

**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. Luis Loza (H032679)

Panel attorney: Jill Fordyce

Date: January 28, 2010

The court held there was insufficient evidence to support the gang crime and the gang enhancement because there was insufficient evidence of the gang's primary activities and insufficient evidence appellant's gang committed the predicate crimes because the records of the predicate crimes that were admitted were committed from people from other gangs. (Staff attorney Jonathan Grossman)

PRETRIAL AND POSTTRIAL MOTIONS

People v. Schuler (H033090)

Panel attorney: Jill Fordyce

Date: April 20, 2010

Appellant was committed as a sexually violent predator. He objected to the imposition of an indeterminate term as being unconstitutional. The court of appeal, following People v. McKee (2010) 47 Cal.4th 1172, remanded the matter for a hearing concerning the claim that the indeterminate commitment violates the equal protection clause. (Staff attorney William Robinson)

G.C. v. Superior Court (H034808)

Staff attorney: Dallas Sacher

Date: March 30, 2010

The minor was placed on deferred entry of judgment for vandalism. He was placed in a graffiti abatement program pursuant to Welfare and Institutions Code section 742.16. He completed all of his requirements, except fully pay the victim restitution. The juvenile court refused to dismiss the case unless he paid all of the restitution. He filed a motion to reconsider, stating that restitution should be required under section 742.16 only if he had the ability to pay. The prosecution argued the statute did not apply to deferred entry of judgment. The minor filed a petition for writ of mandate. In a published decision, the court of appeal held the ability to pay requirement did apply.

People v. Michael Bettencourt (H033594)
Staff attorney: William Robinson
Date: March 15, 2010

Appellant was charged with felony battery causing serious bodily injury. The district attorney wanted to add an enhancement for great bodily injury. Appellant indicated more than once he wanted to go to trial. The court said it wanted to settle the case and offered appellant that if he were to plead guilty to the charge before the amendment, it would place him on probation and permit him to request the charge be reduced to a misdemeanor after one year. Appellant pled, but his request to withdraw his plea was denied. After a certificate of probable cause was issued, the court of appeal reversed. While the trial court can indicate a sentence, it cannot provide a promise of leniency in exchange for waiving a constitutional right.

People v. Tony Matthews (H033568)
Panel attorney: Benjamin Owens
Date: February 11, 2010

The police arrested appellant for being under the influence of drugs before he entered his motel room. The police entered the motel room and handcuffed the occupant. They then searched a beanie that was on the floor near where she was handcuffed. Inside the beanie was drugs. The court of appeal held that because she was securely handcuffed, the officers could not search the beanie incident to arrest under *Arizona v. Gant* (2009) 129 S.Ct. 1710. (Staff attorney Jonathan Grossman)

People v. Nicholas Seaberry (H034234)
Panel attorney: E. Michael Linscheid
Date: February 3, 2010

The police were looking for an Hispanic male suspect who was 20 to 25 years old, five foot five to seven inches tall and weighing 150 to 160 pounds. The officer arrested appellant who was six foot two inches tall and weighed 196 pounds. The court of appeal held there was not probable cause to arrest appellant. (Staff attorney Lori Quick)

People v. Alexander Skinner (H033532)
Panel attorney: James Haworth
Date: January 25, 2010

Appellant was sentenced to prison after violating probation. He filed from prison a pro per motion to receive presentence credits for the time he spent in a drug program. After the trial court summarily denied the motion, he appealed. The court of appeal reversed, ordering the superior court to hold a hearing whether the program qualifies as a custodial institution. (Staff attorney Vicki

Firstman)

ERROR AT TRIAL OR HEARING

People v. Tony Garcia (H032501)

Panel attorney: Lawrence Gibbs

Date: May 25, 2010

Appellant was convicted of murder. At trial, he and his sister testified he acted in defense of others, or at least imperfect defense of others. The trial court believed the defense had not shown the decedent threatened immediate harm and refused to instruct on the defenses. The court of appeal reversed. There was substantial evidence to support the defense. Whether the threat of immediate harm existed was an issue for the jury to decide. (Staff attorney Dallas Sacher)

People v. O'Connell (H033012)

