

**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 Murillo (H038775)

Panel attorney: Stephanie Adraktas

Date: December 24, 2013

Before appellant was arrested, he put heroin in his mouth. But he later spit it out, and the evidence was retrieved. There was insufficient evidence to support the conviction for concealing or destroying evidence, but only evidence of an attempt to do so. Also, the imposition of the AIDS education fine was unauthorized. (Staff attorney Lori Quick)

People v. Jose Rios (H038487)

Staff attorney: Patrick McKenna

Date: December 20, 2013

Appellant was convicted by jury of possessing a loaded firearm as a gang member, auto theft with a gang enhancement, and the gang crime. He was by himself. In a published decision, the court of appeal agreed there was insufficient evidence to support the gang crime because he was acting alone. While the court said the gang enhancement could attach to one acting alone, there was insufficient evidence in this case the crime was for the benefit of a gang. Further, the trial court could not add fees and restitution fines upon a violation of probation.

People v. Reyes (H036867)

Staff attorney: William Robinson

Date: October 28, 2013

Appellant was convicted of 28 counts of sexually abusing a minor. The court of appeal held there was insufficient evidence of duress for 23 of the counts and reduced the convictions to lesser included offenses. Further, he was entitled to a new sentencing hearing because the trial court erred in refusing him to discharge retained counsel at the sentencing hearing.

People v. Martin Reyes (H037362)

Panel attorney: Jeffrey Glick

Date: May 21, 2013

Appellant was convicted of robbery and a gang crime, though he was alone when he committed the underlying crime. The court of appeal decided there was insufficient evidence to support the gang crime. Because the trial court declined to dismiss the prior strike convictions because of the gang crime, a new sentencing hearing was required. Moreover, the trial court was required to calculate presentence conduct credits. Finally, it was not clear how the court calculated the penalty assessments. (Staff attorney William Robinson)

People v. Jesse Flores (H037031)
Panel attorney: Julie Dunger
Date: April 3, 2013

Appellant was convicted of carrying a concealed firearm and a loaded firearm in violation of a condition of probation. Since there was no evidence of a condition of probation not to possess a firearm, the convictions were reversed. (Staff attorney Dallas Sacher)

PRETRIAL AND POSTTRIAL MOTIONS

People v. Marcus Bates (H037910)
Panel attorney: Matthew Bogosian
Date: December 12, 2013

In a published decision, the court decided that although the police officer was not blocking appellant's path, he detained appellant when he stood by his patrol vehicle and signaled with his hand that appellant needed to stop his car. There was not reasonable suspicion to stop him simply because the car being stopped was tan when there was a robbery two hours before by a man with a certain description in a tan car. The subsequent search could not be justified as a probation search. (Staff attorney William Robinson)

People v. Chaney (H037202)
Panel attorney: Rudy Kraft
Date: November 14, 2013

Trial counsel was ineffective for filing a petition for the release of an SVP patient under Welfare and Institutions Code section 6608, when section 6605 applied and provided a lower standard of proof. (Staff attorney Jonathan Grossman)

People v. Lorenzo Arteaga (H038236)
Panel attorney: Rudy Kraft
Date: August 26, 2013

The court erred in failing to hold a *Marsden* hearing upon appellant's request after the court

declared a doubt as to his competency. (Staff attorney Jonathan Grossman)

People v. Rodrigo Martinez (S199495)

Panel attorney: Sara Coppin

Date: August 8, 2013

The supreme court held that when a defendant moves to withdraw the plea for failure of the court to give advice of the immigration consequences under Penal Code section 1016.5, the only prejudice that needs to be shown is that the defendant would not have pled had there been a proper advisement. It is not necessary the defendant would have inevitably gone to trial. It is enough that a disposition with better immigration consequences would have been sought. (Staff attorney William Robinson)

In re X.V. (H038701)

Panel attorney: Gabriel Bassan

Date: July 29, 2013

The minor was with other youths near a school. One of them, not the minor, was smoking marijuana. The police detained them, pat searched appellant, and found a folding knife. He was arrested for possessing a concealed dirk or dagger and resisting arrest. After his motion to suppress evidence was denied, he admitted the allegations. The court of appeal held there was not reasonable suspicion to believe appellant was armed to justify the pat search, so the motion to suppress evidence should have been granted. Further, a folding knife did not qualify as a dirk or dagger under the statute. (Staff attorney Paul Couenhoven)

Michael Fortner v. Superior Court (H038353)

Attorney: Donald Landis

Date: July 17, 2013

The defendant was accused of domestic violence in both California and Hawaii. The district attorney charged both incidents. In a published decision, the court of appeal concluded California did not have statutory jurisdiction to try the Hawaii incident. (SDAP did not participate in this proceeding)

People v. Salvador Prado (H037497)

Panel attorney: Meredith Fahn

Date: May 9, 2013

Appellant was convicted in Contra Costa County of certain crimes in 1999 which led to his deportation. When he returned, he was convicted of some crimes in 2005. Now in custody of

immigration officials, he filed a petition for writ of error coram nobis in Santa Clara County to vacate the judgment in Contra Costa County. The Santa Clara County Superior Court interpreted this to be a motion to vacate the Santa Clara County convictions and denied the motion. The court of appeal decided the Santa Clara County Superior Court acted improperly. It did not have jurisdiction to consider the Santa Clara County convictions because they were not challenged in the petition. It could not consider a motion to vacate the Contra Costa County convictions because the motion must be brought in that county. (Staff attorney Vicki Firstman)

People v. Efrain Fraga (H036566)

