

**SUFFICIENCY OF THE EVIDENCE
PRETRIAL AND POSTTRIAL MOTIONS
ERROR AT TRIAL OR HEARING
SENTENCING
DEPENDENCY CASES
HABEAS PROCEEDINGS
MISCELLANEOUS**

SUFFICIENCY OF THE EVIDENCE

People v. Manuel Trujillo (S130080)

Staff attorney: Michael Kresser

Date: December 11, 2006

Appellant had a prior juvenile adjudication for domestic violence and a violation of Penal Code section 245. After he entered his admission to the crimes, he told the probation officer he used a deadly weapon. In the current case, he had a court trial on whether the prior convictions were strikes, and the judge found they were not. The prosecution filed a notice of appeal, arguing that appellant's admission in the probation report that he used a deadly weapon made them strikes. The Supreme Court held the prosecution had legal authority to appeal but a probation report prepared after the entry of the plea was not part of the "record of conviction." Since there was insufficient evidence in the record of conviction, the priors were not strikes.

People v. Homero Villalobos and Miguel Maltos (H028703)

Panel attorneys: Mark Farbman and Solomon Wollack

Date: December 5, 2006

A jury convicted appellants of four counts of attempted murder, as well as shooting into an occupied vehicle. It found true weapon and gang enhancements, and both were sentenced to serve 125 years to life in prison. The court of appeal held the trial court prejudicially erred in excluding evidence proffered by Maltos that Villalobos admitted to his brother he was the shooter and Maltos was simply present and not necessary aware of Villalobos's intentions. Further, there insufficient evidence to support the gang enhancement. Although the prosecution presented evidence of two predicate crimes, it failed to show that the culprits of those crimes were from the same gang as appellant's. (Staff attorney William Robinson)

People v. Kenneth Franco (H030090)

Panel attorney: Julie Schumer

Date: October 25, 2006

Appellant convicted of three counts of armed robbery and received a sentence of 41 years 8 months because he suffered a prior robbery conviction in Texas. The court of appeal agreed that there was insufficient evidence the Texas case constituted a prior strike conviction or prior

serious felony conviction. (Staff attorney Lori Quick)

People v. George Casillas (H029128)

Panel attorney: Patricia Watkins

Date: October 11, 2006

A jury convicted appellant of felony false imprisonment by force, assault and two counts of misdemeanor sexual battery. The court of appeal decided there was insufficient evidence for the felony false imprisonment conviction and the assault conviction must be dismissed because it was a lesser included offense of the battery. (Staff attorney Jonathan Grossman)

In re Terrence R. (H029228)

Panel attorney: Keith Sugar

Date: August 29, 2006

Appellant was found to possess a burglary tool, among other things. The evidence was that he stole a car and used a key. There was no evidence the key was a master key or altered, but the victim possessed all of his keys. The court of appeal held there was insufficient evidence the key used fell within the definition of Penal Code section 466. (Staff attorney Jonathan Grossman)

People v. Leonardo Blancarte (H026676)

Staff attorney: William Robinson

People v. Ramon Landin

Panel attorney: Katarzyna Kozak

Date: August 2, 2006

Blancarte, Landin, and Victor Palacios saw Miguel and Jose Garcia walking down the street appearing as Surenos while Landin and Palacios identified with Nortenos. Landin called them scraps. Landin had a gun and demanded money. When Jose put his hand in his pocket when Landin yelled Jose had a gun. He then hit him in the head with his own gun. Moments later, Blancarte arrived with a gun and joined in kicking Jose. During the melee, Jose was shot. Palacios pled before trial. Landin said he only had a starter pistol. Blancarte said he ran to the melee when he heard Landin yell Jose had a gun. It appeared Jose was reaching for a gun, so Blancarte hit him with his gun and it accidentally fired. A jury convicted Blancarte and Landin of attempted premeditated murder, robbery, attempted robbery, and felony assault with gang, gun use and great bodily injury enhancements. They were sentenced to serve 40 years to life consecutive to about 25 years. The court of appeal reversed. It held there was insufficient evidence Blancarte aided or abetted in a robbery or attempted robbery. Because there was insufficient evidence Blancarte was guilty of robbery, there was insufficient evidence Landin was culpable of vicariously using a firearm in a robbery. The conviction for murder was

reversed because the court failed to instruct on imperfect self-defense and defense of others. The conviction for felony assault must be reversed because of instructional error defining the crime. Finally, the court erred in denying the defendants access to confidential information concerning the jurors' identities to investigate reported misconduct.

In re Hoang N. (H029108)
Panel attorney: David Burnett
Date: June 9, 2006

A juvenile male was tampering with a soda vending machine, apparently getting change for nothing. A car with youths was parked outside. One of them appeared to be a lookout and appeared surprised when she was the reporting witness. Appellant was one of the passengers but did nothing during the incident of interest. There was a large amount of quarters in the car, and appellant said that the other people in the car were collecting them or obtaining them for change. The juvenile court found her culpable of petty theft as an aider and abettor. The court of appeal held there was insufficient evidence. Appellant did nothing to indicate she aided or abetted; mere presence and association were not enough. (Staff attorney William Robinson)

In re Jose S. (H029039)
Staff attorney: Lori Quick
Date: March 7, 2006

When a police officer approached appellant, he ran. After being caught, he was charged with resisting arrest. (Pen Code, § 148.) The court of appeal agreed there was insufficient evidence because there was insufficient evidence he was detained by the officer. Since it appeared there was only a consensual encounter, appellant had the right to leave.

PRETRIAL AND POSTTRIAL MOTIONS

People v. Larry Sherman (H028702)
Panel attorney: Rudy Kraft
Date: August 22, 2006

Appellant was sitting in a pickup parked in a shopping center parking lot, apparently looking at women. He did not track the officers' movements. The officers were suspicious that he might be masturbating and thus committing indecent exposure. When the two officers approached him, they found him with drugs and paraphernalia. Appellant moved to suppress evidence, stating that he was illegally detained. The prosecution argued there was reasonable suspicion because a person sitting alone in a pickup in a shopping mall was suspicious. The court of appeal agreed with appellant that there was insufficient grounds for believing someone sitting in a vehicle in a shopping mall parking lot was doing anything illegal. (Staff attorney Michael Kresser)

People v. Selvin Garcia (H029473)
Panel attorney: Michael Thorman
Date: July 11, 2006

Appellant was in a traffic stop which dragged on for about a half hour as law enforcement tried to obtain information about him and his companions from the dispatcher. The court of appeal agreed that the detention was unlawfully prolonged and the evidence obtained consequently should have been suppressed. (Staff attorney William Robinson)

People v. Jeffrey Rodriguez (H027433)
Panel attorney: Irma Castillo
Date: June 14, 2006

Appellant was charged with robbery. The main issue was identity. The first trial ended in a mistrial with the jury favoring acquittal 11 to 1. At the time of retrial, the family ran out of money, and retained trial counsel failed to present a defense. Appellant was convicted and sentenced to serve 25 years to life in prison. The court of appeal held trial counsel was ineffective. His decision not to present the identification expert and the alibi witnesses who testified at the first trial left the defendant without a defense. Further, counsel failed to present evidence that appellant had \$200 and other property which would have showed a lack of motive to commit the robbery. And trial counsel inexplicably elicited evidence that appellant was on parole. (Staff attorney Lori Quick)

People v. Cristobal Gonzales (H029057)
Panel attorney: Robert Derham
Date: March 24, 2006

After pleading, appellant filed a motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. The trial court refused to consider the motion. The court of appeal reversed and remanded the matter for a *Marsden* hearing. (Staff attorney Paul Couenhoven)

People v. Julio Guzman (H028326)
Appellate attorney: Daniel Barton
Date: March 16, 2006

The court of appeal held that when older charges are brought after the preliminary hearing more than a year after the victim reported to law enforcement being victimized, the new charges may be beyond the statute of limitations.

