

# CaseBank: *Cases added during December 2023 (sorted by Court)*

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## db APPELLATE ISSUES

### MISC APPELLATE

#### MISC - SUPERIOR CT APPELLATE DIV - PC 1510 - MISD PRETRIAL APPEALS

FRESNO APPELLATE DIV: PC 1510 permits pretrial appeals of 1538.5 rulings in misdemeanor cases IF the 1538.5 motion was made within 45 days of arraignment. This case: Arraignment was repeatedly continued. 1538.5 was BEFORE arraignment. HELD: Appeal NOT authorized. Appeal Dismissed.

VERA *P. v. ()* 11/8/2023 SUPP

## cd MOTIONS

### MOTION PROCEDURE

#### 1538.5 - TIMELINESS - MISD CASES - PC 1510 APPEALS

FRESNO APPELLATE DIV: PC 1510 permits pretrial appeals of 1538.5 rulings in misdemeanor cases IF the 1538.5 motion was made within 45 days of arraignment. This case: Arraignment was repeatedly continued. 1538.5 was BEFORE arraignment. HELD: Appeal NOT authorized. Appeal Dismissed.

VERA *P. v. ()* 11/8/2023 SUPP

## db APPELLATE ISSUES

### MISC APPELLATE

#### WENDE BRIEF - NOT APPLICABLE TO ALL APPEALS - PC 1510 MISD

FRESNO APPELLATE DIV: PC 1510 permits pretrial appeals of 1538.5 rulings in misdemeanor cases. This case: WENDE brief filed. HELD: Wende independent review not required. This is not def's final appeal.

VERA *P. v. ()* 11/8/2023 SUPP

## ae MISC ODDS & ENDS

### ODDS & ENDS

#### INITIATIVES - LEG'S ABILITY TO AMEND - GANGS - AB 333 - SPEC CIRC

AB 333's amendments to PC 186.22 re: gang elements (which did not pass with 2/3's majority) is NOT an improper amendment to Prop 21 which created a Spec Circ -- Gang that expressly referenced PC 186.22. -- No voter intent to "lock-in" 186.22's terms.

ROJAS *P. v. ()* 12/18/2023 CAL

## eb D. P. / SPEC. CIRC.

### SPECIAL CIRCUMSTANCES

#### GANG MURDER - AFFECTED BY AB 333 CHANGES TO 186.22 PC

AB 333's amendments to PC 186.22 re: gang elements (which did not pass with 2/3's majority) is NOT an improper amendment to Prop 21 which created a Spec Circ -- Gang that expressly referenced PC 186.22. -- No voter intent to "lock-in" 186.22's terms.

ROJAS *P. v. ()* 12/18/2023 CAL

## ee MENTAL HEARINGS

### 1368

#### CAP ON HOSPITALIZATION - CLOCK STOPS BY CT FINDING OF

PC 1370(c)(1) places a two year limit on how long a 1368 def can be confined as an Incompetent person. HELD: two-year clock does NOT stop when DHS certifies def is competent. Clock stops only after the trial court determines def is competent.

RODRIGUEZ *def v. SUP CT* 12/14/2023 CAL

## ce SEARCH & SEIZURE

### S/W - EXECUTION

#### THINGS - CELL PHONES - USING DEF'S FINGERPRINT TO UNLOCK

SW affidavit stated intention to use reasonable force to use def's fingerprint to unlock any phone seized. SW itself did NOT address the subject. HELD: Officers can use reasonable force to use def's fingerprint to unlock def's phone.

RAMIREZ *P. v. ()* 12/22/2023 6:

## ab CONSTITUTIONAL ISSUES

### MISC CONSTITUTIONAL ISSUES

#### FIFTH AMENDMENT - DEF COMPELLED TO DO NON-TESTIMONIAL ACTS

Using reasonable force to use def's fingerprint to unlock his properly seized phone does NOT violated any of def's Fifth Amendment rights. Use of the fingerprint is non-testimonial. Use of the fingerprint does not reveal any information.

