

RECENT WINS!

People v. Richelle Dasinger (H036429)

Staff attorney: Lori Quick

Date: December 21, 2011

The court erred in increasing restitution fines upon a revocation of probation.

People v. Martin Corona (H0356717)

Panel attorney: Jeremy Valverde

Date: December 21, 2011

There was insufficient evidence appellant had the ability to pay the drug program fine. (Staff attorney Lori Quick)

People v. Matthew Boronda (H035914)

Staff attorney: Vicki Firstman

Date: December 20, 2011

When appellant's probation was modified in March 2009, he waived presentence credits of more than 365 days. The court thus awarded 244 actual days and 121 conduct days. When probation was again modified in July 2010, the court awarded 183 actual days, instead of 244 days, for the period before March 2009 so that the total amount of presentence credits would be no more than 365 days under amended Penal Code section 4019. The court of appeal held that appellant could not have knowingly and intelligently waived presentence credits pursuant to a law that did not yet exist. Thus, he was entitled to 244 actual days for the period before March 2009.

People v. Brady (H036073)

Staff attorney: Vicki Firstman

Date: December 20, 2011

The court assessed a \$1200 fine under Penal Code section 290.3, including penalty assessments. Because the court did not indicate how it arrived at \$1200, it was not possible to determine if this was the correct amount. The matter was remanded for a the court to be more clear.

People v. Maribel Benabides (H036075)

Staff attorney: Lori Quick

Date: December 20, 2011

The court could not raise the restitution fine when probation was revoked. Further, the drug lab fee must be modified to reflect the amount orally argued and a second drug lab fee must be stricken because it was assessed on a crime to which it does not apply.

People v. David DelReal
Panel attorney: Jefferey Glick
Date: December 20, 2011

Appellant was charged with attempted premeditated murder with enhancements under Penal Code sections 12022.53 and 12022.7. The jury found him guilty of attempted voluntary manslaughter and found the enhancements to be true. Because section 12022.53 does not apply to attempted voluntary manslaughter, the court reduced the enhancement to a violation of section 12022.5. The court of appeal agreed that under Penal Code section 654, the sentencing court could not impose a punishment for the section 12022.7 enhancement. (Staff attorney Jonathan Grossman)

People v. Richard Burch (H036178)
Panel attorney: Joseph Escobosa
Date: December 15, 2011

The court could not increase the restitution fine upon a revocation of probation. (Staff attorney Vicki Firstman)

People v. Rosie Travis (H036753)
Staff attorney: Jonathan Grossman
Date: December 9, 2011

Appellant was placed on Proposition 36 drug probation. She failed to appear. The court terminated her probation without anyone filing a formal petition to revoke probation, without the court holding a hearing or having her admit a violation, and without the court determining it was a drug-related violation of probation. The court of appeal agreed this was unauthorized. Further, fees were improperly imposed because the crime was committed before they were increased, and there was insufficient evidence of an ability to pay probation fees.

People v. Guy Blanco (H036421)
Staff attorney: Jonathan Grossman
Date: December 9, 2011

There was insufficient evidence of an ability to pay a booking fee.

People v. Jacob Chavez (H036355)
Panel attorney: Alex Coolman
Date: December 9, 2011

The court lacked the authority to issue a stay away order when the defendant was sentenced to prison. (Staff attorney Jonathan Grossman)

People v. Witcraft (H036159)
Staff attorney: Dallas Sacher
Date: December 6, 2011

Appellant was in an automobile accident which resulted in a police investigation. He was charged with and convicted of receipt of stolen property, providing false information, presenting a false registration card, and failing to provide proof of insurance. Six months later, he was charged with making a false insurance claim from the accident. A habeas corpus petition was filed, claiming trial counsel was ineffective for failing to object to the second case under *Kellet v. Superior Court* (1966) 63 Cal.2d 822. In a published decision, the court of appeal issued an order to show cause.

In re Johnny Lira (H036162)
Panel attorney: Steve Defilippis
Date: December 6, 2011

The Board of Parole Hearings found petitioner eligible for parole, but the governor reversed the decision. The superior court found there was insufficient evidence to support the governor's decision and reinstated the order for parole. In this habeas corpus petition, the court of appeal held in a published decision that petitioner was entitled to credits against his parole term for the time in custody after the governor's unsupported decision to reverse the grant of parole. (Staff attorney Michael Kresser)

People v. Joshua Silva (H036923)
Staff attorney: William Robinson
Date: November 30, 2011

Because appellant's crimes occurred between January 25, 2010 and September 28, 2010, he was entitled to one-for-one presentence conduct credits. Also, the probation condition not associate with those "suspected" to be gang members or drug users was unconstitutionally vague.