Panel attorney: Randy Baker

Date: May 20, 2010

Appellant was convicted in a court trial of a series of sex offenses. When the police first questioned him, he said he wanted a lawyer. The police continued to question him, and he confessed. The court denied the motion to suppress the confession. The court of appeal held the confession was inadmissible and admission of the evidence was prejudicial to all of the charges except one. (Staff attorney William Robinson)

People v. Pete Guajardo (H034400)

Panel attorney: Brian Gurwitz

Date: April 30, 2010

Appellant agreed to a court trial on three counts. As for one of the counts, possessing methamphetamine, trial counsel entered into a stipulation appellant possessed it. The court of appeal agreed the stipulation was tantamount to a guilty plea. Because appellant was not advised of his constitutional rights, the conviction for possession must be reversed. (Staff attorney William Robinson)

People v. Steven Mohammady (H033353)

Panel attorney: Syda Kosofsky

Date: April 27, 2010

Appellant was convicted of using force to resist an officer when officers entered his home. The main issue is whether appellant impliedly consented to the officer's entry. The court instructed the jury that consent must be proven by a preponderance of the evidence and is determined by how

an officer would view the defendant's actions. The instruction was erroneous because whether the officer was acting lawfully must be proven by proof beyond a reasonable doubt. The instruction also erroneously conveyed to the jury that the issue was whether the officer's claimed there was consent to enter, not whether consent was actually provided. (Staff attorney Dallas Sacher)

People v. Franklin Marshall (H033439)

Panel attorney: Leeor Neta

Date: April 22, 2010

Appellant leased a car of a week and never returned it. He testified that he thought he was obtaining a month-to-month lease from the rental agency. He provided them with a debit card and how to reach them. He assumed they would charge him for as long as he had the car and would contact him if there were a problem. Witnesses from the rental agency confirmed it did provide month-to-month leases but said this was not one of them. He was convicted of auto theft. The court of appeal agreed that the trial court erred in not instructing on claim of right or mistake of fact. (Staff attorney Jonathan Grossman)

People v. Jose Resendez (H032537)

Panel attorney: Stephen Bedrick

Date: March 30, 2010

A jury found appellant committed first degree murder with the special circumstance that it was conducted to further a gang. The jury also found true a gang enhancement. The court reversed the gang findings because the court instructed the jury that one of the predicate offenses can include aggravated assault and possession of a firearm by a felon. The aggravated assault was not proven by competent evidence and possession of a firearm by a felon was not a predicate offense at the time of the crime. (Staff attorney Dallas Sacher)

People v. Frank Lazos (H030184)

Staff attorney: Jean Matulis

Date: March 10, 2010

The court of appeal agreed appellant could not be convicted both of petty theft and of robbery for the same act. (Staff attorney Paul Couenhoven)

People v. Jesse Carranco (H032412)

Panel attorney: Victoria Stafford

Date: February 24, 2010

Appellant was a codefendant in the case of *People v. Hernandez* (2009) 178 Cal.App4th

1510, review granted Feb. 24, 2010, S178823. The issue is whether reversal is required if information concerning a confederate testifying for the prosecution is released by the court on condition that trial counsel cannot share the information with the client. (Staff attorney Dallas Sacher)

People v. Rosemary Greenlaw (H032961, H034299)

Panel attorney: R. Shanti O'Brien

Date: February 18, 2010

Appellant falsely claimed to be an officer of a homeowner's association and withdrew some money from its account. The court of appeal agreed that minutes from a particular association meeting lacked trustworthiness to be admitted. Without the minutes, there was insufficient evidence appellant was not an officer for one of the counts. The court of appeal also ordered that the court reconsider the restitution order. (Staff attorney William Robinson)

People v. N.Z. (H030760)

Panel attorney: Stephen Bedrick

Date: January 14, 2010

Defense counsel retained a psychologist to examine the defendant. The psychologist wrote a report which included information obtained from the defendant. Trial counsel handed the unredacted report to the prosecution, though he decided not to have the psychologist or defendant testify. The prosecution sought to introduce some of the information in the report. The defense objected on the ground the information was attorney-client and psychotherapist-patient privilege. The trial court overruled the objection and admitted the evidence. The court of appeal reversed, finding trial counsel was ineffective for providing the information when there was no duty to or advantage for doing so. (Staff attorney Lori Quick)