RAMIREZ *P. v. ()* 12/22/2023 6:

## ab CONSTITUTIONAL ISSUES

### DUE PROCESS / EQUAL PROTECTION

#### DUE PROCESS - COMPELLING DEF TO OPEN CELL PHONE W/FINGERPRINT

Using reasonable force to use def's fingerprint to unlock his properly seized phone does NOT violated any of def's Fifth Amendment rights. Use of the fingerprint is non-testimonial. Use of the fingerprint does not reveal any information. --- Nor does it violate def's Due Process rights.

RAMIREZ *P. v. ()* 12/22/2023 6:

## bc INSTRUCTIONS/ELEMENTS

### GENERAL INSTRUCTIONS

#### EVID - 1108 EV - CALCRIM 1191B

CALCRIM 1191B -- re: using conviction of count 1 as Ev 1108 evident as to other counts (and vice versa) UPHELD.

RAMIREZ *P. v. ()* 12/22/2023 6:

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## ab CONSTITUTIONAL ISSUES

### RETROACTIVE

#### BENEFIT TO DEF - PLEA BARGAINS, EFFECT ON

Def enters plea bargain where his STIPS to a sentence than includes an UPPER TERM. Then SB 567 changes rules re: upper terms before Def's case became FINAL. HELD: Def gets resentencing. SB 567 applies. BUT, if ct reduces sentence, DDA may cancel plea bargain.

**BURGARA** *P. v. ()* 12/13/2023 6:

## ab CONSTITUTIONAL ISSUES

### RETROACTIVE

#### BENEFIT TO DEF - WHEN IS DEF'S CASE FINAL? - POST REMITTITUR

Def convicted of charges with gang enhancements. All convictions affirmed on appeal, but case remanded for new sentencing only (says REMITTITUR). Then AB 333 enacted changing GANG elements. HELD: the case is not final until the sentence is final. Trial Ct should vacate Gang enhancement.

**MITCHELL** *P. v. ()* 12/15/2023 5:

## bc INSTRUCTIONS/ELEMENTS

### LESSER

#### MURDER (watson) / GROSS VEH MANSL WHILE INTOXICATED

Gross Vehicular Manslaughter DUI is NOT a lesser to a WATSON 187.

**LAGUNAS** *P. v. ()* 4:3

12/12/2023

## bc INSTRUCTIONS/ELEMENTS

### HOMICIDE

#### MALICE (IMPLIED) - DUI 187 - SUFFIC OF EVID

Def asserts the facts of the case do not support a WATSON DUI 187 conviction because the facts are not egregious enough. HELD: while the facts are less egregious than other reported cases, they are still bad enough. Each element of WATSON are met.

**LAGUNAS** *P. v. ()* 12/12/2023 4:3

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.75 PC - 667.5 PRIORS - EFFECT ON PLEA BARGAINS

On a PC 1172.75 resentencing, can the trial court modify the sentence beyond dismissing one-year priors when def entered into plea bargain with Stip sentence. HELD: Yes. And, the DDA can't back out of plea agreement. -- DCA's in conflict

**CARTER** *P. v. ()* 12/8/2023 4:1

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.6 PC - ELIGIBILITY - ISSUES OTHER THAN SB 1473 ISSUES

2005: Def convicted of aid/abet lying in wait murder. No felony 187 or Nat/prob/conseqs instructions given. 2022: 1172.6 petition alleging OTHER instructions permitted jury to find malice improperly. HELD: 1172.6 is SOLELY for cases where SB 1473 changes are relevant. --- DCA's in conflict

**BERRY-VIERWINDEN** *P. v. ()* 12/6/2023 4:1

## ce SEARCH & SEIZURE

### EXIGENT CIRCUMSTANCES

#### SITUATION - DUI - SEIZING BLOOD - DEF UNCONSCIOUS

DUI suspect taken to ER fully conscious after accident. 75 minutes later officer arrives. Def answers some questions, then goes to sleep, or fakes sleep. Officer orders blood draw w/out seeking warrant. HELD: Warrant required. In San Diego, McNeely warrants are obtainable in 30 minutes.