People v. David Beeson (H027242)
Panel attorney: Deanna Lamb

Date: March 2, 2006

Appellant was adjudicated committed as insane. At the hearing to extend his commitment, trial counsel moved to dismiss the proceeding on the ground that appellant never personally entered a plea of not guilty by reason of insanity in the earlier proceeding and was never advised of his constitutional rights before the plea was entered. The court of appeal agreed this constituted a jurisdictional defect and ordered the original commitment be vacated. (Staff attorney Jonathan Grossman)

People v. Martin Salcido (H028802)

Staff attorney: Michael Kresser

Date: February 16, 2006

After sentencing, appellant filed a motion to reduce his restitution fine from \$10,000 to \$200. The clerk concluded the court lacked jurisdiction. He appealed the implied denial of his motion. The court of appeal agreed the superior court had jurisdiction and remanded the matter.

People v. John Heard (H027023)

Panel attorney: Julie Schumer

Date: February 14, 2006

Appellant claimed on appeal he requested a Marsden hearing at the sentencing hearing. The court of appeal held it was not clear he did request the hearing, but it remanded the matter to the superior court to determine if a hearing was requested. If so, it was required to hold a Marsden hearing upon remand and to reinstate the sentence if the motion is denied. (Staff attorney Dallas Sacher)

People v. Charles Fordjour (H027293)

Staff attorney: Paul Couenhoven

Date: February 9, 2006

Appellant, represented by retained counsel was charged with fraud in 1976. He was not prosecuted until 1996 where retained counsel continued to represent him. In 1996, he pled guilty. After that, he was held in custody in Arizona until 2004. In 2004, he appeared in Santa Clara County with retained counsel and asked the court to appoint counsel to investigate a motion to withdraw his plea. The public defender was appointed, but no motion was prepared. At sentencing, appellant moved for a Marsden hearing and to represent himself. The court ignored the requests and sentenced him to prison. The court of appeal held that the failure to hold a Faretta hearing or a Marsden hearing concerning the representation by the public defender required reversal. The superior court was required to hold the hearings hearing upon remand and to reinstate the sentence if the motions are denied.

People v. Rudolpho Miramontes (H024323)

Panel attorney: Alan Siraco

Date: January 3, 2006

The trial court denied appellant's *Pitchess* motion on the ground that trial counsel failed to provide a specific factual scenario establishing good cause. The Supreme Court has said that this standard was too high. The court of appeal remanded the matter for a new hearing on the motion. It also ordered that the punishment for one of the counts be stayed. (Staff attorney William Robinson)

ERROR AT TRIAL OR HEARING

People v. David Crockett (H029598)

Staff attorney: Paul Couenhoven

Date: December 29, 2006

Appellant pled guilty to reckless evasion and resisting arrest. When the court indicated at sentencing that it would impose a prison term, appellant asked to withdraw his plea. The court indicated he could make his motion at a later date. The court of appeal held that the failure of the trial court to consider the motion to withdraw plea was error which can be raised without a certificate of probable cause. It remanded the matter for a hearing on the motion.

People v. Garcia (H028358)

Panel attorney: J. Frank McCabe

Date: December 28, 2006

Appellant was accused of molesting two girls. During a custodial interrogation, the police promised leniency if he confessed. The trial court excluded the confession as coerced. During the interrogation, appellant agreed to write a letter of apology to the victims. The trial court admitted the letter. Appellant was convicted and sentenced under the multiple victims provision of the One Strike law to 160 years to life in prison. The court of appeal found the letter of apology was part of the same coerced confession. Although error was harmless as to one of the girls, the conviction as to the other girl and the One Strike findings were reversed. (Staff attorney Jonathan Grossman)

People v. Valencia (H029730)

Staff attorney: Dallas Sacher

Date: December 26, 2006

Appellant was accused of molesting his sisters. After the girls were removed by CPS, he went to the police station to be interviewed. The police officers told appellant that the girls could not be returned unless they knew the truth and suggested he would not get in trouble. In a published

decision, the court of appeal held that retained counsel was ineffective for not moving to exclude the statements. Trial counsel was also ineffective for failing to exclude a statement by a witness that she heard the molestations had been occurring for a while.

In re James M. (H030160)
Panel attorney: Mikol Benjacob
Date: December 22, 2006

At 1 a.m., appellant and a friend were walking down a sidewalk. Because they appeared underaged, an officer stopped them for suspicion of violating the curfew ordinance. The officer instructed them to sit on a curb. Because appellant was a documented gang member and wore baggy clothes, he was told he would be patted down. The officer asked him if he had any weapons, and he pulled out a knife. The juvenile court denied a motion to suppress evidence and he later admitted possessing a concealed dirk or dagger. The court of appeal reversed the denial of the suppression motion. There was no reasonable suspicion appellant might be armed to justify a pat down search. Although he voluntarily disclosed the possession of the knife when asked, it was only after he was told he was going to be patted down. (Staff attorney William Robinson)

People v. Sean Hammond (H028901)
Panel attorney: Stacy Saetta
Date: December 5, 2006

Appellant was standing near a bust stop without boarding any buses. He sometimes talked to people who were taking the bus. Because the area was known for drug activity, the officer observing all this believed he selling drugs. The officer stopped next to appellant, which prompted appellant to board the bus. He got off at the next stop and entered a Western Union shop; the officer followed him. As appellant about to leave the store, the officer engaged him in conversation. He learned appellant was on probation for drug sales. The officer saw appellant apparently had something in his mouth. The officer administered a choke hold until appellant spitted out six pieces of rock cocaine. In a split decision, the court of appeal held there was a detention, not a consensual encounter because the officer was following appellant, making it clear he was not free to go about his business. But there was not reasonable suspicion. The officer did not see any hand-to-hand sales or any conduct resembling a drug transaction.

People v. Phillip Russell (H029753)
Panel attorney: Laura Pedicini
Date: November 21, 2006

Appellant was convicted of receiving a stolen motor vehicle when he assumed possession of a motorcycle. He said he thought the motorcycle was abandoned, but the court refused to instruct the jury on the theory of mistake of fact. In a published decision, the court of appeal reversed,

stating the trial court deprived appellant of the right to present a defense. (Staff attorney Vicki Firstman)

Jose G. Lopez Garcia v. Superior Court (H030523)

Panel attorney: Jean Matulis

Date: November 15, 2006

Garcia was found incompetent and committed to a state hospital. The court authorized the administration of involuntary medication. He argued that the order did not comply with constitutional and statutory requirements. The prosecution did not contest the contention. The court of appeal issued a writ of mandate directing the superior court to vacate its order authorizing involuntary medication. (Staff attorney William Robinson)

People v. Ojeda (H029199)

Staff attorney: Lori Quick

Date: November 9, 2006

Appellant's daughter made allegations to the police and at the preliminary hearing that appellant molested her. At trial, she recanted and said the allegations were fabricated. After the jury convicted him, he moved for a new trial based on newly discovered evidence that she had recanted to law enforcement officers as early as a month after the initial report to the police. The trial court denied the motion. The court of appeal reversed, stating the evidence was important in showing the victim's recantation was not a recent decision.