Panel attorney: Alex Coolman

Date: March 27, 2013

The court held a trial on the prior strike conviction and found it was true, though it expressed an opinion about the offense lacking seriousness. The matter was eventually scheduled for a *Romero* motion, but a different judge appeared for the hearing. Appellant's motion to continue the hearing until the original judge could return was denied. The court denied the *Romero* motion. The court of appeal held it was an abuse of discretion to deny the continuance since the original judge was familiar with the facts and indicated it might have ruled differently on the *Romero* motion. (Staff attorney Dallas Sacher)

People v. Kevin Lu (H037846)

Panel attorney: Jean Lavallee

Date: March 26, 2013

A police officer saw appellant pushing a bicycle and walking with a female companion at 4:45 a.m. The officer stopped his patrol car and asked what they were doing and if they were on probation or parole. Appellant's companion said she was on parole. The officer directed her to approach him, and both of them did. Once appellant was within arm's reach, the officer grabbed hold of him and pat searched him. He found contraband. The court of appeal reversed the denial of the suppression motion, holding appellant was detained when the officer grabbed hold of him and there was not reasonable suspicion for doing so. (Staff attorney Dallas Sacher)

In re A.A. (H037837)

Staff attorney: Lori Quick

Date: February 6 2013

The juvenile court's judgment making the minor a ward of the court was reversed for failing to consider whether he would be eligible for deferred entry of judgment. (Welf. & Inst. Code, § 790.) Further, a probation condition not to associate with people the probation officer has named requires that appellant know whom the officer named. A condition not to possess poisons was vague and overbroad because it could ban using normal herbicides as directed. A ban on inhaling or

consuming substances of any type used as a glue, plant material, or aerosol product was vague and overbroad because it could ban incidental breathing in of fumes while legitimately painting or gluing something. A ban on weapons was overly broad and vague because it was not defined as a dangerous or deadly weapon.

ERROR AT TRIAL OR HEARING

People v. Jason Avila (H038552)

Panel attorney: Joy Maulitz

Date: December 19, 2013

Appellant was convicted of auto theft and receiving stolen property. The court of appeal held he could not be convicted of receiving the same property he stole. Further, the sentencing court could not impose a parole revocation restitution fine when he was placed on supervised release. (Staff attorney Jonathan Grossman)

People v. Delilah Corral (H038608)

Staff attorney: Patrick McKenna

Date: December 18, 2013

Previous summary revocations of probation did not extend the five year period of probation. The court could not violate appellant's probation after it had expired.

People v. Tamra Freidt (H038250)

Panel attorney: Jonathan Opet

Date: December 12, 2013

Appellant had been on probation for six years for a felony. Though she was never found to be willfully in violation of probation, the court extended probation because she had not completed paying off restitution. The court of appeal held in a published decision that probation could not be extended when there was not a violation, even if it had been summarily revoked during before. (Staff attorney Jonathan Grossman)

People v. Juventino Villarreal (H037177)

Attorney: Paul Meltzer

Date: September 24, 2013

The conviction was reversed due to juror misconduct. Two jurors discussed how they believed the defendant was guilty before hearing the defense case. (SDAP did not participate in the appeal)

People v. William Johnson
Panel attorney: Jamie Lee Moore
Date: September 11, 2013

Appellant lost at jury trial. He then admitted he suffered a prior prison commitment without being advised of his constitutional rights to a jury trial on the matter. Accordingly, the admission to the prior was reversed and the matter remanded to the superior court. (Staff attorney Lori Quick)

People v. Rick Wilson (H037262)
Panel attorney: Michael Satris
Date: September 5, 2013

Appellant suffered a prior conviction for driving under the influence and gross vehicular manslaughter while intoxicated. It was disputed in the prior litigation whether a passenger had seized control of the vehicle before the accident. The prosecution sought to allege the prior conviction as a strike conviction in a recent case. In a published decision, the court held there was insufficient evidence that it was a strike. The conviction for gross vehicular manslaughter could have occurred under an aiding and abetting theory, so it could not be inferred appellant personally inflicted great bodily injury. For the court to now make a determination of whether there was personal infliction would violate the Sixth Amendment right to a jury trial. (Staff attorney Lori Quick)

People v. Patrick Fousek (H037696)
Panel attorney: Richard Boire
Date: June 14, 2013

The court reversed the conviction for child endangerment for failure to give a unanimity instruction when the evidence indicated discrete, unrelated acts could support the conviction. (Staff attorney Lori Quick)

People v. Hernandez (H037436)
Panel attorney: Joseph Shipp
Date: May 9, 2013

Appellant was convicted of raping a woman by dragging her about ten feet from a sidewalk to a small field next to the sidewalk. The court found there was sufficient evidence of a kidnapping but agreed the court erred in not instructing the jury that the asportation must not be incidental to the rape. Because this was a close case, reversal of the kidnapping conviction was necessary. (Staff attorney Jonathan Grossman)

People v. Bruce Blackburn (H038181)
Panel attorney: Rudy Kraft
Date: March 21, 2013

Appellant was committed under the MDO Act, and the court issued an order permitting involuntary medication. The court of appeal agreed the order was unconstitutionally vague and overbroad because it did not specify what medication could be administered and did not state the medication was appropriate to treat his mental condition. (Staff attorney Paul Couenhoven)

People v. David Jennings (H037265)
Panel attorney: Randall Conner
Date: March 19, 2013

Appellant issued a threat, but it was not clear if the victim heard it. The court of appeal agreed the conviction must be reversed for failing to instruct on attempted criminal threats. (Staff attorney Lori Quick)

In re Steven R. (H036784)
Panel attorney: JuNelle Harris and Hilda Scheib
Date: February 7, 2013