People v. Benny Hernandez (H035408)
Panel attorney: Danalynn Pritz
Date: November 30, 2011

The court could not impose a parole revocation restitution fine when the defendant is sentenced to serve life without parole. (Staff attorney William Robinson)

In re J.C. (H035985)
Panel attorney: Alex Coolman
Date: November 29, 2011

The 12 year-old minor was found to be a delinquent. Further investigation revealed he was being neglected by his mother. The court conducted a dual status evaluation to determine if he should be in the dependency system, but it erroneously concluded the dependency system was unavailable because his mother was not abusive. The court of appeal reversed.

People v. Sergio Pablo and Jorge Rico (H035031)
Panel attorneys: Gordon Brownell and J. Frank McCabe
Date: November 28, 2011

The court could not impose an enhancement under both Penal Code section 186.22(b)(5) and section 12022.53(b) and (e). The court also failed to award presentence credit for the day he was arrested and it failed to award presentence conduct credits. (Staff attorney Paul Couenhoven)

People v. Ramiro Ramirez (H036200)
Panel attorney: Lynne Coffin
Date: November 23, 2011

Appellant was sentenced after January 25, 2010, so he was entitled to the increased conduct credits. (Staff attorney Vicki Firstman)

People v. Shunnee King (H036342)
Panel attorney: Victoria Stafford
Date: November 18, 2011

The court ordered the abstract of judgment be corrected to accurately reflect the sentence imposed. (Staff attorney Dallas Sacher)

People v. Voit (H035882)
Staff attorney: Jonathan Grossman
Date: November 18, 2011

The court of appeal reduced certain fines and penalty assessments because the crime was

committed before increases went into effect.

People v. Gonzolo Camarena (H036819)

Panel attorney: Rachel Sussman

Date: November 15, 2011

Appellant committed his crime in February 2010 but was sentenced after September 2010. The court erred in calculating his presentence credits under Penal Code section 4019 that existed after September 2010 instead of the one that existed in February 2010. (Staff attorney Paul Couenhoven)

People v. Sergio Miranda (H036477)

Staff attorney: Paul Couenhoven

Date: November 14, 2011

The court of appeal decided the trial court is required to calculate presentence conduct credits for those sentenced to prison under amended Penal Code section 2933. Further, the minute order of the sentence was inaccurate when it stated the court struck certain priors appellant never admitted.

People v. Kenneth Chapman (H035443)

Panel attorney: Eric Multhaup

Date: November 14, 2011

In calculating the minimum indeterminate term under Penal Code section 1170.12, subdivision (c)(2)(A)(iii), the court could not use the same prior conviction to add one year as a prison prior and five years as a prior serious felony. Thus the minimum indeterminate term must be reduced by one year. (Staff attorney Vicki Firstman)

People v. Steven Saucedo (H035471)

Panel attorney: Thomas Singman

Date: November 8, 2011

The court imposed the upper term for residential burglary which was doubled because of a prior strike conviction. The court imposed concurrent terms for some enhancements, saying the concurrent terms were because the same factors that were elements of the enhancements were used to impose the upper term on the underlying charge. The court did not have discretion to impose concurrent terms for the enhancements. It should have stricken the enhancements. (Staff attorney Paul Couenhoven)

People v. Jorge Gutierrez (H036316)
Panel attorney: Karli Sager
Date: November 3, 2011

The court of appeal struck from the minute order of the sentencing hearing and the abstract of judgment an AIDS fine because the sentencing court never ordered it. It also struck the drug program fine because there was insufficient evidence of an ability to pay. Finally, it modified the restitution fines to reflect the court's oral order. (Panel attorney Paul Couenhoven)

People v. Demontre Haynes (H036503)
Staff attorney: Jonathan Grossman
Date: November 3, 2011

The court remanded the matter for a determination of appellant's ability to pay probation fees.

People v. Ramon Sanchez (H036324)
Panel attorney: Robert Angres
Date: November 2, 2011

The court modified certain conditions of probation to avoid problems with vagueness and overbreadth. It also modified the amount of the probation revocation restitution fine to be the same as the restitution fine without the ten percent administrative surcharge. (Staff attorney Lori Quick)

In re M.J. (H036794)
Panel attorney: Catherine Czar
Date: October 6, 2011

Atty represented the minor in a dependency case. The minor's trial counsel successfully petitioned to end visits because the minor refused to see her mother and exhibited symptoms of anxiety around the time visits were to occur. The mother appealed. The court of appeal agreed with the minor that the juvenile court did not abuse its discretion. (Staff attorney Jonathan Grossman)