People v. Sterling Brown (H029123)

Panel attorney: Mark Farbman

Date: November 8, 2006

Appellant was charged with making criminal threats, false imprisonment, rape, and forcible oral copulation. After a jury convicted him, the court of appeal reversed. At retrial, the court excluded evidence of appellant's criminal history or parole status. Nonetheless, when the complaining witness testified, she mentioned him just being released from prison when the alleged crimes occurred. Although the court limited the evidence for the jury's consideration, it denied appellant's motion for a mistrial. The court of appeal reversed, stating the evidence was too prejudicial. (Staff attorney William Robinson)

People v. Larry Brown (H028963)

Panel attorney: Gary Cooks

Date: November 1, 2006

Appellant was convicted of residential burglary, two counts of false imprisonment by force, threatening a witness, making criminal threats, disobeying a court order, and two counts of battery on a cohabitant. The court of appeal agreed that, under the circumstances of the case, the failure to instruct on the lesser included offense of misdemeanor non-forcible false imprisonment was prejudicial error. (Staff attorney Jonathan Grossman)

People v. Roger Mentch (H028783)

Panel attorney: Joseph Bochner

Date: October 18, 2006

Appellant was accused of selling marijuana. It was undisputed that he had the right to use marijuana for his own medical use. He admitted selling some to others who had a right to use medical marijuana. The proceeds from the sales were to cover the costs of producing the marijuana for them. In a published decision, the court of appeal held that Proposition 215 and the statutory framework enacted since then permits someone to cultivate marijuana and give to others for medical purposes while accepting money for actual expenses for cultivating the marijuana. (Staff attorney Dallas Sacher)

People v. Melvin Simmons (H026450)

Panel attorney: Rudy Kraft

Date: September 22, 2006

In a published decision, the court of appeal reversed the conviction of a prisoner convicted of a committing a crime while in prison because he was tried in prison garb and shackles without an individualized showing of need. (Panel attorney Vicki Firstsman)

People v. Nader Sabouri (H0297547)

Panel attorney: Rachel Lederman

Date: September 14, 2006

Appellant was convicted of passing bad checks on placed on probation. He was subsequently deported. His probation was violated for failing to pay restitution. When he re-entered the United States, he was arrested, found to be in violation of probation, and sentenced to prison. The court of appeal reversed, stating there was insufficient evidence appellant was told how to pay the restitution since he was deported before seeing the probation officer. Since there was no willful violation of probation, the order sentencing him to prison was invalid. (Staff attorney Dallas Sacher).

People v. Jaime Jasso (H028593)

Panel attorney: Ruth McVeigh

Date: September 12, 2006

Appellant was a prisoner accused of conspiring to import drugs into the prison. In a published opinion, the court reversed on appeal because the trial court failed to properly instruct on conspiracy. (Staff attorney Lori Quick)

People v. Leonardo Blancarte (H026676)

Staff attorney: William Robinson

People v. Ramon Landin

Panel attorney: Katarzyna Kozak

Date: August 2, 2006

Blancarte, Landin, and Victor Palacios saw Miguel and Jose Garcia walking down the street appearing as Surenos while Landin and Palacios identified with Nortenos. Landin called them scraps. Landin had a gun and demanded money. When Jose put his hand in his pocket when Landin yelled Jose had a gun. He then hit him in the head with his own gun. Moments later, Blancarte arrived with a gun and joined in kicking Jose. During the melee, Jose was shot. Palacios pled before trial. Landin said he only had a starter pistol. Blancarte said he ran to the melee when he heard Landin yell Jose had a gun. It appeared Jose was reaching for a gun, so Blancarte hit him with his gun and it accidentally fired. A jury convicted Blancarte and Landin of attempted premeditated murder, robbery, attempted robbery, and felony assault with gang, gun use and great bodily injury enhancements. They were sentenced to serve 40 years to life consecutive to about 25 years. The court of appeal reversed. It held there was insufficient evidence Blancarte aided or abetted in a robbery or attempted robbery. Because there was insufficient evidence Blancarte was guilty of robbery, there was insufficient evidence Landin was culpable of vicariously using a firearm in a robbery. The conviction for murder was reversed because the court failed to instruct on imperfect self-defense and defense of others. The conviction for felony assault must be reversed because of instructional error defining the crime. Finally, the court erred in denying the defendants access to confidential information concerning the jurors' identities to investigate reported misconduct.

People v. Joel Rubio (H028213)

Panel attorney: Janice Brickley and Robert Derham

Date: August 1, 2006

A juror indicated at trial she could not hear well. Although some effort was made to assist her, she failed to assert herself when she could not hear some of the proceeding, and she stated in a questionnaire after the trial that she did not hear much of the trial. During a hearing, she stated she heard some of the people in the courtroom, but she had difficulty with others. Nonetheless, the court denied appellant's motion for a new trial. In a published decision, the court of appeal reversed, holding the defendant was not lawfully convicted by a unanimous verdict from twelve jurors. (Staff attorney Lori Quick)

People v. Sergio Ortiz (H028786)
Panel attorney: J. Frank McCabe
Date: August 1, 2006

The court of appeal reversed the conviction for one of the counts because appellant was not permitted to cross-examine one of the prosecution witnesses about a prior theft and past lies. (Staff attorney Dallas Sacher)

People v. Aranda (H028745)
Panel attorney: Richard Boire
Date: July 26, 2006

Appellant was accused of failing to register. He said he suffered a stroke and could not remember to register, so there was no willful failure to register. He requested that the court appoint an expert who could review his medical records and assist in any viable medical defense, but the court denied the request. The court also excluded the medical records at trial. The prosecution stressed at trial the lack of corroboration of his medical condition and the lack of evidence that his alleged medical condition could have affected his memory. After the jury found him guilty, he was sentenced to serve life in prison. The court of appeal reversed, finding the court should have provided the expert. (Staff attorney William Robinson)

People v. Rubi Garcia (H028474)
Panel Attorney: Larry Gibbs
Date: July 6, 2006

Appellant was convicted of first degree murder. The court of appeal reversed because of the trial court's failure to sever the trial from the codefendant who was allowed to introduce gang evidence and expert testimony to argue that it was appellant rather than he who fired the gun. (Staff attorney Dallas Sacher)

People v. Gary Bergman (H028517)
Panel attorney: David Martin
Date: June 22, 2006

Appellant was convicted of grand theft and placed on probation in 1994 for five years with the condition that he pay more than \$100,000 in victim restitution. In 1999, his probation was revoked and reinstated with the term of probation extended five years to permit him to continue paying victim restitution, though there was never a finding he willfully violated the terms of probation. The court revoked probation in 2005 because money was still owing. Appellant was remanded, and although he eventually paid all of the restitution, he was sentenced to prison. The court of appeal held that since there was never a willful violation of probation, the trial court lacked

the authority in 1999 to extend it beyond its statutory maximum period of time. Thus, the court did not have jurisdiction to revoke probation in 2005. (Staff attorney Dallas Sacher)