People v. Thomas Alcaraz (H031733)

Panel attorney: Danalynn Pritz

Date: January 14, 2010

Appellant and his brother were in a car when four men violently attacked them. When a police officer arrived, three of the assailants ran off, but appellant retrieved a gun and shot and killed the fourth who was trying to escape. The jury was instructed on murder and voluntary manslaughter under a heat of passion theory. The jury was erroneously instructed that the provocation would also have to cause an average person to do what appellant did—i.e., shoot and kill someone in front of the police. The court of appeal held this was reversible error. (Staff attorney William Robinson)

People v. Robert Sanchez and Jorge Ayala (H032296)

Panel attorneys: Richard Ruben and Solomon Wollack
Date: January 13, 2010

The defendants were found guilty of first degree murder as aiders and abettors. The prosecution's theory was that conspired or directly aided in the commission of the murder, or they conspired or aided in the commission of a lesser charge where murder was the natural and probable consequences. The court of appeal held the instruction was flawed because it required the jury only to find that murder was the natural and probable consequence and not murder in the first degree. The error was prejudicial under the facts of the case. (Staff attorney Dallas Sacher)

SENTENCING

In re V.E. (H034936)
Staff attorney: Lori Quick
Date: May 28, 2010

When appellant was a minor, he was adjudicated a ward and ordered to pay victim restitution. After he turned 18, the juvenile court violated his probation for committing a new offense as an adult. Over objection, the juvenile court ordered that the restitution order be added to his adult conditions of probation of probation. The court of appeal agreed the juvenile court lacked authority to make the order.

People v. Jamell Wood (H033514)
Panel attorney: John Dwyer
Date: May 28, 2010

The court orally awarded 538 days of presentence credits, the paperwork showed he received 530 days, but calculations show he should have received 546 days. The court ordered he receive the full presentence credits. (Staff attorney William Robinson)

People v. Mark Hurlibirt (H034142)
Staff attorney: Vicki Firstman
Date: May 25, 2010

The court modified certain conditions of probation to avoid problems with overbreadth and vagueness.

In re Jordan C. (H034662)
Staff attorney: Lori Quick
Date: May 24, 2010

Appellant entered a drug treatment program through the juvenile court with the agreement his probation would be dismissed upon completion of the program. When he completed the program, the court refused to dismiss probation because he failed to pay victim restitution. The court of appeal reversed and ordered that probation be dismissed.

People v. Nuuelua Sofara (H033652)
Panel attorney: R. Shanti O'Brien
Date: May 18, 2010

The court reversed a restitution order to reimburse the travel expenses of the victim's aunt and uncle because they are not victims under Penal Code section 1202.4. (Staff attorney Paul Couenhoven)

In re J.A. (H034505)
Panel attorney: E. Michael Linsheid
Date: May 18, 2010

The court modified gang conditions of probation to avoid problems with vagueness and overbreadth. (Staff attorney Jonathan Grossman)

People v. Gutierrez (H033213)
Panel attorney: David Mann
Date: May 12, 2010

The court agreed that an order to stay away from the victim was unconstitutionally vague. Further, the trial court erred in setting the amount of parole revocation restitution fine to an amount different from the restitution fine. (Staff attorney Vicki Firstman)

People v. David Melgoza (H032508)
Panel attorney: Gene Vorobyov
Date: May 12, 2010

Appellant was convicted of illegally selling a firearm and illegally possessing the same firearm. The court held that the punishment for the possession must be stayed pursuant to Penal Code section 654. (Staff attorney Paul Couenhoven)

In re J.J. (H034470)
Panel attorney: Dena Meierhenry
Date: May 10, 2010

Appellant involved in a gang assault, but he was not immediately charged. He later possessed a knife at school, committed auto theft, vandalism, and hit and run. He was placed on juvenile probation when he was charged from the gang assault incident with assault with a deadly weapon causing great bodily injury for the benefit of a gang. After the petition was sustained, the court committed him to the Division of Juvenile Justice on the ground that his crimes were of increasing seriousness. The court of appeal reversed because the juvenile court mistakenly believed the crimes were committed in the order they were adjudicated. Since the assault occurred before the other crimes, his crimes were of decreasing seriousness. (Staff attorney William Robinson)

People v. Chris Barrientos (H034588)
Staff attorney: Jonathan Grossman
Date: May 10, 2010

The court orally pronounced \$300 in drug program fines and the corresponding penalty assessments. The abstract of judgment stated it was \$450 and increased the penalty assessment accordingly. The court of appeal reduced the fine and penalty assessments to the amount the court orally pronounced.