The court of appeal modified conditions of probation to require knowledge. It also modified a condition of probation that the appellants not associate with anyone on probation, though the court placed both of them in the same home. Further, the matter was remanded for the juvenile court to clarify how it arrived at the amount of a general fund fine. (Staff attorney William Robinson)

People v. Minh Nguyen (H037951)
Panel attorney: Katherine Dwight
Date: January 15, 2013

The conviction for making a false report of an auto theft must be reversed because it was brought after the statute of limitations had expired. (Staff attorney Dallas Sacher)

SENTENCING

People v. Samuel Ghebretensae (H038123)
Panel attorney: Emery Allen
Date: December 30, 2013

The court lacked the authority to impose a probation supervision fee for a defendant being placed on mandatory supervision. (Panel attorney Jonathan Grossman)

People v. James Smith (H038457)
Panel attorney: Alan Siraco
Date: December 23, 2013

The court erred in ordering appellant to register as a gang member. Notwithstanding his prior gang ties, there was no evidence the crime was gang-related. (Staff attorney Lori Quick)

People v. Jorge Felix (H039363)
Staff attorney: William Robinson
Date: December 20, 2013

Appellant was convicted of commercial burglary and petty theft. The punishment for both crimes violated Penal Code section 654 and consequently the restitution fines must be reduced.

People v. Richard Maldonado (H038383)
Panel attorney: Alex Coolman
Date: December 18, 2013

The court lacked the authority to issue a stay away order against the prisoner. (Staff attorney Jonathan Grossman)

People v. David Soliz (H038969)
Staff attorney: Paul Couenhoven
Date: December 18, 2013

The court lacked the authority to order appellant be tested for AIDS when he was convicted of domestic violence and dissuading a witness.

People v. Joe Jones (H0376699)
Panel attorney: Karli Sager
Date: December 17, 2013

The court lacked the authority to order a stay away order against the prisoner. (Staff attorney Dallas Sacher)

People v. Joshua Moran (H039330)
Panel attorney: Joshua Schraer
Date: December 16, 2013

A condition to stay away from all Home Depots and their parking lots was modified to permit going on the parking lots. (Staff attorney William Robinson)

People v. Fernando Moreno (H039087)
Staff attorney: Paul Couenhoven
Date: December 16, 2013

The court purported to set the restitution fines at the statutory minimum, but it failed to take into account that the minimum amount increased since the commission of the crime. The fines were reduced.

People v. Labiano
Staff attorney: Paul Couenhoven
Date: December 11, 2013

The court purported to impose the statutory minimum restitution fine, but the minute order placed it at \$240. Because the minimum restitution fine at the time of the offense was \$200, the amount was reduced to \$200.

People v. Manuel Rocha (H038703)
Panel attorney: David Adams
Date: December 6, 2013

Appellant's parole was violated because of the new offense and because of absconding. The guidelines used by parole provide that the term of confinement for absconding would be nine months. The court decided in a published decision that the period of incarceration for the parole violation beyond the nine months must be applied to presentence credits in the instant case. (Staff attorney William Robinson)

People v. Faustino Flores (H039281)
Panel attorney: Michael Allen
Date: December 5, 2013

Appellant was entitled to dual presentence credits with a violation of probation that was based solely on the current offense. (Staff attorney Lori Quick)

People v. Daniel DeJesus (H038756)
Staff attorney: Vicki Firstman
Date: December 4, 2013

A condition of probation to stay 100 yards away from the victim was modified to require knowledge.

People v. Samir Elmachtoub (H038439)

Panel attorney: JuNelle Harris

Date: December 4, 2013

A protective order was modified to enjoin only willful, knowing contact with the victim. The condition that defendant must not destroy or damage the property of the victim was further modified to prohibit destroying or damaging the property of the victim with the intent to frighten, intimidate, harass, or annoy her. The condition that defendant must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person was stricken. (Staff attorney Lori Quick)

People v. Naheed Hamed (H039223)

Panel attorney: Michael Allen

Date: November 26, 2013

In a published the decision, the court held the calculation of penalty assessments was incorrectly calculated, and the calculation should be explicitly explained on the record. (Staff attorney Lori Quick)

People v. Cuong Bui (H039144)

Panel attorney: Monica Stoner

Date: November 25, 2013

A condition of supervised release not to possess or use illegal drugs or be where they are used or sold was modified to require knowledge. Further, appellant was entitled to increased presentence credits, to be credited to the time on supervised release, because the court's calculation was based on the wrong arrest date. (Staff attorney Lori Quick)

People v. Steven Garcia (H039147)

Panel attorney: David Adams

Date: November 25, 2013

The court was required to stay the punishment for possession of methamphetamine for sale in lieu of the punishment for transporting the same meth. Further, there was insufficient evidence appellant had the ability to pay attorney fees. (Staff attorney Paul Couenhoven)

People v. Lawrence Ledee
Panel attorney: Robert Derham
Date: November 18, 2013

The court erred in increasing the restitution fines upon the revocation of probation. (Staff attorney Paul Coenhoven)

People v. Adrian Ramirez (H038660)
Panel attorney: David Mishook
Date: November 13, 2013

Conditions of probation not to use illegal drugs or alcohol or not to obtain new gang-related tattoos were modified to require knowledge. (Staff attorney Paul Couenhoven)

People v. Angel Ortega (H039218)
Staff attorney: Jonathan Grossman
Date: November 13, 2013

A probation condition not to be on the parking lot of any Lucky Store, Save Mart, or FoodMaxx was deemed to be overbroad and modified to permit him to be on the parking lot.

People v. Arthur Pagaduan (H039308)
Staff attorney: Patrick McKenna
Date: November 8, 2013

A condition of probation not to use or consume alcohol or illegal drugs was modified to require knowledge.