People v. Dariel Shazier (H028674)

Panel attorney: Alex Green

Date: May 8, 2006

The court of appeal reversed an SVP commitment in a published decision based on prosecutorial misconduct. The court granted two in limine motions to exclude from the jury the result of a jury's finding to that the petition was true. The prosecution argued in closing argument that it is not supposed to consider what would happen if it returned a verdict, but do not become sympathetic for the defendant because of his description of the treatment received at Atascadero State Hospital. The court agreed the argument was a calculated effort to tell the jury that appellant would benefit from a finding that the petition was true. (Dallas Sacher)

People v. Nasir Mohamud (H028773)

Panel attorney: William Mount

Date: April 10, 2006

Appellant was placed on three years probation on December 10, 1996 on condition that he serve some time in jail and report to the probation officer within three days of his release, among other things. When his jail sentence was over in 1997, he was deported. His probation was summarily revoked on February 5, 1998 on the allegation that he was released to the Immigration Services and deported. On December 26, 2004, he was arrested in San Jose, and it was later alleged he violated the conditions of probation by failing to contact the probation officer, failing to do a drug program, and failure to pay fines and fees. After a contested hearing, the court found him in violation and sentenced him to prison. The court of appeal reversed. His deportation was not grounds for revoking probation because it was an involuntary act. Besides, this was not the grounds the trial court eventually relied on. Since the grounds for revoking his probation was invalid, and probation otherwise terminated before the new allegations were filed, the court lacked jurisdiction to revoke probation. (Staff attorney Dallas Sacher)

In re Fernando R. (H028851)

Staff attorney: Paul Couenhoven

Date: March 1, 2006

In a published decision, the court of appeal held that statements provided by witnesses to officers at the crime scene were testimonial and should not have been admitted under *Crawford v. Washington*.

People v. Lavern Sykes (H027398)
Panel attorney: Jeffrey Schafer
Date: February 23, 2006

After jury trial, appellant was committed under the SVP Act. On appeal, he complained the instruction on reasonable doubt was weakened when the judge used every day events as examples. The court of appeal agreed that under settled law reversal was required. (Staff attorney Lori Quick)

People v. Jose Martinez (H028606)
Staff attorney: Lori Quick
Date: February 9, 2006

The court placed appellant on probation. In 2004, appellant's probation was summarily revoked. He denied the violation of probation, and the court sentenced him to prison. The court of appeal held the revocation of probation without a hearing or admission violated due process.

People v. Sean Allen (H027835)
Staff attorney: Michael Kresser
Date: February 6, 2006

Appellant was committed as a mentally disabled offender (MDO). After his commitment ended, the district attorney's office filed a petition to extend the commitment. The court of appeal held in a published decision that the superior court lacked jurisdiction to extend a commitment that had already expired.

People v. Anthony Roberts (H028135)
Panel attorney: Mark Greenberg
Date: January 20, 2006

After a trial, appellant was sentenced under the Three Strikes Law. One of the alleged strikes was a prior conviction in New York for robbery which was proven simply by evidence of the plea and the indictment. Since New York law did not recognize claim of right as a defense, its definition of robbery was broader than it is in California. The court of appeal reversed the finding and remanded the matter for a new trial on the prior conviction. (Staff attorney Vicki Firstman)

SENTENCING

People v. Jose Trevino (H029308)
Panel attorney: Walter Pyle
Date: December 29, 2006

Appellant was convicted of violent felonies occurring between 1988 and 1992. The court limited his conduct credits to 15 percent of his presentence credits. The court of appeal decided this was error because Penal Code section 2933.1 was enacted in 1994 and could not retroactively reduce conduct credits. (Staff attorney Lori Quick)

People v. Rito Avila (H029671)
Panel attorney: Douglas Kane
Date: December 20, 2006

Appellant was convicted of two counts of assault with a deadly weapon and two felony counts of false imprisonment involving two different victims. The court of appeal agreed that one of the false imprisonment counts should have been stayed pursuant to Penal Code section 654. As a result, the trial court incorrectly calculated the amount of the restitution and restitution fines. (Staff attorney Dallas Sacher)

People v. Andrew Johnson (H029362)
Panel attorney: Syda Kofosky
Date: December 19, 2006

Appellant was sentenced to prison and ordered to pay \$500 in attorney fees. The court of appeal agreed there was insufficient evidence of an ability to pay. (Staff attorney Paul Couenhoven)

People v. Eddie Streeter (H029619)
Panel attorney: Carlo Andreani
Date: December 15, 2006

Appellant was convicted of various crimes, including dissuading a witness. After a successful appeal on the sentence, the matter was remanded for a new sentencing hearing which resulted in this appeal. Among other things, the trial court imposed a restraining order under Penal Code section 136.2, subdivision (a)(4). However, this provision applies only while the prosecution is pending. Consequently, the criminal court's restraining order was vacated. Finally, the court of appeal ordered that appellant receive presentence conduct credits for the time after the remand but before the new sentencing date. (Staff attorney William Robinson)

People v. Edgar Ayala (H029822)
Staff attorney: Lori Quick
Date: December 11, 2006

Appellant was placed on probation and assessed a \$200 restitution fine. When his probation was revoked, the court imposed a new \$800 restitution fine. Because the new restitution fine was

unauthorized, it was reduced to the original \$200.

People v. Jorge Ayala (H029727)
Staff attorney: William Robinson
Date: December 11, 2006

Appellant was arrested for a crime in Santa Clara County and then was released on bail. He failed to appear for court, and he was subsequently arrested for a new crime in Merced County. In Merced County, he sought to be released on bail but the hold out of Santa Clara County prevented this. He subsequently pled in Merced County for a two years sentence. He was then transported to Santa Clara County where he was convicted. By the time he was sentenced, he had finished his sentence Merced County sentence. The court of appeal agreed that appellant was entitled to presentence credits for the time he spent in the Merced County Jail. It held that because appellant sought a release on bail in Merced County, he would have been released but for the Santa Clara County hold. Thus, under Penal Code section 2900.5, he was entitled to presentence credits. Although he would not receive presentence credits if he received a consecutive sentence, he did not. By the time he was sentenced in Santa Clara County, the Merced County sentence was over.

People v. Judy Spotswood (H030118)
Panel attorney: Rudy Kraft
Date: December 11, 2006

The court of appeal agreed that a probation supervision fee cannot be a condition of probation. (Staff attorney Lori Quick)

People v. Jerry Patlan (H029723)
Panel attorney: Gary Crooks
Date: November 30, 2006

Patlan's conviction was reversed in a previous appeal. On remand, he pled no contest to certain charges. The trial court increased his restitution fine from \$200 to \$1800. The court of appeal agreed this amounted to increasing punishment after appeal, which is prohibited under state law. Further, appellant was entitled to an additional 18 days of conduct credits. (Staff attorney Jonathan Grossman)

People v. Timothy Miller (H029672)
Staff attorney: Lori Quick
Date: November 28, 2006

At sentencing, the court stated that it was required to impose the upper term in order for it

to be the principal term. In a published decision, the court of appeal reversed because the trial court was mistaken about the scope of its discretion.