People v. Adan Vasquez (H034462)
Staff attorney: Lori Quick
Date: May 10, 2010

The court of appeal agreed there was insufficient evidence appellant had the ability to pay attorney fees. Further, the minute order needed to be amended to strike a \$20 fine the trial court never actually imposed. Finally, one of the counts needed to be dismissed as agreed to in the plea bargain.

In re T.L. (H034671)
Panel attorney: Marsanne Weese
Date: May 3, 2010

The court modified a condition of probation that appellant stay away from court houses to require him not to attend court proceedings he knows involves gang members. (Staff attorney Vicki Firstman)

People v. Armando Duarte (H034071)
Panel attorney: Elisa Nadeau
Date: April 28, 2010

The court stayed a couple of counts and set the restitution fine according to the formula

found in Penal Code section 1202.4. Because the court erroneously included the stay counts in the calculation, the restitution fine needed to be reduced. (Staff attorney Paul Couenhoven)

In re E.A. (H034655)
Staff attorney: Lori Quick
Date: April 27, 2010

The minor admitted he committed a criminal offense and was placed in drug treatment court. He signed a contract with the court that stated that if he successfully completed the requirements of drug court, the wardship would be dismissed. He completed the requirements, but the wardship was not dismissed because he still owed victim restitution. The court of appeal held this was error.

People v. Jamie Saechao (H034456)
Panel attorney: Alex Green
Date: April 22, 2010

The superior court placed appellant on probation on condition that he serve nine months in jail. The court of appeal agreed there was insufficient evidence of an ability to pay attorney fees. (Staff attorney Dallas Sacher)

In re R.S. (H034600)
Panel attorney: Eric Heffelfinger
Date: April 22, 2010

The court modified a condition of probation to require knowledge. (Staff attorney Paul Couenhoven)

People v. Vito Mitchell (H033369)
Panel attorney: Cliff Gardner
Date: April 15, 2010

A jury convicted appellant of second degree murder and found the gang enhancement to be true. Because murder carried an indeterminate term, the court erred in adding ten years for the gang enhancement. (Staff attorney Dallas Sacher)

People v. Francisco Savinon (H034172)
Staff attorney: William Robinson
Date: April 14, 2010

Appellant pled guilty to attempted murder without premeditation, but the abstract of judgment said it was with premeditation. The court of appeal agreed the abstract judgment needed to be amended.

People v. Sophia Curenio (H034552)
Panel attorney: Stephanie Adraktas
Date: April 12, 2010

A condition of probation was modified to prevent a condition to stay away from a courthouse from being unconstitutionally overbroad. (Staff attorney Dallas Sacher)

People v. Anthony Negron (H034312)
Staff attorney: Paul Couenhoven
Date: April 6, 2010

Conditions of probation were modified to prevent constitutional problems with vagueness and overbreadth.

People v. Rafael Chubbs (H033510)
Panel attorney: Mark Shusted
Date: April 6, 2010

Appellant was placed on probation and assessed a \$200 restitution fine. When his probation was revoked, the court imposed a \$600 restitution fine. The amount was reduced to \$200 because the court cannot increase the restitution fine at a violation of probation. (Staff attorney William Robinson)

People v. Richard Price (H034293)
Staff attorney: Jonathan Grossman
Date: March 29, 2010

The court modified gang conditions of probation so that they would not be vague or overbroad. It also ordered stricken a requirement found in the minute order that he register as a gang member because the sentencing court did not orally order it.

