

CaseBank: Cases added during January 2024 (sorted by Court)

www.casebanklaw.com

<p>ce SEARCH & SEIZURE</p> <p>S/W - EXECUTION</p> <p>MISC - EXTREME ABUSE DURING EXECUTION - EXCLUSION REMEDY</p> <p>Maybe, in an extreme case, police abuse of SW authority (searching for things not in the warrant) MIGHT be a basis to EXCLUDE, But, this is NOT that case.</p> <p>HELZER <i>P. v. ()</i> CAL</p> <p>1/22/2024</p>	<p>eb D. P. / SPEC. CIRC.</p> <p>JURY SELECTION</p> <p>VOIR DIRE QUESTIONS RE: TYPE OF CASE BEFORE THE COURT</p> <p>How the prospective jurors should be told about certain facts about the case in order to determine they can remain objective and impartial about imposing the Death Penalty is left to discretion of trial court. Discretion not abused in this case. -- the lines are not clear cut.</p> <p>HELZER <i>P. v. ()</i> CAL</p> <p>1/22/2024</p>
<p>eb D. P. / SPEC. CIRC.</p> <p>PEN - ARGUMENT</p> <p>DDA EMOTIONAL TRICKS - POWERING UP RECIPROCATING SAW</p> <p>Def used a power reciprocating saw to cut up his 187 victims. DDA turned the saw on during his closing penalty phase argument. It made a loud, frightening, sound. --- HELD: it was possibly More Prejudicial than Probative, but if so, it was harmless.</p> <p>HELZER <i>P. v. ()</i> CAL</p> <p>1/22/2024</p>	<p>eb D. P. / SPEC. CIRC.</p> <p>PEN - ARGUMENT</p> <p>DDA - SAYING THAT SOME 190.3 FACTORS "DO NOT APPLY"</p> <p>If the facts do not rise to the level of mitigation on a particular 190.3 factor, it was ERROR for the DDA to argue the Factor "did not apply" to the case. The LAW always "applies".</p> <p>HELZER <i>P. v. ()</i> CAL</p> <p>1/22/2024</p>
<p>de SENTENCING</p> <p>STRIKE CASES</p> <p>GANG STRIKES - PRE AB 333</p> <p>AB 333 does NOT affect the viability of GANG RELATED STRIKE CONVICTIONS that were FINAL before AB 33 passed.</p> <p>GONZALEZ <i>P. v. ()</i> 5:</p> <p>1/23/2024</p>	<p>de SENTENCING</p> <p>MISC - SENTENCING</p> <p>AGGRAVATING FACTORS - SB 567 - PRIOR CONVICTIONS AS</p> <p>Until the legislature drops another shoe, Courts can still impose the upper term based solely on def's prior convictions.</p> <p>GONZALEZ <i>P. v. ()</i> 5:</p> <p>1/23/2024</p>
<p>dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO</p> <p>1172.6 PC - POST GRANT - FELONY 187's - ADDING SUBSTITUTE CHARGES</p> <p>2006: Def convicted of Felony 187 and the underlying felony (robbery). PC 1172.6 petition is Granted. At resentencing, court IS NOT permitted to add uncharged, factually related, crimes. -- if the robbery was uncharged in this case, the robbery could be added.</p> <p>FOUSE <i>P. v. ()</i> 5:</p> <p>1/18/2024</p>	<p>ce SEARCH & SEIZURE</p> <p>MISC - SEARCH</p> <p>EXCLUSION REMEDY - CalECPA (1546.2 PC) VIOLATIONS</p> <p>The Warrants were fine, the Executions were fine, BUT, Digital Information was seized and def was NOT given required notice under CalECPA (PC 1546.2) (he was given notice, but not in form mandated by statute.) HELD: in this case EXCLUSION is NOT an appropriate remedy.</p> <p>CAMPOS <i>P. v. ()</i> 5:</p> <p>1/22/2024</p>
<p>cd MOTIONS</p> <p>DISCRIMINATORY PROSECUTION</p> <p>CRJA - CHARGING DECISIONS - PRIMA FACIE CASE</p> <p>Black D.P. def claims DA's Office makes racially biased D.P. decisions under CRJA. Submits statistical analysis in support. plus names of "similar" White murderers who got LWOP from DA. ISSUE is what is enough for a Prima Facie showing. HELD: At Prima Facie stage, DA does NOT get to REBUT.</p> <p>MOSBY <i>def v. SUP CT</i> 4:2</p> <p>1/25/2024</p>	<p>de SENTENCING</p> <p>DIVERSION</p> <p>DIVERSION - MENTALLY ILL - 1001.36 PC - BELIEF DEF WILL FAIL PROGRAM</p> <p>Trial Ct denies def's request for Mental Health Diversion (PC 1001.36). REVERSED. HELD: (1)Future dangerousness is defined as likelihood def will commit a Super Strike Offense (not steal and take drugs) (2) Belief def will not comply with treatment is NOT a basis to deny.</p> <p>SARMIENTO <i>def v. SUP CT</i> 4:1</p> <p>1/9/2024</p>

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

www.casebanklaw.com

db APPELLATE ISSUES

WRITS

WRIT - MANDATE - PRETRIAL REVIEW - DIVERSION DENIALS

Trial Ct denies def's request for Mental Health Diversion (PC 1001.36).
REVERSED on WRIT of Mandate. Strong Dissent on appropriateness of
permitting pre-trial Writs for non-extraordinary situations.