People v. Frank Soto (H029486)
Staff attorney: Michael Kresser
Date: November 17, 2006

Appellant was convicted of transporting methamphetamine in count one, possessing methamphetamine in count two, using a false compartment in a car for drugs in count three, and possessing a firearm in count four. He was also convicted for a second event: transporting methamphetamine in count five, possessing it for sale in count six, and using a false compartment in count seven. The court of appeal agreed that using a false compartment was the same act as possessing meth for sale and transporting it. Therefore, counts three, five, and six must be stayed, reducing appellant's sentence by 16 months.

People v. Tom Perruso (H028232)
Panel attorney: Jill Kent
Date: November 14, 2006

The probation office recommended a 14 year sentence and a restitution fine of \$2800. The court decided to sentence appellant to 10 years and imposed a restitution fine according to the formula under Penal Code section 1202.4. However, it set the amount at \$2800. The court of appeal reduced the restitution fine to \$2000. (Staff attorney Jonathan Grossman)

People v. Molea (H028577)
Panel attorney: Gordon Brownell
Date: November 2, 2006

Appellant was convicted of violent crimes occurring in 1993-1996. Although conduct credits would be limited to 15 percent of the sentence had the crimes occurred after 1994, it was not clear this was the case. Consequently, the court of appeal held the defendant was entitled to full conduct credits. (Staff attorney Vicki Firstman)

People v. Juan Pimental (H029533)
Staff attorney: William Robinson
Date: September 28, 2006

Appellant was placed on probation and assessed a \$200 restitution fine. When probation was later revoked, the court imposed a \$3000 restitution fine. The court of appeal decided that once the amount of the restitution fine is set, it cannot be changed upon a subsequent revocation of probation.

The amount was reduced to the original \$200. Further, appellant was entitled to additional presentence credits. The court held that appellant did not waive his presentence credits at an earlier violation of probation hearing and that the time in custody was attributed to this case, not on another case that was later dismissed.

People v. Ceferino Curenio (H029398)

Staff attorney: Vicki Firstman

Date: August 30, 2006

There was insufficient evidence appellant had the ability to pay attorney fees, as ordered by the superior court.

People v. Walter Johnson (H029216)

Panel attorney: William Mount

Date: August 21, 2006

Appellant was convicted of carjacking and attempted robbery. The court of appeal agreed that the conviction for attempted robbery must be stayed pursuant to Penal Code section 654. Also, the trial court imposed a \$10 fine plus penalty assessments. The minute order states there were \$22.50 in penalty assessments. The matter was remanded to the trial court to explain the proper amount of the penalty assessments. (Staff attorney Lori Quick)

People v. Craig Stuller

Panel attorney: Frederick Schnider

Date: August 18, 2006

Appellant was convicted of burglary, attempted robbery, two counts of grand theft, and battery when he entered a building, took some items, and tried to take another item when he was confronted by a third victim. The court of appeal agreed he could be convicted of only one count of grand theft from a single episode. (Staff attorney Dallas Sacher)

People v. David Gonzalez (H029020)

Panel attorney: Carlo Andreani

Date: August 11, 2006

The sentence was reduced by eight months because the trial court imposed a full consecutive term for an enhancement to a subordinate term. The court of appeal also argued that a concurrent term be stayed pursuant to Penal Code section 654, stating that the Attorney General's theory for why section 654 did not apply contradicted the prosecution's theory at trial. (Staff attorney Vicki Firstman)

People v. Morris Foster (H028837)
Panel attorney: Rudolph Kraft
Date: August 2, 2006

Appellant was convicted of transporting narcotics and also suffered a parole revocation which was based on the facts related to the new offense, failing to follow reporting instructions, and frequenting areas of drug-related activity. The probation officer reported appellant was not entitled to presentence credits because the parole revocation was not based solely on the new offense. Appellant objected, stating it was not clear what failing to follow reporting instructions were. The court refused to hold an evidentiary hearing, in part because appellant had the right to pursue administrative appeals. In a published decision, the court of appeal reversed. Since administrative appeals were eliminated for parole revocations, the court had a duty to resolve the dispute. (Staff attorney Dallas Sacher)

In re Joel B. (H029277)
Staff attorney: Lori Quick
Date: July 27, 2006

Appellant was found to have assaulted another. As a condition of probation, he was told to stay away from the victim and his family. The court of appeal agreed that the probation condition was unconstitutionally vague for not requiring knowledge.

People v. Eric Brown (H029220)
Panel attorney: Emry Allen
Date: July 27, 2006

Appellant was placed on probation on condition that he not associate with people who traffic drugs or who are on probation or parole. The court of appeal modified the conditions of probation to require knowledge. (Staff attorney Dallas Sacher)

People v. Jose Audon (H028287)
Panel attorney: Danalynn Pritz
Date: July 11, 2006

The court of appeal agreed there was insufficient evidence appellant had the ability to pay attorney fees. (Staff attorney William Robinson)

In re Kashif H. (H029585)
Panel Attorney: R. Charles Johnson

Date: July 10, 2006

Appellant was placed on probation and ordered, among other things, to pay a \$125 fine pursuant to Welfare and Institutions Code section 730.5. However, the statute requires a finding of an ability to pay. The court of appeal agreed there was insufficient evidence for such a finding. (Staff attorney Michael Kresser)

People v. Leon Jordan (H029487)

Panel attorney: John Schuck

Date: July 11, 2006

Appellant agreed to waive his right to a jury trial with the agreement that he would serve no more than 15 years in prison. After a court trial, he was found guilty of the charges. To arrive at a 15 year sentence, the trial court dismissed a five year prior. In a published decision, the court of appeal held that appellant could contend that dismissal of the five year prior constituted an illegal sentence and that this challenge did not contest the validity of any plea. The matter was remanded for a new sentencing hearing. (Staff attorney Lori Quick)

People v. John Ryan (H028126)

Panel attorney: Gayathri Murthy

Date: June 19, 2006

The court of appeal agreed to strike the award for attorney fees because there was insufficient evidence that appellant, sentenced to prison, had the ability to pay. It also agreed that a concurrent sentence should have been stayed under Penal Code section 654. (Staff attorney Dallas Sacher)

In re Matthew S. (H029465)

Staff attorney: Lori Quick

Date: June 13, 2006

Although the court ordered victim restitution to a certain victim, the minute order listed additional restitution to second victim as well. The court of appeal ruled the addition in the minute order was not valid and ordered it be stricken.

People v. Minh Bui (H028395)

Panel attorney: Tara Morrissey

Date: June 12, 2006

There was insufficient evidence for the assessment of attorney fees when the appellant was sentenced to prison. Further, the criminal lab fees of \$300 and \$100 must be reduced to a total of

\$50. A lab fee of \$300 for a conviction is unauthorized since the statute permits only \$50 per conviction. Although there were two drug convictions, the punishment for one of them was stayed pursuant to Penal Code section 654. Since the lab fee constitutes punishment, the total lab fee must be reduced to \$50. (Staff attorney Paul Couenhoven)

People v. Martha Castro (H029050)

Panel attorney: Hilda Scheib

Date: May 30, 2006

The superior court found appellant was in violation of her probation and reinstated probation on condition that she pay attorney fees and probation costs. The court of appeal held there was insufficient evidence of an ability to pay and the costs could not be made a condition of probation. (Staff attorney Jonathan Grossman)

In re David S. (H029262)

Panel attorney: Laura Pedicini

Date: May 24, 2006

The court of appeal modified a condition of probation to stay away from gang members to require knowledge. (Staff attorney Michael Kresser)

People v. Antonio Coronado (H028110)

Panel attorney: Alan Stern

Date: May 23, 2006

The court of appeal agreed to stay the punishment that had been imposed consecutively. (Staff attorney Jonathan Grossman)

People v. Frank Neal (H028822)

Staff attorney: Paul Couenhoven

Date: May 19, 2006

Appellant was convicted of unlawful intercourse and oral copulation with a 16 year-old. The court believed it was compelled to order him to register for the oral copulation conviction. In light of the decision in People v. Hofsheier (2006) 37 Cal.4th 1185, the court of appeal remanded the matter for a new sentencing hearing.

