

RECENT WINS!

People v. Terry Troglin (H031861), Christopher Hubbard (H031896), Dean Pacini (H031873)
Panel attorney: Jennifer Mannix
Date: June 25, 2008

The superior court's order retroactively modifying a two year commitment under the SVP Act to be an indeterminate term was unlawful. (Staff attorney Jonathan Grossman)

People v. Mike Sanchez (H031856)
Panel attorney: Gordon Scott
Date: June 25, 2008

The superior court's order retroactively modifying a two year commitment under the SVP Act to be an indeterminate term was unlawful. (Staff attorney Jonathan Grossman)

Bruce Gordon (H031837)
Panel attorney: Jennifer Mannix
Date: June 24, 2008

The superior court's order retroactively modifying a two year commitment under the SVP Act to be an indeterminate term was unlawful. (Staff attorney Jonathan Grossman)

People v. Raymond Quinonez (H032002)
Panel attorney: Katarzyna Kozik
Date: June 24, 2008

Appellant and his companions planted pipe bombs without fuses. They called the police to report the bombs. While the police responded en masse to the pipe bombs, appellant and his companions attempted to commit a robbery in another part of town. The court of appeal agreed that Penal Code section 654 precluded separate punishment for the robbery and the bomb-related crimes. (Staff attorney William Robinson)

People v. Rick Kase (H032266)
Attorney: Jamie Harmon
Date: June 23, 2008

The police stopped a car for having an insufficient tire tread. The passenger, appellant, was found with an illegal cane sword. The court denied the motion to suppress evidence. The court of

appeal reversed. When the officer testified he was uncertain if the tire had sufficient tread. Saying it was iffy, he indicated he was acting on a hunch. This did not amount to reasonable suspicion.

People v. Douglas Peters (H030838)

Panel attorney: John Dwyer

Date: June 20, 2008

A *Pitchess* hearing was held in camera. Appellate asked the court of appeal to review the sealed record to determine if the trial court abused its discretion in denying discovery. The sealed record included the reporter's transcript of the in camera hearing but not the material the court reviewed. The court remanded the matter for the court to hold an in camera hearing, specify what records were reviewed, and make copies of the records for appellate review. (Staff attorney Paul Couenhoven)

People v. Donna Olsen (H031660)

Panel attorney: John Schuck and Maureen Fox

Date: June 17, 2008

Appellants were convicted of two counts of assault with a deadly weapon and sentenced to prison. The court ordered they have no contact with the victims for an unspecified period of time. The stay away order was unauthorized. The court could not make such an order under Penal Cod section 136.2 because this provision applies only until the trial is completed. The court could not have ordered a protective restraining order under the Code of Civil Procedure section 527.6 because there was no evidence the victims were afraid of the defendants and the civil provision did not provide for an order of an undetermined length of time. (Staff attorney Vicki Firstman)

People v. Ronald Rose (H031855)

Panel attorney: Danalynn Pritz

Date: June 13, 2008

The superior court's order retroactively modifying a two year commitment under the SVP Act to be an indeterminate term was unlawful. (Staff attorney Jonathan Grossman)

People v. Daniel Ornelas (H030853)

Panel attorney: Danalynn Pritz

Date: June 11, 2008

The penalty assessments on a fine was too much, and the court of appeal ordered that it be reduced. (Staff attorney Williams Robinson)

People v. Fraser; People v. Lopez; People v. Starrett; People v. Wallace
(H031842, H031867, H031860, H031868)

Staff attorney: Jennifer Mannix

Date: June 11, 2008

The superior court's order retroactively modifying a two year commitment under the SVP Act to be an indeterminate term was unlawful. (Staff attorney Jonathan Grossman)

People v. Francisco Torres (H031998)

Staff attorney: Paul Couenhoven

Date: June 10, 2008

Appellant's probation officer participated in a search of appellant's home. The officer asked appellant's brother which room was his, and the brother pointed to a particular room where drugs were found. Appellant's probation was revoked based solely on the testimony of the probation officer. The court of appeal reversed because the brother's indication of which room was appellant's was hearsay and there was not good cause for not presenting him as a witness at the violation of probation hearing.

In re David Vigil (H032786)

Staff attorney: Dallas Sacher

Date: June 9, 2008

Defendant pled guilty to making criminal threats and admitted he had at least two prior strike convictions. The victim told the police defendant had knife during the incident. She told the public defender investigator that she did not see what he was holding. Defense counsel never presents this evidence. At sentencing, the judge denied the *Romero* motion, stating the victim must have been very afraid because of the knife, the defendant showed no remorse because he denied he had a knife, and one of his prior strikes involved use of a knife. The court of appeal granted an order to show cause in the habeas corpus petition alleging ineffective assistance of counsel for not presenting the evidence disputing the existence of the knife.

