.

TRAMMEL *P. v. ()* 11/21/2023 1:1

cb DEFENDANT'S STATEMENTS

AMBIG. INVOKE

GENERALLY - CONTEXT, USE OF - i WON'T SAY ANYTHING ELSE

After waiving MIRANDA, def talks freely until subject X comes up. Then def says, Well, I made a mistake, I won't say anything else. --- Held: this was NOT an invocation. It was a refusal to talk about a particular subject. Interrogation can continue. Detective can even return to subject X.

VILLEGAS *P. v. ()* 11/15/2023 1:1

de SENTENCING

RESTITUTION

ITEM - NON-ECONOMIC DAMAGES IN CHILD ABUSE CASES - 1202.4(f)

PC 1202.4(f)(3)(F) permits RESTITUTION for non-economic damages for violations of PC 288, 288.5, and 288.7. Def was charged under PC 289. HELD: if def's conduct was chargeable under 288, 288.5 or 288.7, then Restitution for non-economic damages may be ordered.

VILLEGAS *P. v. ()* 11/15/2023 1:1

de SENTENCING

RESTITUTION

ITEM - NON-ECONOMIC DAMAGES IN CHILD ABUSE CASES - 1202.4(f)

PC 1202.4(f)(3)(F) permits RESTITUTION for non-economic damages for violations of PC 288, 288.5, and 288.7. HELD: The mothers of 288 victims may also seek Restitution for non-economic damages.

VILLEGAS *P. v. ()* 11/15/2023 1:1

de SENTENCING

MISC - SENTENCING

FEES/ASSESSMENTS - PENALTY ASSESSMENTS APPLY TO 290.3 FINE

PC 290.3 imposes a fine of for each conviction of a crime listed in PC 290(c). HELD: Penalty assessments under PC 1464 and Govt 76000(a) and PC 1465.7, and Govt 70372 and Govt 76104.6 and Govt 76104.7 and Govt 73000 need to be added.

VILLEGAS *P. v. ()* 11/15/2023 1:1

de SENTENCING

ONE-STRIKE SEX

ONE STRIKE - 667.61 PC - NEED FOR ALLEGATIONS/FINDINGS

The complaint alleged violations of 667.61(b) and (c) and said punishment would be 15-to-life. After trial, DDA argues 667.61(m) applies and seeks 25-to-life. HELD: this violates DUE PROCESS. The was not NOT given fair notice that he was facing a punishment of 25-to-life.

VILLEGAS *P. v. ()* 11/15/2023 1:1

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cd MOTIONS

DEMURRER

NOTICE PLEADING - ONE STRIKE SEX CASES - 667.61 PC

The complaint alleged violations of 667.61(b) and (c) and said punishment would be 15-to-life. After trial, DDA argues 667.61(m) applies and seeks 25-to-life.

HELD: this violates DUE PROCESS. The was not NOT given fair notice that he was facing a punishment of 25-5o-life.

VILLEGAS

P. v. ()

11/15/2023

1:1

ab CONSTITUTIONAL ISSUES

DUE PROCESS / EQUAL PROTECTION

DUE PROCESS - NOTICE REQUIREMENTS - 667.61 PC ENHANCEMENTS

The complaint alleged violations of 667.61(b) and (c) and said punishment would be 15-to-life. After trial, DDA argues 667.61(m) applies and seeks 25-to-life.

HELD: this violates DUE PROCESS. The was not NOT given fair notice that he was facing a punishment of 25-5o-life.

VILLEGAS

P. v. ()

11/15/2023

1:1