People v. Michael Wallin (H034304)
Panel attorney: David Stanley
Date: March 19, 2010

Appellant was convicted of auto theft and receiving a stolen auto. The court of appeal agreed the punishment for the second count must be stayed pursuant to Penal Code section 654. (Staff attorney Vicki Firstman)

People v. Manuel Urrea (H033949)
Staff attorney: William Robinson
Date: March 11, 2010

Appellant was convicted of recklessly evading and officer and resisting arrest. He was placed on probation on condition, among other things, to not possess or consume alcohol or be at a place where it is “a major item for sale.” The court of appeal agreed the condition was not involved in his criminal behavior and there was insufficient evidence it was related to future rehabilitation.

People v. Blake Macierez (H033474)
Staff attorney: Jonathan Grossman
Date: March 11, 2010

The court agreed to offset the restitution award by \$30,000 to reflect the amount paid to the victim by appellant's insurance. It also agreed that he because he served four actual days in jail before sentencing, he was entitled to two days of presentence credits under former Penal Code section 4019.

People v. Donna Martinez (H033830)
Staff attorney: Paul Couenhoven
Date: March 1, 2010

There was evidence appellant suffered from mental illness. In imposing probation, the court ordered that she take all prescribed medication. The court of appeal agreed the condition was overly broad to the extent she was required to take medication not related to her mental illness.

People v. Ruben Cuevas (H034038)
Panel attorney: Jeffrey Glick
Date: February 26, 2010

Appellant was assessed \$795 in fines and unidentified penalty assessments. The court of appeal remanded the matter for the trial court to identify the amounts. (Staff attorney Dallas Sacher)

In re Carlos J. (H034582)

Panel attorney: Syda Kosofsky
Date: February 26, 2010

The court modified gang-related conditions of probation to comply with due process. (Staff attorney Jonathan Grossman)

People v. Rosario Lopez (H034125)
Panel attorney: Carl Gonser
Date: February 25, 2010

Appellant was convicted of driving under the influence causing death to one and great bodily injury to another. As part of the victim restitution award, appellant was ordered to pay \$26,000 in attorney fees because most of the victim's attorney's time was spent trying to collect a civil judgment and the amount awarded was not reasonable to the victim restitution award. The court of appeal agreed the trial court abused its discretion. (Staff attorney Vicki Firstman)

In re C.C. (H034343)
Staff attorney: Lori Quick
Date: February 23, 2010

The minor committed a burglary. He was placed in the drug treatment court. He and the court signed a drug court contract which included the promise that if he successfully complete the program, the wardship would be dismissed. He also agreed to pay victim restitution. He successfully completed the program, but the court continued him on probation to pay the victim restitution. He objected, stating he completed his portion of the contract. The court of appeal agreed the juvenile court was bound by the contract it drafted and that the wardship must be dismissed.

In re F.A. (H034590)
Panel attorney: Karli Sager
Date: February 19, 2010

The court found the minor carried a concealed dirk or dagger in a public place. (Pen. Code, § 12020, subd. (a)(4).) The matter was remanded for the juvenile court to determine if the offense was a felony or a misdemeanor. (Staff attorney Lori Quick)

People v. Diego Legaspi (H033834)
Panel attorney: Randy Kravis
Date: February 18, 2010

The court of appeal agreed the abstract of judgment failed to correctly reflect the sentence.

One count was stayed, the restitution fine was purportedly \$6000 when it should have been \$1500, the amount of the drug program fines and lab fines were not clear, and appellant was entitled to an additional day of presentence credits. (Staff attorney Paul Couenhoven)

People v. Louis Ortiz (H034170)

Panel attorney: Ozro Childs

Date: February 18, 2010

Appellant was convicted of robbery with a gang enhancement. He was placed on probation on condition, among other things, that he possess no alcohol and be subject to drug and alcohol testing. The court of appeal agreed there was insufficient evidence to support these conditions. It also modified a condition to not be present in a courthouse so that the condition not be an overbroad. (Staff attorney Dallas Sacher)

In re A.M. (H034031)

Panel attorney: Marsanne Weese

Date: February 11, 2010

The minor touched another boy's penis with a hand. The court of appeal concluded there was insufficient evidence to order appellant to undergo AIDS testing. Further a probation condition not to associate with certain people needed to be modified to require knowledge. (Staff attorney Lori Quick)

In re J.M. (H034317)

Staff Attorney: Lori Quick

Date: February 10, 2010

The minor admitted committing a hit and run and possessing a concealed knife or dagger. He was placed in the drug treatment court. He and the court signed a drug court contract which included the promise that if he successfully complete the program, the wardship would be dismissed. He also agreed to pay victim restitution. He successfully completed the program, but the court continued him on probation to pay the victim restitution. He objected, stating he completed his portion of the contract. The court of appeal agreed the juvenile court was bound by the contract it drafted and that the wardship must be dismissed.