In re H.V. (H039634)
Staff attorney: Lori Quick
Date: November 6, 2013

A condition of probation to stay 100 yards away was modified to require knowledge.

People v. Laurel (H039164)
Panel attorney: Jonathan Berger
Date: November 5, 2013

Appellant was convicted of rape. The jury found true two different one strike provisions:

aggravated kidnapping, requiring a sentence of 25 years to life, and simple kidnapping, requiring a sentence of 15 years to life. The court imposed the term of 25 years to life and also imposed but stayed the punishment of 15 years to life. This was unauthorized, and the stayed sentence was vacated. (Staff attorney William Robinson)

People v. Cary Silberman (H038722)

Staff attorney: Patrick McKenna

Date: October 29, 2013

Appellant was sentenced to serve 2 years 8 months in the jail followed by a term of two years of mandatory supervision. The sentencing court ordered him to pay \$110 per month in probation supervision fees. The court of appeal held the fee was not authorized for those placed on supervised release while serving a “split sentence” at the jail.

People v. Tony Dang (H038688)

Panel attorney: Jonathan Gettleman

Date: October 29, 2013

Probation conditions not to possess, consume drugs or alcohol or be where alcohol is the primary object being sold were modified to require knowledge. (Staff attorney Lori Quick)

In re G.C. (H038607)

Panel attorney: Evan Greenberg

Date: October 28, 2013

Conditions not to use or possess drugs or alcohol, or a scale that can be used for weighing drugs were modified to require knowledge. Further, the matter was remanded for the juvenile court to determine if the offenses were felonies or misdemeanors. (Staff attorney Dallas Sacher)

People v. Philip Garcia (H038578)

Panel attorney: Hannah Good

Date: October 25, 2013

The probation condition to stay away from school campuses was vague and modified to stay at least 50 feet from them. (Staff attorney William Robinson)

People v. Jeffrey McCormick (H038603)

Staff attorney: Paul Couenhoven

Date: October 21, 2013

The trial court miscalculated presentence credits, and appellant was entitled to two additional days.

People v. Juan Pineda (H038570)
Panel attorney: Joseph Escobosa
Date: October 17, 2013

The court modified a condition of probation not to possess gang clothes or symbols to require knowledge. It also modified a condition to not be adjacent to a school campus to be at least 50 feet away. (Staff attorney Lori Quick)

In re C.P. (H039480)
Panel attorney: Christopher Morales
Date: October 17, 2013

The court modified a condition of probation to stay away from the victim to require knowledge, and a condition to not be adjacent to a school campus to not be within a block. (Staff attorney Paul Couenhoven)

People v. Armando Gomez (H038711)
Panel attorney: Ellen Rheame
Date: October 15, 2013

The court modified a condition of probation not to be where weapons are to require knowledge. (Staff attorney Dallas Sacher)

People v. Stanford Hauser (H039072)
Staff attorney; Jonathan Grossman
Date: October 11, 2013

Appellant was convicted of robbery, making criminal threats, and possession of a firearm. The court held that the punishment for making criminal threats needed to be stayed pursuant to Penal Code section 654, and consequently the restitution fines must be reduced by one-third.

People v. Larry Reece (H038356)
Staff attorney: Dallas Sacher
Date: October 4, 2013

The Criminal Justice Realignment Act required that the defendant serve his sentence at the jail, not the prison, when execution of sentence is suspended before October 1, 2011 but is not

executed until afterward.

People v. Ulises Williams (H039084)

Panel attorney: Joseph Escobosa

Date: October 4, 2013

Appellant was placed on three years probation. Although probation had been summarily revoked at one point, he was found not to be in violation. A new petition to revoke probation was filed more than three years after he was placed on probation. The prosecution argued it was timely because probation was tolled when it had been summarily revoked the first time. However, this does not extend probation, so the court lacked jurisdiction to revoke probation the second time. (Staff attorney Patrick McKenna)

People v. Traisen Wallace (H038930)

Staff attorney: Lori Quick

Date: October 3, 2013

The court agreed appellant was entitled to increased presentence credits for time in a residential program. Further, the conduct credits should not have been limited to 20 percent of his sentence.

People v. Alvaro Gonzalez (H038025)

Staff attorney: Paul Couenhoven

Date: September 30, 2013

Appellant took the victim's car and money. He was convicted of robbery and auto theft. The court of appeal concluded the punishment for auto theft must be stayed pursuant to Penal Code section 654.

People v. Nwuzi (H038485)

Panel attorney: Catherine White

Date: September 27, 2013

Appellant was convicted of false imprisonment, human trafficking, criminal threats, and pandering. The court of appeal concluded the punishment for human trafficking must be stayed pursuant to Penal Code section 654. (Staff attorney William Robinson)

People v. Jesse Carranco (H032412)

Panel attorney: Victoria Stafford

Date: September 23, 2013

The defendant was convicted by jury of attempted murder with premeditation. The trial court decided a life sentence would constitute cruel and unusual punishment and reduced the conviction to attempted murder without premeditation, leading to a ten year sentence. The prosecution appealed. The court of appeal concluded the trial court did not err. (Staff attorney Dallas Sacher)

People v. Garcia (H037456)
Panel attorney: Monica Stoner
Date: September 23, 2013

Appellant pled to some crimes where the requirement to register as a sex offender was a matter of court discretion. The order to register was reversed because the court failed to make requisite findings. (Staff attorney William Robinson)

In re A.L. (H038840)
Staff attorney: Patrick McKenna
Date: September 19, 2013

The matter was remanded to determine if the offense was a felony or misdemeanor. Further, conditions of probation not to possess drug paraphernalia or graffiti-related material were modified to require knowledge.