People v. Phomphachanh

Staff attorney: Jonathan Grossman

Date: May 16, 2006

A jury convicted appellant of commercial burglary and petty theft from the same store. The court imposed a prison sentence for the commercial burglary and 141 days for the petty theft with 141 days credit for time served. The court of appeal agreed that the punishment for the petty theft should have been stayed pursuant to Penal Code section 654 and the presentence credits should have been credited to the prison sentence.

People v. Danian Smith (H028226)
Panel attorney: J. Courtney Shevelson
Date: May 9, 2006

The court sentenced appellant to serve 25 years to life in prison and set the amount of restitution fine to be \$50,000. The court of appeal reduced the fine to the statutory maximum of \$10,000. (Staff attorney William Robinson)

People v. Juan Gutierrez (H029490)
Staff attorney: Jonathan Grossman
Date: May 3, 2006

Appellant was convicted of failing to register. The trial court imposed a \$200 fine pursuant to Penal Code section 290.3. That statute provides for a fine for each conviction of an offense described in section 290. The court of appeal agreed that the fine applied only for crimes for which the defendant must register under section 290, not for failing to register itself.

People v. David Thimmes (H028897)
Panel attorney: Gloria Cohen
Date: April 26, 2006

Appellant was convicted of possessing a small amount of cocaine. He was 52 years old. His prior strike conviction was a violation of Penal Code section 422 in 1999. He threatened his estranged wife when they were divorcing after nearly 20 years of marriage. He had borderline intelligence and schizophrenia which caused him particular difficulties in custody. At the sentencing hearing, appellant requested the court to dismiss the prior strike conviction. The trial court said it was a close call and sentenced him to serve 32 months in prison. The trial court said a determinative factor in denying the motion was that appellant was told in 1999 the consequences of suffering a strike conviction. In fact, in 1999 a violation of section 422 was not a strike. In a published decision, the court of appeal held trial counsel was ineffective for not objecting to this erroneous factor in denying the motion. (Staff attorney Dallas Sacher)

People v. Lisa Hernandez (H029033)
Panel attorney: Heather McKay
Date: April 26, 2006

Appellant was placed on probation and ordered to pay probation supervision fees of \$42 per month. Appellant later admitted a violation of probation for, among other things, not paying the probation supervision fees. The court placed her back on probation and ordered that she now pay \$75 per month in probation supervision fees. The court of appeal reversed the order for increased probation supervision fees, holding the trial court did not comply with the requirements of Penal Code 1203.1b and there was insufficient evidence of an ability to pay. (Staff attorney Dallas Sacher)

People v. Rodney Anderson (H028719)
Panel attorney: Erik Babcock
Date: April 21, 2006

The trial court erred in not recalculating presentence credits when the case was remanded for a new sentencing hearing. (Staff attorney William Robinson)

People v. Charles Hardick (H028778)
Staff attorney: Lori Quick
Date: April 14, 2006

Appellant was ordered to pay victim restitution because the victim was acting out in class, resulting in a new school and counseling. The court of appeal reversed the order because the victim had problems before the crime and the trial court failed to ascertain what portion of the counseling expense was attributable to the crime.

People v. Jason Mackins (H029042)
Staff attorney: Lori Quick
Date: March 24, 2006

The court of appeal agreed that the trial court could not make the court security fee, attorney fee, booking fee, and probation supervision fee conditions of probation.

People v. Jimmy Dodson (H029536)
Staff attorney: Lori Quick
Date: March 24, 2006

Appellant was sentenced to prison and ordered to pay \$300 in attorney fees. The court of appeal agreed there was insufficient evidence of an ability to pay and held that the correct remedy

is simply to strike the requirement.

In re Steven L. (H028321)
Staff attorney: Jonathan Grossman
Date: March 24, 2006

The court of appeal remanded the matter for a new dispositional hearing for the juvenile court to exercise its discretion under Welfare and Institutions Code section 731, subdivision (b).

People v. Jesus Assante (H028607)
Staff attorney: William Robinson
Date: March 24, 2006

The court of appeal agreed there was insufficient evidence for the trial court to order HIV testing.

People v. Gracie Castro (H028924)
Panel attorney: Alan Stern
Date: March 22, 2006

Appellant pled no contest with the agreement that she serve 2 years 8 months in prison. Although she was advised that the court could impose a restitution fine of up to \$10,000, no amount was part of the plea bargain. The court of appeal disagreed that the \$1200 restitution fine violated the plea bargain, but it did agree there was insufficient evidence she had the ability to pay \$500 in attorney fees. (Staff attorney Dallas Sacher)

People v. David Whitfield (H028526)
Panel attorney: Stacy Saetta
Date: March 21, 2006

The court held that imposing a probation revocation restitution fine to a crime committed before Penal Code section 1202.44 was enacted violated the ex post facto clause. (Staff attorney Jonathan Grossman)

People v. John York (H028843)
Panel attorney: Gordon Scott
Date: March 9, 2006

Appellant was convicted of violent felonies committed in 1989 to 1991. The trial court

limited conduct credits to 15 percent of his sentence. The court of appeal ruled the statute limiting conduct credits to violent felonies, enacted in 1994, could not be applied retroactively. (Staff attorney William Robinson)

People v. Vincent Hofsheier (S124636)

Staff attorney: Paul Couenhoven

Date: March 6, 2006

Appellant was convicted of statutory oral copulation. Penal Code section 290 required him to register as a sex offender, though the requirement is not mandatory to those who commit statutory rape. The California Supreme Court agreed section 290 violated the equal protection clause as applied because there was no rational basis for requiring all people convicted of statutory oral copulation to register but not all people convicted of statutory rape.

People v. Salvador Corona (H028884)

Staff attorney: William Robinson

Date: March 2, 2006

Appellant was convicted of four counts. When the court sentenced him to prison, it stayed the punishment of two of the counts pursuant to Penal Code section 654. It set the restitution fine according to the statutory formula of years x counts x \$200. The court of appeal agreed that the fine should not include the counts that were stayed and reduced the fine to \$1200.

In re Daniel M. (H028692)

Panel attorney: Jill Fordyce

Date: March 1, 2006

The court of appeal agreed that the juvenile court failed to exercise its discretion in determining the maximum period of physical confinement under Welfare and Institutions Code section 731. (Staff attorney Jonathan Grossman)

People v. David Leon (H026042)

Panel attorney: Lynda Romero

Date: February 24, 2006

In 2002, appellant was convicted of committing a murder in 1983. Although the court of appeal upheld the murder conviction, it agreed that the imposition of restitution fines violated the ex post facto clause. (Staff attorney Dallas Sacher)

People v. Tuyen Le (H028821)
Staff attorney: William Robinson
Date: February 10, 2006

Appellant was convicted of commercial burglary and robbery of the store. In a published decision, the court of appeal agreed that the punishment for the commercial burglary to steal within the store must be stayed pursuant to Penal Code section 654. It also held that when the trial court uses the statutory formula for assessing the restitution fine pursuant to Penal Code section 1202.4, the trial court could not use a stayed count for assessing the fine. Thus, trial counsel was ineffective for not objecting to the amount of the restitution fine.