People v. Jesse Garcia (H034421)

Panel attorney: J. Frank McCabe

Date: February 8, 2010

The court of appeal made clear that payment of attorney and probation fees cannot be a condition of probation, and some conditions of probation were modified to require knowledge.

(Staff attorney Vicki Firstman)

In re R.G. (H034640)
Panel attorney: Ronald Dehoff
Date: February 5, 2010

A gang-related condition of probation was modified to require knowledge. (Staff attorney Paul Couenhoven)

People v. Anthony Castillo (H033859)
Staff attorney: Vicki Firstman
Date: February 4, 2010

Conditions of probation were modified to require knowledge. Further, the minute order stated he needed to register as a gang member when the court never required it. The court struck this condition.

People v. Joseph Leon (H034066)
Panel attorney: Elisa Nadeau
Date: February 2, 2010

In a published decision, the court of appeal held that certain constitutional challenges to conditions of probation were not forfeited without an objection. Conditions of probation was amended to require knowledge. Further, a condition not to be in a courthouse was modified to stay away only from proceedings the defendant knew involved gang members unless the probation officer gave permission to attend. (Staff attorney Paul Couenhoven)

In re A.M. (H033917)
Panel attorney: Eric Hefflefinger
Date: January 22, 2010

The court modified gang conditions of probation so that they would not be unconstitutionally vague or overbroad. (Staff attorney William Robinson)

People v. Robert Sanchez and Jorge Ayala (H032296)
Panel attorneys: Richard Ruben and Solomon Wollack
Date: January 13, 2010

The court erred in imposing the gang enhancement for a serious felony when the defendant

was not convicted of a serious felony. Further, the punishment for one count should have been stayed under Penal Code section 654, and the abstract of judgment must be amended to reflect that victim restitution was a joint and severable obligation. (Staff attorney Dallas Sacher)

People v. Christopher Barkley (H032690)

Staff attorney: Jonathan Grossman

Date: January 12, 2010

At a trial, appellant admitted he suffered a prior serious felony conviction. The jury convicted him of most charges but acquitted him of the new serious felony. The court stayed punishment for the prior serious felony. It also set a restitution fine of \$10,000 plus restitution fines in two other cases on which he was sentenced the same day. The court of appeal agreed that the prior serious felony should be stricken, not stayed, and the total restitution fine could not exceed \$10,000.

People v. Stoffer (H033836)

Panel attorney: R. Shanti O'Brien

Date: January 8, 2010

Appellant was convicted of molesting a granddaughter with his hands. There was insufficient evidence to order that he undergo an AIDS test. (Staff attorney Lori Quick)

DEPENDENCY CASES

In re S.T. (H034753)

Panel attorney: Carolyn Todd

Date: March 19, 2010

The matter was remanded for proper notice under the Indian Child Welfare Act. (Staff attorney Jonathan Grossman)

In re M.S. (H034629)

Panel attorney: Cathy Czar

Date: February 18, 2010

The order terminating parental rights was reversed to ensure that proper notice was sent as required by ICWA. (Staff attorney Vicki Firstman)

In re W.K. (H034165)

Panel attorney: James Haworth

Date: January 19, 2010

The mother unsuccessfully sought a restraining order against the father in dependency court and appealed. Attorney represented the father and convinced the court of appeal to affirm. The dependency court had sufficient information to properly exercise its discretion and the lack of recent violent episodes justified the dependency court's action. (Staff attorney Jonathan Grossman)

In re J.N. (H034242)