People v. Eliseo Barajas (H037848)
Staff attorney: Vicki Firstman
Date: September 12, 2013

The court erred in adding a gang enhancement to an indeterminate term.

In re E.A. (H039165)
Staff attorney: Patrick McKenna
Date: August 29, 2013

The matter was remanded so that the juvenile court could determine if a wobbler offense was a felony or a misdemeanor.

People v. Joseph McConnell (H038310)
Staff attorney: Vicki Firstman

Date: August 29, 2013

The court failed to make a determination whether appellant had the ability to pay probation supervision fees.

People v. Christina Anzalone (H035123)

Panel attorneys: Gabriel Bassan and J. Courtney Shevelson

Date: August 29, 2013

The sentencing court was required to impose one-third of the punishment for a weapons enhancement that attached to a subordinate term and to stay the punishment for misdemeanor brandishing a weapon pursuant to Penal Code section 654. (Staff attorney William Robinson)

People v. Alexander Welbers (H038791)

Panel attorney: Morgan Taylor

Date: August 28, 2013

The probation conditions not to possess weapons or burglary tools required knowledge. (Staff attorney William Robinson)

People v. Donna Trujillo (H038316)

Panel attorney: Randall Conner

Date: August 22, 2013

Because the trial court failed to make a determination of appellant's ability to pay monthly probation supervision fees, the court of appeal remanded the matter for a new hearing. The appellate court also reduced the restitution fine from \$240 to \$200, because the latter amount was the minimum fine when the crime was committed. The court eliminated the ten percent administrative fee for collecting any probation revocation restitution fine because it is unauthorized for the probation revocation restitution fine. (Staff attorney Jonathan Grossman)

In re D.P. (H038856)

Panel attorney: Rachel Sussman

Date: August 21, 2013

The court modified a condition of probation not to possess drug paraphernalia to require knowledge. (Staff attorney Paul Couenhoven)

In re J.A. (H038500)

Panel attorney: Monica Stoner
Date: August 20, 2013

The court modified a condition of probation not to use or possess drugs or alcohol to require knowledge. (Staff attorney Paul Couenhoven)

People v. Adrian Ruiz (H038020)
Panel attorney: Evan Greenberg
Date: August 15, 2013

The court of appeal remanded the matter for a determination of an ability to pay probation supervision fees and to modify a condition of probation to define a gang as a criminal street gang. (Staff attorney Jonathan Grossman)

In re E.N. (H038827)
Panel attorney: Alissa Bjerkhoel
Date: August 1, 2013

The court erred in not setting the maximum confinement time when it placed the minor out of home. (Staff attorney Lori Quick)

People v. Waters (H038708)
Staff attorney: Patrick McKenna
Date: July 31, 2013

The defendant was ordered to pay a \$500 fine under Penal Code section 290.3. The statutory maximum was \$300 unless he suffered a prior conviction. Although he suffered a prior out of state conviction, this did not qualify under the statute.

People v. Richard Lyons (H038698)
Staff attorney: Patrick McKenna
Date: July 31, 2013

The court said it was imposing the statutory minimum restitution fine of \$240. However, at the time the crime was committed, the statutory minimum fine was \$200. It violated the ex post facto clause to increase the statutory minimum fine after the crime was committed. The amount was reduced to \$200.

People v. Pirali (H038349)

Panel attorney: Maria T. Rogers
Date: July 17, 2013

In a published decision, the court held that certain conditions of probation restricting access to the Internet were vague, as was an order not to possess pornography. (Staff attorney Jonathan Grossman)

People v. Joseph Indorato (H037964)
Panel attorney: Patricia Lai
Date: July 17, 2013

The Monterey County Superior Court imposed a \$200 fine under Health and Safety Code section 11372.5 and another \$200 fine under Health and Safety Code section 11372.7. These amounts were incorrect, and it was not clear if the court included penalty assessments in the amounts. The matter was remanded for the court to clarify its order. (Staff attorney Lori Quick)

People v. Malia Soto (H038355)
Staff attorney: William Robinson
Date: July 12, 2013

The court erred in setting the probation revocation restitution fine at amount larger than the restitution fine.

People v. Eliseo Barajas (H037848)
Staff attorney: Vicki Firstman
Date: July 11, 2013

Appellant committed his crime in 2010. At sentencing in 2012, the court set the restitution fine according to the statutory formula in effect in 2012, which was higher than it was in 2010. The use of the new formula violated ex post facto restrictions.

People v. Jason Castillo (H039070)
Staff attorney: Lori Quick
Date: July 10, 2013

Probation conditions were modified to require knowledge.

People v. Jorge Rodriguez (H038431)
Panel attorney: J. Frank McCabe

Date: July 1, 2013

A stay away condition of probation must be modified to clarify where he was supposed to stay away from.

People v. Francisco Castro (H038558)

Panel attorney: Jill Fordyce

Date: June 27, 2013

Appellant pled to a wobbler. At sentencing, he asked that the felony be reduced to a misdemeanor. The prosecution erroneously argued the offense was not a wobbler. The court denied the motion without comment. The court of appeal decided it was ambiguous whether the trial court accepted the prosecution's argument in denying the motion. It remanded the matter for the court to clarify its reasons. (Staff attorney Lori Quick)

People v. Alvin Jessen (H037830)

Panel attorney: Michael O'Flannigan

Date: June 27, 2013

The sentencing court did not have the authority to impose a probation revocation or parole violation restitution fine for a defendant sentenced to jail under Penal Code section 1170(h) who will be subject to supervised release. Further, the court could not impose an order ex parte after the sentencing hearing forbidding certain early release programs from the jail. (Staff attorney Jonathan Grossman)

People v. Jeffrey Romero (H037094)

Panel attorney: Gordon Brownell

Date: June 14, 2013

Appellant was convicted of a new crime, and the court imposed an aggregate sentence with another case he was serving from another county. When this occurs, the court was required to calculate the presentence credits for the aggregate sentence. (Staff attorney Dallas Sacher)

People v. Berry Bahena (H038620)

Staff attorney: Lori Quick

Date: June 12, 2013

The court erred in awarding one-for-one presentence conduct credits when the crime was committed in September 2011.