People v. Anthony Perez
Panel attorney: Mikol Benjacob
Date: February 3, 2006

The court held that the \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)) could not be applied retroactively to crimes committed before August 17, 2003. (Staff attorney Lori Quick)

People v. Joe Johnson (H027648)
Panel attorney: David Stanley
Date: January 18, 2006

A jury convicted appellant of burglary, attempted robbery, and felony assault. The court imposed concurrent terms of 25 years to life for each count under the Three Strikes Law, and it awarded no presentence conduct credits. Since the purpose of the burglary was to commit theft, and since the assault resulted from the effort to commit theft, the two counts must be stayed pursuant to Penal Code section 654. Further, the court did not have discretion to not award presentence conduct credit. (Staff attorney Dallas Sacher)

People v. Stephen Grady (H028847)
Panel attorney: Gloria Cohen
Date: January 10, 2006

Appellant was convicted of child molestation (Pen. Code, § 647.6.) He was placed on probation on condition, among other things, that he stay away from the victim and pay a \$70 AIDS education fine pursuant to Penal Code section 647.1. The court of appeal modified the stay away condition to require knowledge. It struck the AIDS education fine because it does not apply to a violation of section 647.6. (Staff attorney Lori Quick)

People v. Victoria Jefferson (H027919)

Staff attorney: Lori Quick
Date: January 6, 2006

Appellant was sentenced to prison and ordered to pay \$300 in attorney fees. The court of appeal agreed there was insufficient evidence of an ability to pay.

DEPENDENCY CASES

In re Michael O. (H029734)
Panel attorney: James Haworth
Date: December 6, 2006

The order terminating parental rights was reversed for failure to provide proper notice under ICWA. (Staff attorney Jonathan Grossman)

In re Hayden C. (H029995)
Panel attorney: Mara Carman
Date: November 17, 2006

While the minor was staying with the paternal grandparents, the mother stabbed the father, leading to him going to the hospital and her going to jail. When she made bail, she tried to retrieve the minor. The grandparents called the police, and the child was placed in CPS custody. There had been a history of domestic violence, but the mother was eventually back in custody and the minor had a strong bond with the father. Nonetheless, the court assumed jurisdiction and removed the minor. The court of appeal reversed the removal order finding insufficient evidence the minor was at risk in his care. (Staff attorney Vicki Firstman)

In re Reynoldo H. (H029744)
Panel attorney: Carol Koenig
Date: October 13, 2006

Notice was sent pursuant to ICWA. The court of appeal was willing to consider evidence of the a ICWA notice sent after the appeal. Nonetheless, it found the notice to be inadequate. (Staff attorney Jonathan Grossman)

In re Blaze E. (H029677)
Panel attorney: Catherine Czar
Date: August 2, 2006

The order terminating parental rights was reversed for failure to provide adequate notice under ICWA.

In re Elizabeth E. (H029522)
Panel attorney: Mara Carman
Date: June 14, 2006

The termination of parental rights was reversed for failure to provide adequate notice under ICWA. The Department had information about the family which it failed to provide in the notice. (Staff attorney Vicki Firstman)

In re I.A. (S141585)
Panel attorney: Cathy Czar
Date: April 19, 2006

The court of appeal affirmed the termination of parental rights. A rehearing petition was filed on behalf of the mother. While the petition was pending, it is revealed that the adoptive placement fell through and the child was no longer viewed to be adoptable. County counsel and minor's counsel were considering agreeing to a stipulated reversal. More than 15 days, but less than 30 days after, a second rehearing petition was filed to preserve the court's jurisdiction with a motion to permit the late filing with the reasons given. The court of appeal refused to file the motion or the petition, and the first petition was denied. A review petition was filed in the supreme court. By then county counsel and minor's counsel were willing to agree to a stipulated reversal, and they agreed to file an answer in the supreme court stating this. The supreme court granted review and transferred the matter back to the court of appeal with instructions that it consider a motion for taking new evidence or for a stipulated reversal. (Staff attorney Vicki Firstman)

In re Justin S. (H029121)
Panel attorney: Carol Koenig
Date: April 7, 2006

The order terminating parental rights was conditionally reversed pending proper notification under the Indian Child Welfare Act. (Staff attorney Vicki Firstman)

Juan M. v. Superior Court (H02955)
Panel attorney: Valerie Sopher
Date: January 12, 2006

Juan appealed the termination of his parental rights. Appellate counsel filed an opening brief and a petition for writ of habeas corpus alleging ineffective assistance of counsel. Although the court of appeal affirmed the judgment on appeal, it issued an order to show cause returnable in the superior court. At the evidentiary hearing, the juvenile court summarily dismissed the habeas corpus petition on the ground that it lacked jurisdiction because the remittitur issued on the appeal.

Appellate counsel filed a petition for writ of mandate and/or habeas corpus in the court of appeal. The court of appeal issued a writ of mandate, requiring the superior court to hold an evidentiary hearing on the OSC. It said it did not issue an OSC just so the superior court could dismiss the matter. (Staff attorney Jonathan Grossman)

HABEAS PROCEEDINGS

In re Jaime Jasso (H029756)

Panel attorney: Ruth McVeigh

Date: September 12, 2006

Defendant was a prisoner accused of conspiring to import drugs into the prison. In a published opinion, the court of appeal issued an order to show cause because he was forced to stand trial while shackled and in prison garb. Trial counsel, the prosecutor, and the judge never said a word about it, except for the judge instructing the jury to ignore it. (Staff attorney Lori Quick)

People v. Rene Andrade (H030037)

Panel attorney: Carlo Andreani

Date: July 25, 2006

Appellant admitted he his probation when he failed to report to the probation officer after he was deported. Under the law, however, this was not a willful violation of probation. The court of appeal issued an order to show cause why trial counsel was not ineffective for advising him to admit the VOP. (Staff attorney Vicki Firstman)

In re S.L. (H029041)

Panel attorney: Janet Sherwood

Date: February 28, 2006

A split court of appeal reversed so that adequate notice under ICWA can be sent. (Staff attorney Jonathan Grossman)

In re Humberto Ramos (H029137/S139788)

Panel attorney: Tara Mulay

Date: February 22, 2006

Mr. Ramos pled guilty to certain crimes on the advice of his attorney. In the court of appeal, a habeas corpus petition was filed alleging he did not understand the advice of his attorney who spoke to him in English without a Spanish interpreter. The court of appeal summarily denied the petition. The supreme court granted review and transferred the matter to the court of appeal with directions to grant the order to show cause. (Staff attorney Lori Quick)

In re Paul Magnan (H028530)
Staff attorney: Dallas Sacher
Date: January 5, 2006

The court of appeal issued an order to show cause, returnable to the superior court on allegations that trial counsel rendered ineffective assistance of counsel. Magnan was convicted of possessing less than a gram of heroin and possessing methamphetamine for sale; he was sentenced to life under the Three Strikes Law. The meth was found in a cigarette box next to his girlfriend who was a meth user, Magnan used the same brand of cigarettes and possessed \$300. According to a police officer testifying as an expert, the amount of meth was just under an ounce and the difference between an ounce and the amount seized could be sold for about \$300. Magnan had told trial counsel that the \$300 he possessed was recently wired to him by his mother, a fact that was verifiable. Trial counsel, however, made no attempt to investigate the claim or otherwise explain the possession of the money. The superior court granted relief.