SARMIENTO *def v. SUP CT* 4:1
1/9/2024

bd OTHER TRIAL ISSUES

JUROR/VERDICT ISSUES

MISC - JUROR RECOGNIZES WITNESS MID-TRIAL

During trial, juror X recognizes Witness Y as being someone she works with.
Large Company, different floors, very little contact with each other. X says she
can evaluate Y's testimony impartially. Def asks that X be excused. Denied.
UPHELD.

BROOKS *P. v. ()* 4:1
1/30/2024

bc INSTRUCTIONS/ELEMENTS

290 PC

SEX REGIS - 290 PC - TERMINATION - 290(e) / 290.5 PC

Def is a CALIF PC 290 registrant who currently lives in OREGON (where he is
registered). PC 290.5 (a)(1) says a person must file his request for 290
termination in the county he is currently registered in. Therefore, def cannot
currently make a request for termination.

SMYTH *P. v. ()* 3:
1/24/2024

de SENTENCING

ENHANCEMENTS - SENTENCING

OUT ON BAIL - 12022.1 PC - MULTIPLE BAILS / RELEASES

Out-On-Bail enhancements -- PC 12022.1 -- are limited to ONE enhancement
PER RELEASE. Def commits many felonies. Arrested, Bailed, commits more
felonies. Arrested again, Bailed again, commits more felonies. --- ONLY TWO
enhancements

HURT *P. v. ()* 3:
1/22/2024

ab CONSTITUTIONAL ISSUES

COLLATERAL

LAW OF THE CASE DOCTRINE - RELATION TO PC 1172.6

Def's early 1172.6 petition Summarily Denied and Affirmed on appeal because
his Conspiracy to Commit 187 conviction established malice. Then AB 775
expanded 1172.6 eligibility. HELD: AB 775 did not affect def. No new facts, no
new (relevant) law, def's 2nd petition is denied under Law of the Case Doctrine.

MEDRANO *P. v. ()* 2:6
1/22/2024

bc INSTRUCTIONS/ELEMENTS

GENERAL INSTRUCTIONS

CALCRIM 320 - WITNESS INVOKING THE FIFTH

Dom Vio Victim of def's crime asserted THROUGH COUNSEL (away from jury)
that she would take the 5th and refuse to testify. HELD: this is sufficient basis
on which court could instruct jury that no negative inference should be made by
jury due to V not testifying. CALCRIM 320

BROOKS *P. v. ()* 4:1
1/30/2024

ce SEARCH & SEIZURE

EXPECTATION OF PRIVACY

CAMERAS - LOCATED ON STREET LAMPS WITHIN CITY

San Diego has cameras mounted on city street lights. HELD: Def has no
reasonable expectation of privacy over his movements on public street.

Everyone should expect that they will be seen by others, and often pictured by
camera. (Distinguished from cell phone tracking cases)

CARTWRIGHT *P. v. ()* 4:1
1/25/2024

ed JUVENILE

MISC - JUVENILE

RECORDS - SEALING OF - 786 W&I

While on Juvi Probation, minor is arrested, and admits to, possession of MJ as
an INFRACTION. HELD: this DOES NOT disqualify minor from later having his
file SEALED under W&I 786.

K, B, *In Re ()* 3:
1/30/2024

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. ()* 2:7
1/12/2024

bc INSTRUCTIONS/ELEMENTS

290 PC

SEX REGIS - 290 PC - TERMINATION - 290(e) / 290.5 PC

After 37 years, def petitions under PC 290.5 (a)(1) to be removed from 290 list
and obligation. Court noted that, today, def's conduct would get conviction for
Crime that had lifetime 290, and denies petition. HELD: It is the crime def got
convicted of that counts. -- Def is eligible for removal from 290.