People v. Orlando Creswell (H038097)
Panel attorney: Alan Siraco
Date: May 30, 2013

Appellant had a previous appeal, in which reversed the judgment was reversed. On remand, he was retried on the allegation that was reversed and resentenced. The court erred in not awarding updated presentence custody credits. (Staff attorney Jonathan Grossman)

People v. Huang Do (H037180)
Panel attorney: Patricia Lai
Date: May 21, 2013

The court erred in not awarding presentence conduct credits. Further, it could not impose a parole revocation restitution fine when the defendant was sentenced to serve life without parole. Finally, the minute order mistakenly lists a booking fee that the court chose not to impose. (Staff attorney William Robinson)

People v. Jose Negrete (H037760)
Staff attorney: Jonathan Grossman
Date: May 21, 2013

The court agreed appellant was entitled to accelerated presentence conduct credits for the time in custody after January 25, 2010.

People v. Enrique Lopez (H038506)
Panel attorney: Gunnar Rosenquest
Date: May 16, 2013

A probation condition was modified to avoid problems with vagueness and overbreadth. (Staff attorney Paul Couenhoven)

People v. Laura Mosbrucker (H038545)
Panel attorney: Eileen Rice
Date: May 16, 2013

Appellant was given a 16 month sentence with credit for 489 days. Since 16 months was a few days short of the 489 days, she was entitled to have the remainder of the days credited toward her fines. (Staff attorney Dallas Sacher)

In re J.C. (H038359)
Panel attorney: David Scopp
Date: May 13, 2013

The court of appeal remanded the matter for the juvenile court to determine if a wobbler offense was a misdemeanor or felony. The court also decided there was insufficient evidence of an ability to pay a fine. (Staff attorney Lori Quick)

People v. Rhuben Hollins (H037521)
Panel attorney: Lydia de la Torre
Date: May 13, 2013

The court of appeal decided that a conviction for violating Penal Code section 529 did not warrant a probation condition not to consume alcohol when there was no evidence alcohol was involved or appellant had a problem with alcohol. (Staff attorney William Robinson)

People v. Ramon Corona (H037853)
Panel attorney: Janet Gilger
Date: May 9, 2013

Appellant was convicted of robbery with a gun enhancement and illegal possession of a firearm. The punishment for possessing the firearm must be stayed because there was no evidence he possessed it before or after the robbery. (Staff attorney Paul Couenhoven)

People v. Anthony Watson (H037764)
Panel attorney: David Annicchiarico
Date: May 9, 2013

Appellant was convicted of assault with a firearm, burglary, and making criminal threats. The court agreed the punishment for the last count must be stayed because it was part of the other crimes. (Staff attorney Lori Quick)

People v. Paul Casarez (H038478)
Staff attorney: Paul Couenhoven
Date: May 8, 2013

The court decided appellant was entitled to additional presentence credits.

People v. Aaron Corn (H038127)

Panel attorney: Edward Mahler
Date: April 30, 2013

Appellant was a teenager involved in a drunk driving accident that severely injured one of his passengers. The probation department and the court believed he was presumptively ineligible for probation under Penal Code section 1203, subdivision (e)(3). But this provision applies only if great bodily injury is intentional, which it was not in this case. The matter was remanded for a new sentencing hearing.

People v. Jesse Diaz (H038283)
Panel attorney: Alex Green
Date: April 30, 2013

Appellant was entitled to increased presentence conduct credits under amended Penal Code section 4019 for the time he spent in custody after the law went into effect. (Staff attorney William Robinson)

People v. Gerald Quint (H036833)
Panel attorney: Jeffrey Needelman
Date: April 29, 2013

Trial counsel was ineffective for not objecting to a restitution order that overstated the loss to the victim. (Staff attorney Paul Couenhoven)

People v. Marlon Johnson (H037980)
Panel attorney: Carrie Kojimoto
Date: April 26, 2013

Probation conditions were modified to avoid problems with vagueness and overbreadth. (Staff attorney Dallas Sacher)

In re Johnny C. (H038023)
Panel attorney: Victoria Schultz
Date: April 22, 2013

Probation conditions were modified to avoid problems with vagueness and overbreadth. (Staff attorney Lori Quick)

People v. Christopher Silva (H038146)

Staff attorney: William Robinson
Date: April 19, 2013

Probation conditions were modified to avoid problems with vagueness and overbreadth.

People v. Carlos Salinas (H038428)
Staff attorney: Lori Quick
Date: April 16, 2013

Probation conditions were modified to avoid problems with vagueness and overbreadth.

People v. Elio Diaz (H037952)
Panel attorney: Jonathan Gettleman
Date: April 16, 2013

Probation conditions were modified to avoid problems with vagueness and overbreadth.
(Staff attorney Paul Couenhoven)

People v. Johnson (H037677)
Staff attorney: Lori Quick
Date: April 12, 2013

The court ordered as a condition of probation that appellant take medication prescribed for any diagnosed ailment as directed by mental health doctors. The condition was overbroad to the extent it required him to take medication not related to mental health issues.