MISCELLANEOUS

In re Weider (H030203)
Attorney: William Schmidt
Date: December 5, 2006

Weider was convicted of second degree murder in 1987. When his parole was denied, he filed a habeas corpus petition in the superior court. The superior court granted relief, but the government appealed. The court of appeal affirmed, ordering that the Board conduct a new hearing. At remand, the Board denied parole again, based largely on the same grounds. He filed a habeas corpus petition, and the superior court granted relief. The government appealed again. In a published opinion, the court of appeal affirmed, though it struck the superior court's provision limiting what the Board can consider.

People v. Gary Kelly (S133114)
Panel attorney: J. Courtney Shevelson
Date: November 27, 2006

Appellate counsel filed a Wende brief. The defendant mailed to the court of appeal a supplemental brief raising 15 claims. The court of appeal affirmed in a five paragraph opinion without addressing the claims raised by the defendant himself. The defendant personally filed a petition for review which was granted. Shevelson argued that when the defendant raises certain arguments, the court of appeal was required to address them in the opinion. On this issue, all seven justices agreed. A four-justice majority went on to provide additional requirements for appellate courts in considering Wende cases. (Staff attorney Vicki Firstman)

People v. Stephen Samble (Santa Clara No. 75735)
Staff attorney: Jonathan Grossman
Date: November 22, 2006

Mr. Samble was denied parole. He filed a habeas corpus petition in the superior court which was granted. The government appealed, but the court of appeal upheld the decision of the superior court. It disagreed with the superior court as to the remedy, ordering a new hearing without limitation of what the Board can consider. At remand, the Board denied parole, based largely on its previous findings. The superior court again granted relief. If there was not some evidence to deny parole before, there was still not some evidence to deny parole when the only new evidence was favorable for parole.

People v. Sadrudin Laiwala (H029001)
In pro per
Date: October 6, 2006

A jury convicted Laiwala of stealing trade secrets. The court of appeal reversed the conviction because there was insufficient evidence. After the case was dismissed, Laiwala filed a petition for a finding of factual innocence. The superior court denied it. He prosecuted his appeal on his own, and the court of appeal reversed in a published decision because no reasonable person could have found from the evidence that he committed the crime.

Parle v. Runnels (N.D. Cal., No. 01-3487 WHA)
Attorneys: Martin Buchanan, Michael Kresser
Date: August 31, 2006

Parle was convicted of first degree murder. The Sixth District found five errors at trial: the invasion of the psychotherapist-patient privilege, the exclusion of defense evidence, and the admission of inadmissible character evidence. The court of appeal, however, found the errors to be harmless. In a federal habeas corpus petition, the United States District Court held that the state court's analysis of cumulative prejudice was unreasonable under AEDPA and the combination of errors deprived Parle of due process.

People v. Richard Ormonde (H028471)
Attorney: Philip Schnayerson
Date: August 25, 2006

The police responded to a call of a domestic dispute. Appellant was outside the house and was detained by the officers. The officers entered the house and then stepped out of the house. They subsequently obtained permission from appellant to search the house where they found evidence he was selling drugs. The court of appeal held the trial court erred in not suppressing the

evidence. The first entry into the house was without exigent circumstances because appellant was detained outside the house. The subsequent consent was tainted by the illegal conduct of the officers.

Michael Hutchinson v. Hamlet (N.D. Cal. No. C 02-974 JSW (PR).)

Attorney: Larry Gibbs, Cliff Gardner

Date: June 22, 2006

Hutchinson was convicted of robbing a 7-Eleven. Although the robber was masked, three store employees reviewing the grainy video decided that appellant, a frequent customer, was the culprit. Trial counsel presented an alibi defense which consisted of appellant saying he was somewhere else but could not remember where. He said he was too injured to maneuver as the culprit in the video did, but no medical records were presented. Trial counsel did not try to obtain an expert to analyze the videotape because he believed Hutchinson was the robber and Hutchinson lacked funds to hire an expert. The court of appeal denied counsel's request for appointment of an expert and the state habeas petition was summarily denied. While Hutchinson's habeas petition was pending in federal court, the San Jose Mercury News hired an expert who determined that the person in the video committing the robbery was six inches shorter than Hutchinson. The district court granted relief, finding trial counsel was ineffective by making trial decisions based on insufficient information. Had trial counsel acted competently, it was reasonably probable Hutchinson would have been found not guilty.

In re Robert Lucella (H027990)

Staff attorney: William Robinson

Date: May 25, 2006

Lucella was granted parole but the governor vetoed the decision. The superior court granted Lucella's habeas corpus petition, and the government appealed. The court of appeal agreed that there was not some evidence to support most of the governor's decisions, but did find a few of reasons were valid. The matter was remanded for the governor to reconsider the decision.

In re Marcus (H028866)

Counsel: Ozro Childs

Date: April 18, 2006

The mother disobeyed an oral order of the family court. When the court held her in contempt, she filed a habeas corpus petition. The court of appeal reversed, holding that a written order is required for there to be contempt.

People v. Martin Mora (H028116)

Panel attorney: Michael Mehr
Date: March 13, 2006

Mr. Mora pled no contest to possessing cocaine for sale in 1990. When deportations proceedings started in 2003, he filed a petition for writ of error coram nobis to withdraw his plea. The court denied the petition, stating the minute order and transcript of the plea indicated he was advised of the immigration consequences and his trial counsel would always advise people of the consequences. The court of appeal reversed. It observed the minute order and the transcript of the plea did not so state. It also held that the judge's reliance on personal knowledge of what a particular attorney normally did was not evidence. It remanded the matter for a new hearing on whether Mir. Mora would have pled had been properly advised. (Staff attorney Vicki Firstman)

In re Keith Odom (H029015/S139373)
Panel attorney: Deborah Hawkins
Date: February 22, 2006

The court of appeal summarily denied a petition for writ of mandate concerning the superior court's denial of a certificate of probable cause. The supreme court granted review and transferred the matter to the court of appeal with directions to grant the alternative writ of mandate. (Staff attorney Dallas Sacher)

In re Stephen Samble (H028334)
Staff attorney: Jonathan Grossman
Date: February 21, 2006

The court of appeal agreed with the prisoner that there was not some evidence to deny him parole. It thus affirmed the decision of the superior court granting relief on his petition for writ of habeas corpus. The court of appeal, however, disagreed with the remedy of limiting the evidence the parole board could consider upon remand.

In re Nam Huynh (H028888)
Panel attorney: Keith Wattley
Date: February 3, 2006

The parole board agreed to parole Mr. Huynh, but the governor vetoed the decision. Huynh's petition for writ of habeas corpus was granted by the superior court, and the government appealed. The court of appeal mostly agreed with Mr. Huynh but ordered the matter return to the governor for reconsideration. (Staff attorney Michael Kresser)