FRANCO *P. v. ()* 2:2
1/25/2024

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

www.casebanklaw.com

<p style="text-align: right;">cc GRAND JURY / PRELIMS</p> <p>GRAND JURY 995 MOTION BASED ON CHANGE IN GANG ELEMENTS - REMEDY Before AB 333, Grand Jury indicts def on GANG crimes. After AB 333, but before trial, def moves to dismiss. HELD: Based on INHERENT AUTHORITY over Grand Juries, (not PC 995a), court may suspend motion to give DDA opportunity to seek new indictment.</p> <p>CHAVEZ <i>def v. SUP CT</i> 1/25/2024 2:2</p>	<p style="text-align: right;">db APPELLATE ISSUES</p> <p>WRITS HABEAS - DEATH PENALTY REFORM - PROP 66 - NO APPLY TO LWOP's Death Penalty Def's Habeas is partially successful in that his sentence is reduced to LWOP. He then APPEALS the Habeas decision because it Denied other relief. HELD: Def is no longer facing D.P., therefor (like everyone else) he cannot APPEAL a Habeas denial.</p> <p>DUONG <i>In Re ()</i> 1/29/2024 2:1</p>
<p style="text-align: right;">cd MOTIONS</p> <p>DISCRIMINATORY PROSECUTION CRJA - RACIALLY BIASED ATTORNEY ADVICE Black Def. Atty advises him to "be himself" on the stand. Def uses "street language". Def convicted. Def makes CRJA claim against Atty for bad advice. HELD: Atty advice was (1) NOT racially motivated or biased; (2) was NOT incompetent advise.</p> <p>COLEMAN <i>P. v. ()</i> 1/5/2024 1:5</p>	<p style="text-align: right;">de SENTENCING</p> <p>RESTITUTION RESTITUTION FINE - PAROLE - 1202.45 PC - LWOP CASES LWOP defs don't get parole. Therefore, LWOP defs don't get PAROLE RESTITUTION FINES under PC 1202.45.</p> <p>COLEMAN <i>P. v. ()</i> 1/5/2024 1:5</p>
<p style="text-align: right;">ed JUVENILE</p> <p>SENTENCING SYTF - 875 W&I - COURT MAY AMEND ORDERS TO CORRECT ERRORS Juvi Ct sentences Minor under new W&I 875 to a SYTF. Two weeks later, Court amends sentence re: use of CTS and Goodtime. HELD: Unlike adult ct, Juvi Ct never lost jurisdiction over case. Ct may correct mistakes at any time. (W&I 775)</p> <p>M.B. <i>In Re ()</i> 1/31/2024 1:4</p>	<p style="text-align: right;">ed JUVENILE</p> <p>SENTENCING SYTF - 875 W&I - USE OF CTS / GOOD TIME Per W&I 875, CTS and good time is applied against the MAXIMUM time of Confinement, NOT against the BASELINE sentence.</p> <p>M.B. <i>In Re ()</i> 1/31/2024 1:4</p>
<p style="text-align: right;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - POST GRANT - UPDATE CTS, DONT UPDATE GOOD TIME At a RESENTENCING, court should reset the CTS number, but should NOT set a GOOD TIME number. Any Good time earned in Prison is for the CDCR to determine.</p> <p>DEAN <i>P. v. ()</i> 1/31/2024 1:4</p>	<p style="text-align: right;">cd MOTIONS</p> <p>DISCRIMINATORY PROSECUTION CRJA - PROCEDURE - FAILURE TO RAISE ISSUE IN TRIAL COURT Although amended CRJA now permits Claims to be made to DCA, general rules re: waiver of appeal by failure to object at trial STILL apply. DCA dismisses appeal based of Racial Bias claims not raised in trial court.</p> <p>LASHON <i>P. v. ()</i> 1/8/2024 1:3</p>
<p style="text-align: right;">dd PETITIONS TO RESENTENCE</p> <p>PETITIONS TO 1172.6 PC - HEARING - MAJOR PARTIC, RECK INDIFF - INSUFF EVID A and B walk up to V; push V to ground; stand over V punching V; take V's wallet; leave. V dies from multiple stab wounds. A claims he had no idea B had knife. 1988 jury convicts A of felony 187. 2022 judge finds A was Major Part/ Reckless etc and denies 1172.6. DCA REVERSES - insuff evidence.</p> <p>UNDERWOOD <i>P. v. ()</i> 1/30/2024 1:2</p>	<p style="text-align: right;">de SENTENCING</p> <p>STRIKE CASES 1385(c) PC - 3-STRIKES ARE NOT AN ENHANCEMENT PC 1385(c) does NOT apply to STRIKES. AB 600 does NOT change that conclusion. --- DCA reverses Trial Ct's granting of a ROMERO motion based on the trend in the legislature to roll back long sentences. --- Amending STRIKES requires 2/3's vote on EXPLICIT reform. Legislative trends don't count.</p> <p>DAIN <i>P. v. ()</i> 1/31/2024 1:2</p>

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

www.casebanklaw.com

ac STATUTORY CONSTRUCTION

STATUTORY CONSTRUCTION

RULE - LEGISLATIVE TRENDS, GENERAL LEGISLATIVE INTENT (NOT)

PC 1385(c) does NOT apply to STRIKES. AB 600 does NOT change that conclusion. --- DCA reverses Trial Ct's granting of a ROMERO motion based on the trend in the legislature to roll back long sentences. --- Amending STRIKES requires 2/3's vote on EXPLICIT reform. Legislative trends don't count.

DAIN *P. v. ()* 1/31/2024 1:2