People v. Adam Alffaro (H037912)
Panel attorney: J. Wilder Lee
Date: April 10, 2013

Appellant pled no contest to three counts of attempted murder and admitted that he personally fired a gun under Penal Code section 12022.53(c) for count one only and he used a gun under section 12022.5(a) for counts two and three. It was agreed he would be sentenced to serve 25 years in prison and the remaining allegations would be dismissed. At sentencing, the court imposed concurrent terms of 25 years for all three counts calculated by adding 20 years for the section 12022.53(c) enhancement for each count. The sentence violated the plea bargain because he never admitted the section 12022.53(c) enhancements for counts two and they were supposed to be dismissed. (Staff attorney Paul Couenhoven)

People v. Vincent Obannon (H037481)
Panel attorney: Heather McKay
Date: April 4, 2013

Appellant used a false access card to purchase merchandise from a store. The court ordered he pay victim restitution to both the bank and the store. Since the bank had reimbursed the store, the store suffered no loss. The restitution order to the store must be stricken. (Staff attorney William Robinson)

People v. Deni Urosevic (H037496)
Staff attorney: Vicki Firstman
Date: April 2, 2013

When appellant was sentenced, probation was denied, and he was sentenced to serve a term in the jail with a period of supervised release afterward. He was assessed a probation supervision fee and a parole violation restitution fine. The court of appeal agreed these fines and fees were unauthorized because he was not on probation and would not be on parole. Further, the criminal conviction assessment for two convictions should be \$60, not \$80.

People v. Caitlin Esquivel (H037937)
Staff attorney: William Robinson
Date: March 28, 2013

Appellant pled to robbery and grand theft. He was arrested for both crimes on the same day. The court imposed three years for the grand theft and eight months (240 days) consecutive for the robbery. But in awarding presentence credits, it assigned 506 days to the robbery only. This was error. Once the robbery sentence was completed, all of the remaining presentence credits must be awarded to the grand theft.

People v. Marco Cuevas (H036928)
Panel attorney: John Dwyer
Date: March 27, 2013

A parole revocation restitution fine could not be imposed when the court imposes life without parole. (Staff attorney William Robinson)

People v. Lawrence Frank (H037578)
Panel attorney: Jeffrey Glick
Date: March 21, 2013

The court of appeal agreed that the award of penalty assessments violated the ex post facto clause because it included assessments added on after the crime was committed. (Staff attorney Jonathan Grossman)

People v. Noe Hernandez (H038293)
Panel attorney: Charles Marson
Date: March 19, 2013

The court of appeal agreed that a condition to not associate with anyone whose behavior might lead to criminal activity was unconstitutionally vague. (Staff attorney Jonathan Grossman)

People v. Jose Campos (H038502)
Staff attorney: William Robinson
Date: February 27, 2013

The probation conditions to not use or possess alcohol or narcotics, not possess or transport dangerous weapons or firearms or ammunition, stay away from the victim, or not possess or have access to a police scanner required knowledge.

People v. Manuel DeJesus (H038503)
Staff attorney: Paul Couenhoven
Date: February 26, 2013

The probation condition not to possess a deadly or dangerous weapon requires knowledge.

People v. John Zamora (H037159)
Panel attorney: Robert Angres
Date: February 26, 2013

Appellant could not be convicted of false imprisonment and kidnapping. This required a reduction in the court security and court facility fees. (Staff attorney William Robinson)

People v. Jesus Barriga (H037613)
Panel attorney: Rudy Kraft
Date: February 26, 2013

The probation condition not to use alcoholic beverages requires knowledge. (Staff attorney Paul Couenhoven)

People v. Carolyn Huerta (H037152)
Panel attorney: Solomon Wollack
Date: February 25, 2013

The punishment for felony assault and grand theft must be stayed in lieu of the punishment for the gang crime. (Staff attorney William Robinson)

People v. Drew Young (H036922)
Staff attorney: Vicki Firstman
Date: February 21, 2013

Conditions of probation were modified to avoid problems with overbreadth and vagueness, the order concerning presentence credits was modified, and the order to pay probation supervision fees was reversed and remanded for a hearing to determine appellant's ability to pay.

People v. Ronald McAlmond (H037617)
Panel attorney: Elisa Brandes
Date: February 21, 2013

The court of appeal agreed that appellant was entitled to increased presentence conduct credits for time in custody after Penal Code section 4019 was amended. (Staff attorney Vicki Firstman)

In re D.G. (H037973)
Panel attorney: Katja Grasso
Date: February 20, 2013

A condition of probation was modified to avoid problems with overbreadth and vagueness. (Staff attorney Lori Quick)

In re D.L. (H038499)
Panel attorney: Alissa Bjerkhoel
Date: February 19, 2013

The punishment for burglary or residential robbery needed to be stayed pursuant to Penal Code section 654. (SDAP did not participate in this appeal)

People v. Ivan Colin (H037593)
Panel attorney: William White

Date: February 13, 2013

A condition of probation was modified to avoid problems with overbreadth and vagueness.
(Staff attorney Dallas Sacher)

People v. Joseph Gomez (H037337)

Panel attorney: Julia Spikes

Date: January 30, 2013

In ordering victim restitution for stolen jewelry, the trial court accepted that the value might have appreciated. But the court of appeal decided the trial court did not explain its basis for adding certain values to certain pieces of jewelry. Some of the jewelry was made up impure gold, and others were purchased later in time. Yet the court appeared to have assumed the same appreciation in value. (Staff attorney Lori Quick)

People v. Alan Tinker (H037306)

Panel attorney: Michael Allen

Date: January 24, 2013

Appellant was convicted of possession for sale and transportation of controlled substances. When he pled, the court said the punishment for one of the convictions would be stayed pursuant to Penal Code section 654, but at sentencing it imposed a concurrent term. In a published decision, the court of appeal agreed the term needed to be stayed. Further, the trial court erred in failing to award presentence credits under Penal Code section 2933, subdivision (e) in effect from September 25, 2010 to September 30, 2011. (Staff attorney William Robinson)

People v. Michelle Castor (H037867)

Staff attorney: William Robinson

Date: January 23, 2013

Appellant committed her crimes before January 2010. After the Criminal Justice Realignment Act, her probation was revoked. But instead of being sentenced to prison, she was sentenced to serve the term in the county jail. The court of appeal held that the presentence conduct credits earned after January 2010 should be at two days for every two actual days served. Further, she is entitled to earn post-sentence conduct credits at 50% as if she were sentenced to prison. Failure to do so would violate ex post facto principles.