People v. Martinez (H032281)

Panel attorney: Alfons Wagner

Date: June 6, 2008

As the Monterey County District Attorney's Office conceded on appeal, the superior court's order retroactively modifying a two year commitment under the SVP Act to be an indeterminate term was unlawful. (Staff attorney Jonathan Grossman)

People v. David Ortiz (H031493)
Panel attorney: Trina Chatterjee
Date: June 5, 2008

The court of appeal reviewed the in camera record of a *Pitchess* hearing and reversed for a new hearing. (Staff attorney Vicki Firstman)

People v. Robert Segura (H031871)
Panel attorney: Jean Matulis
Date: June 5, 2008

The superior court's order retroactively modifying a two year commitment under the SVP Act to be an indeterminate term was unlawful. This was especially true in this case where the initial judgment of commitment was recently reversed. (Staff attorney Jonathan Grossman)

People v. Magana (H030453)
Panel attorneys: Carlo Andreani and Matthew Wilson
Date: June 3, 2008

Luis Magana was beat up by Garcia and told his son, Richard Magana, about it. Richard went to Garcia and a confrontation started resulting in Richard stabbing Garcia. The prosecution theory was that Richard was guilty of first degree murder and Luis was also guilty as an aider and abettor. The defense alleged defense of others. The jury convicted Richard of voluntary manslaughter and Luis of aggravated assault. The jury asked if antecedent threats against the father could justify a quicker response by Richard. The answer is yes, but the court read the same confusing form instruction instead. The error required reversal. (Staff attorney Dallas Sacher)

People v. Juan Vasquez (H031781)
Panel attorney: Danalynn Pritz
Date: May 30, 2008

The court erroneously imposed a \$70 AIDS fine for a crime which does not carry the fine. (Staff attorney Dallas Sacher)

People v. Michael Marchese (H031994)
Panel attorney: Rudolph Kraft
Date: May 29, 2008

Appellant was found not guilty by reason of insanity. The government petitioned to extend his commitment which appellant opposed. Midway through the jury trial on the extension petition,

defense counsel, over appellant's objection, waived jury and requested that the commitment be extended. The court obliged. Appellant argued on appeal the loss of the contested hearing violated due process, which the government conceded. The court of appeal agreed. (Staff attorney Michael Kresser)

People v. Howard; People v. Soque (H031609, H031651)

Staff attorney: Jonathan Grossman

Date: May 29, 2008

The superior court's order retroactively modifying a two year commitment under the SVP Act to be an indeterminate term was unlawful.

In re Byron Mills (H031434)

Panel attorney: Keith Wattlely

Date: May 28, 2008

The court of appeal affirmed the superior court's order for relief on habeas corpus. Mills was convicted 27 years ago for second degree murder. There was not some evidence to justify the decision by the Parole Board to find him unsuitable for parole. (Staff attorney Dallas Sacher)

People v. Marcos Soria (H031237)

Panel attorney: Jeffrey Glick

Date: May 23, 2008

Appellant pled to the charges in three different cases. He waived his right to appeal the sentence. The trial court imposed a \$10,000 restitution fine on one case and additional restitution fines on the other cases. In a published decision, the court of appeal concluded the waiver of appeal did not encompass the restitution fines. Nor did appellant agree to the restitution fines when he was advised in each case when he pled that he could receive a restitution fine of up to \$10,000. The court held that the imposition of restitution fines totaling more than \$10,000 in one prison commitment was unauthorized. (Staff attorney Vicki Firstman)

People v. Wardell (H031285)

Panel attorney: Gene Vorobyov

Date: May 20, 2008

Appellant was convicted of certain crimes and the court imposed a \$200 restitution fine, among other things. He appealed, and the judgment was reversed. Upon retrial, he was convicted, and the court imposed a \$10,000 restitution fine. The court of appeal agreed that the amount of the fine could not increase after a successful appeal. (Staff attorney William Robinson)

People v. Adams (H030529)

Panel attorneys: Alan Siraco and Maribeth Halloran

Date: May 20, 2008

Eric Adams was charged with two conspiracies, but the jury was not instructed that it must unanimously agree on the same two conspiracies. The court agreed this required reversal of the conspiracy convictions. Jess Adams was convicted of conspiracy, dissuading a witness, and making criminal threats, all based on an agreement to threaten a certain witness. The court of appeal agreed that two of the counts must be stayed pursuant to Penal Code section 654. (Staff attorney Dallas Sacher)

People v. Michael Shephard (H030646)

Panel attorney: Danalynn Pritz

Date: May 16, 2008

The imposition of the upper term violated *People v. Black II* (2007) 41 Cal.4th 799, 818-819, and the matter was remanded for a new sentencing hearing under *People v. Sandoval* (2007) 41 Cal.4th 825.

People v. Frederick Mendiola (H031839)

Panel attorney: Cliff Gardner

Date: May 16, 2008

Appellant was sentenced to serve six years in prison and ordered to pay \$300 in attorney fees. The court of appeal agreed there was insufficient evidence he had the ability to pay.

People v. Freddie Guzman (H031390)

Panel attorney: Judyanne Valladao

Date: May 9, 2008

The court imposed fines but it could not be determined how much of the amount was the substantive fine and how much consisted of penalty assessments. The matter was remanded for the court to specify the amounts. (Staff attorney Lori Quick)

People v. Jesus Estrada (H031979)

Panel attorney: Paul Carroll

Date: May 8, 2008

Appellant was placed on probation and the court set a \$200 restitution fine. When probation

was revoked, the restitution fine increased to \$600. This was error. Also, the court failed to award a day of presentence credits and a day of conduct credit. (Staff attorney Lori Quick)

People v. Salee Mohammed (H030980)

Panel attorney: Jill Fordyce

Date: May 2, 2008

Appellant was released on her own recognizance on a felony, but the court failed to have her sign the proper paperwork required by Penal Code section 1318. When she failed to appear, she was charged with felony failure to appear, though the underlying felony was dismissed. In a published decision, the court of appeal held that because she did not sign the statutory required promise to appear, there was insufficient evidence to convict her of failing to appeal. (Staff attorney Michael Kresser)