**ALVAREZ** *P. v. ()* 12/29/2023 4:1

## bc INSTRUCTIONS/ELEMENTS

### DUI'S

#### SEIZING BLOOD - POST McNEELY - EXCUSES FOR NOT GETTING SW

DUI suspect taken to ER fully conscious after accident. 75 minutes later officer arrives. Def answers some questions, then goes to sleep, or fakes sleep. Officer orders blood draw w/out seeking warrant. HELD: Warrant required. In San Diego, McNeely warrants are obtainable in 30 minutes.

**ALVAREZ** *P. v. ()* 12/29/2023 4:1

## cd MOTIONS

### SPEEDY

#### POST APPEAL DELAY - COURT CLERK ERROR

Superior Ct clerk fails to notify trial department of REMITTITUR in def's case that ordered a new trial. After 97 days, def's appellate atty wrote letter to trial court. HELD: the REMITTITUR is deemed filed after receipt by the court clerks office. Local Ct Rule saying trial ct must order it "filed" does NOT control. Case

**WALSWORTH** *def v. SUP CT* 12/20/2023 3:

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.75 PC - 667.5 PRIORS - STAYED PRIORS

2013: Def sentenced to 25-to-life (3 strikes) plus some STAYED enhancements and STAYED one-year priors. 2023: def gets 1172.75 resentencing. HELD: The STAYED enhancements are fair game to re-evaluated under PC 1385(c).

**SALDANA** *P. v. ()* 12/19/2023 3

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## ce SEARCH & SEIZURE

### DETAIN/ARREST/PAT-DOWN

#### PC TO ARREST - DISTINCTIVE TATTOOS

A distinctive tattoo and/or a tattoo in a distinctive location can -- by itself -- supply PC to arrest.

**DIAZ** *P. v. ()* 2:8

12/18/2023

## bd OTHER TRIAL ISSUES

### ARGUMENT

#### DDA NO-NO - SANDBAGGING IN ARGUMENT

Def asserts DDA "sandbagged" in closing arguments. HELD: merely holding back "some" topics until final argument is NOT sandbagging.

**DIAZ** *P. v. ()* 2:8

12/18/2023

## ab CONSTITUTIONAL ISSUES

### RETROACTIVE

#### BENEFIT TO DEF - REMAND BECAUSE CT NOT AWARE OF NEW CHANGES

Def was sentenced two months after SB 81 (adding PC 1385(c)) and TIRADO decision (permitting court to impose lesser terms to 12022.5 gun enhancements). Transcript shows no sign anyone was aware. --- DCA REMANDS for court to address these topics.

**DIAZ** *P. v. ()* 12/18/2023 2:8

## cd MOTIONS

### REPRESENTATION

#### MISC - FIRING RETAINED COUNSEL - TIMELINESS

Over 3 years, def had changed attorneys 4 times. 4 days before trial, Atty #5 appears and assures court he is READY and no continuance will be requested. Skeptical Court denies request to change atty. REVERSED. Skepticism was warranted, but it is NOT enough to deny request.

**FRIAS** *P. v. ()* 12/15/2023 2:7

## cd MOTIONS

### DOUBLE JEOPARDY

#### SENTENCE IMPOSED / RE-SENTENCING AFTER APPEAL

Def is sentenced to 18 years. Def appeals. DCA finds trial court unlawfully STAYED a 10-year term than must be CONSEC. -- def then asserts trial COULD have got to 18 a different and legal way, and therefore, any new sentence cannot exceed 18. HELD: any new sentence cannot exceed 28.