People v. Mario Becerra (H037373)

Panel attorney: Susannah McNamara

Date: January 18, 2013

Atty was able to show, after some complicated calculations, that appellant was entitled to additional presentence credits. (Staff attorney Paul Couenhoven)

People v. Gregory Hughes (H037665)

Panel attorney: Julia Freis

Date: January 15, 2013

The court ordered a restitution fine of \$1200, but the minute order erroneously stated it was \$1600. (Staff attorney Jonathan Grossman)

People v. Brooks (H037775)

Panel attorney: Alex Coolman

Date: January 7, 2013

In sentencing appellant to prison, the court lacked the authority to order him to stay away from the victim under Penal Code section 136.2. (Staff attorney Lori Quick)

People v. Jose Alvarez (H037822)

Panel attorney: Robert Derham

Date: January 3, 2013

Additional presentence credits were awarded to correct a clerical error. (Staff attorney Dallas Sacher)

DEPENDENCY CASES

In re J.S. (H039460)

Panel attorney: Karen Elcaness

Date: November 18, 2013

Although the minor's ancestor was adopted, this did not preclude the possibility that the Indian Child Welfare Act applied; thus, the juvenile court erred in failing to require notice to be sent pursuant to ICWA. (Staff attorney Jonathan Grossman)

Gonzales v. Santa Clara County Dept. Social Services (H038241)

Attorney: Seth Gorman

Date: October 8, 2013

Appellant had been placed on the statewide child abuse central index for a “substantiated” claim of child abuse. She disciplined her daughter by hitting her with a wooden spoon. After an

investigation of child protective services, no dependency petition was filed. Appellant petitioned to have the “substantiated” report removed from the index, but the department refused. The court of appeal held in a published decision that parental discipline of this nature did not constitute child abuse and she was entitled to relief. (SDAP did not participate in this case)

HABEAS CORPUS

In re George Garcia (H040100)

Staff attorney: Carlo Andreani

Date: November 18, 2013

Garcia was denied presentence credits on the ground he suffered a parole violation for absconding in addition to the new case. Because this was incorrect, the court of appeal issued an order to show cause. (Staff attorney Lori Quick)

People v. Durrand (H038105)

Staff attorney: Jonathan Grossman

Date: August 7, 2013

The defendant entered a plea bargain where he admitted he suffered a prior strike from a Florida residential burglary for a nine year sentence. He was told his maximum sentence if he went to trial and lost would have been 25 years. On habeas corpus, it was alleged he was misadvised because the Florida prior did not qualify as a strike in California and thus his maximum sentence would have been 12 years. Had he known this he would not have pled. The court of appeal issued an order to show cause.

MISCELLANEOUS

Ochoa v. Valverde (H037350)

Attorney: Allen Schwartz

Date: November 21, 2013

Appellant was driving and failed to dim his bright lights as an officer approached in the opposite direction. The officer made a U-turn and followed appellant. Appellant drove into his attached garage and started to close the garage door. The officer turned on his emergency lights after he drove up the driveway and stopped the garage door from closing by entering the threshold. He then got a hold of appellant and noticed he was under the influence of alcohol. Criminal charges were filed, but they were dismissed because the stop was illegal. The officer did not have the right to enter the residence for failing to dim the bright headlights. The DMV administratively suspended his license. The court of appeal held the suspension was unlawful because it did not have the authority to rely on illegally obtained evidence. (SDAP did not participate in this appeal)

Sorenson v. Superior Court (H038295)
Attorney: Donald Landis, Monterey County Public Defenders
Date: September 4, 2013

In a published decision, the court of appeal held that the public and the prosecution did not have a First Amendment right to access the record of a jury trial in a Lanterman-Petris-Short Act proceeding in light of the defendant's right to privacy. (SDAP did not participate in the proceeding)

Holland v. Superior Court (H038872)
Attorney: Michael Ogul
Date: June 26, 2013

The court of appeal issued a pretrial writ of mandate directing the superior court to order that the district attorney provide unredacted police reports and the addresses of people on its witness list in an upcoming murder trial. (SDAP did not participate in this proceeding)

Luis Rios v. Superior Court (H038585)
Attorney: Lisa Kay McCamey
Date: January 24, 2013

A jury convicted Rios of four felony counts and found for three of the counts that an enhancement under Penal Code section 12022.55 was true. On appeal, the enhancement was reversed because of instructional error. The case was remanded with direction to either retry him on the alleged enhancement within 60 days of the remittitur or resentence him. He was not retried within 60 days, and he moved to dismiss the alleged enhancement and be resentenced. When the superior court denied the motion, he filed a petition for writ of mandate. The court of appeal granted relief and directed the superior court to dismiss the alleged enhancement and resentence him. The prosecution then filed a new complaint alleging only the enhancement. Rios demurred, which was denied. He filed another petition for writ of mandate. The court of appeal granted relief and directed the complaint to be dismissed. (SDAP did not participate in the proceeding)