Panel attorneys: Sheri Cohen and Roland Simoncini

Date: January 6, 2010

The parents were in a car accident with the children inside. The parents had been drinking. The juvenile court assumed jurisdiction. The court of appeal held the accident alone where the parents had been drinking were insufficient grounds for assuming jurisdiction when the parents were remorseful and otherwise responsible, and there was little risk of the children suffering further harm. (Staff attorney Vicki Firstman)

HABEAS PROCEEDINGS

In re Daniel Dominguez (Santa Clara Super. Ct. No. CC768960)

Panel attorney: Eric Weaver

Date: April 2, 2010

Defendant pled no contest and admitted he suffered five prior serious felony convictions. Trial counsel advised defendant that at sentencing, the district attorney could dismiss the prior serious felonies in the interest of justice, and mitigating evidence was prepared for a sentencing hearing. After the prior serious felonies were not dismissed at sentencing, he filed a petition for writ of habeas corpus. The superior court found trial counsel was ineffective. While the statutes permit the district attorney to move to dismiss an alleged prior serious felony conviction when there is a problem with proving it, the law does not grant the district attorney the power to request dismissal after it has been admitted in the interest of justice. (Staff attorney Dallas Sacher)

MISCELLANEOUS

People v. Juan Carlos Ruiz (H033380)

Panel attorney: David Carico

Date: April 12, 2010

Appellant was driving a car while under the influence of alcohol. The police stopped him, but then he sped off. The police chased him for a while but then ended the pursuit. Appellant hit a car, injuring two people. Another pursuit ensued. Appellant pled guilty to DUI with injury, two counts of recklessly evading an officer, and two counts of hit and run. They stipulated there is a factual basis contained in the accident report. The trial court issued a certificate of probable cause. The court of appeal agreed that there was not a factual basis to support two convictions of reckless evasion and two convictions for hit and run. Further, Penal Code section 654 did not permit separate punishments for DUI with injury and reckless evasion. (SDAP did not participate in the appeal)

People v. James Guasch (H032720)

Attorney: Dean Johnson

Date: April 6, 2010

Appellant was convicted of two counts of transporting and distributing a controlled substance when he drove to a location with the drugs and then sold them to an undercover officer as arranged. The court agreed that the conviction for one of the counts must be stayed under Penal Code section 654. (SDAP did not participate in this case)

People v. Taravella (H033992)

Attorney: John Schuck

Date: February 23, 2010

The defendant was convicted of committing oral copulation of a minor under the age of 16 years by one at least 21 years old. In a published decision, the court of appeal held that the trial court had discretion to determine if he should continue to register under *People v. Hofscheier* (2006) 37 Cal.4th 1185. It also concluded that the proper means of seeking relief for a conviction that has long been final is through an action for declaratory relief. (SDAP did not participate in this case)

In re James Sauers (H034179)

Panel attorney: Keith Wattley

Date: January 26, 2010

The court affirmed the granting of relief on habeas corpus by the superior court. The courts decided Sauers was entitled to a new parole board hearing in compliance with *In re Lawrence* (2008) 44 Cal.4th 1181. (Staff attorney Michael Kresser)

In re Michael Harris (H033292)

Attorney: Marc Elliot Grossman

Date: January 19, 2010

The court of appeal affirmed as modified the superior court granting relief on habeas corpus from the denial of parole by the Board. (SDAP did not participate in this case)

People v. Augustin Uribe (Santa Clara Cty. No. CC598686)

Attorney: Alfonso Lopez

Date: January 6, 2010

Uribe had been convicted of molestation. At trial, the child recanted. The strongest evidence

against him came from the SART nurse, Mary Ritter. After trial, it was learned that the SART exam had been videotape. A defense expert determined after viewing the videotape that, contrary to Ritter's testimony, there was no evidence of abuse. The conviction was reversed. In the superior court, Uribe moved for dismissal on the ground of outrageous government conduct because the prosecution knowingly failed to disclose the existence of the videotapes in sex cases for 20 years. The prosecuting attorney testified that there was no knowing misconduct. The court found the deputy district attorney was not credible, as his testimony was contradicted by other witnesses and evidence. The case was dismissed. for outrageous government conduct. (SDAP did not participate in the motion)