**RUIZ** *P. v. ()* 12/13/2023 2:6

## ae MISC ODDS & ENDS

### ODDS & ENDS

#### INITIATIVES - LEG'S ABILITY TO AMEND - 11275 PC / PROP 36

2009: Def gets 28-to-life (3 strikes + 3 one-year priors). 2013: def seeks Prop 36 resentence. He qualified, but was Denied on public safety grounds. 2023: Def gets resentencing under PC 1172.75 (void one-year priors). HELD: 1172.75 did not get 2/3's vote. 1172.75 cannot amend Prop 36.

**GUEVARA** *P. v. ()* 12/8/2023 2:6

## dd PETITIONS TO RESENTENCE

### PETITIONS TO

#### 1172.75 PC - 667.5 PRIORS - FULL RESENTENCE - POST PROP 36 DENIAL

2009: Def gets 28-to-life (3 strikes + 3 one-year priors). 2013: def seeks Prop 36 resentence. He qualified, but was Denied on public safety grounds. 2023: Def gets resentencing under PC 1172.75 (void one-year priors). HELD: 1172.75 did not get 2/3's vote. 1172.75 cannot amend Prop 36.

**GUEVARA** *P. v. ()* 12/8/2023 2:6

## ee MENTAL HEARINGS

### SexVioPredator

#### MISC - UPDATING STALE PRO-DEF DSH REPORTS

Due to trial delays, def asks a DSH doctor to update his report that said def is NOT SexVioPredator. DSH says NO (unless court orders it). Ct say NO because statute does not explicitly authorize it. HELD: Trial court has DISCRETION to order an update for the defense. (after giving DDA oppo to object)

**CONWAY** *def v. SUP CT* 12/1/2023 2:5

## cd MOTIONS

### 1385

#### ENHANCEMENTS - 1385(c) - 3-STRIKES IS NOT AN ENHANCEMENT

3-Strikes is NOT an enhancement -- it is an alternative Sentencing scheme. Therefore, PC 1385(c) does NOT apply.

**OLAY** *P. v. ()* 1:5

12/21/2023

## de SENTENCING

### STRIKE CASES

#### 1385(c) PC - 3-STRIKES ARE NOT AN ENHANCEMENT

3-Strikes is NOT an enhancement -- it is an alternative Sentencing scheme. Therefore, PC 1385(c) does NOT apply.

**OLAY** *P. v. ()* 1:5

12/21/2023

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## ee MENTAL HEARINGS

## bb EVIDENCE

### MDO

#### MDO TRIAL - JURY WAIVER BY DEF - FULL ADVISEMENT NEEDED

A perfunctory advisement before taking a JURY WAIVER from an OMHD (formerly known as an MSO) is inadequate. Court should explain what a jury is, and how it is selected, and how their verdict must be unanimous.

**McCRA Y** *P. v. ()* 12/22/2023 1:4

### PRIVILEGE

#### LITIGATION PRIVILEGE

B&P 6128 makes it a misdemeanor for a lawyer to lie / mislead in pleadings. The evidentiary Litigation privilege -- Civil Code section 47 -- does NOT apply to 6128 case. BUT, it does apply to a CIVIL prosecution under B&P 17200 based on violations of 6128.

**POTTER HANDY LLP** *P. v. ()* 12/8/2023 1:3

## ed JUVENILE

## de SENTENCING

### SENTENCING

#### SYTF - 875 W&I - REVIEW HEARINGS - COURT DISCRETION

After a commitment to a "secure youth treatment facility" (SYTF), a minor is entitled to six-month review hearing per W&I 875 HELD: a "good report" does NOT guarantee a six-month reduction of the "baseline" term. Any reduction is a matter of court discretion.

**TONY R.** *In Re ()* 12/28/2023 1:2

### MISC - SENTENCING

#### AGGRAVATING FACTORS - SB 567 - PRIOR CONVICTIONS AS

A single prior conviction can, in the exercise of discretion, be enough to support the imposition of an UPPER term after the amendments to PC 1170.

**HALL** *P. v. ()* 12/13/2023 1:1