

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

**SUFFICIENCY OF THE EVIDENCE**

People v. Dominic Mixon-Givens (H044705)

Staff attorney: Lori Quick

Date: December 31, 2019

There was insufficient evidence to support the allegation appellant suffered a prior strike conviction and a prior serious felony conviction based on a Nevada burglary conviction. The trial court improperly relied on facts of the conviction in violation of *People v. Gallardo* (2017) 4 Cal.5th 120, 138. Further, the punishment for either domestic violence or for assault with force likely to cause great bodily injury must be stayed because they were from the same act.

In re C.H. (H046005)

Panel attorney: Julie Caleca

Date: December 19, 2019

Appellant and a classmate were friends. Appellant asked the classmate's boyfriend what would happen if he touched her breasts. The boyfriend replied try it and find out. So he did, and she reacted angrily. There was insufficient evidence of a sexual battery when there was lack of evidence appellant had the intent to sexually arouse, gratify, or abuse. (Staff attorney Lori Quick)

People v. Rudy Revillas (H045760)

Panel attorney: Peggy Headley

Date: December 10, 2019

Appellant could not be convicted of two separate stalking offenses against the same victim. (Staff attorney Lori Quick)

People v. Loan Nguyen (H044510)

Panel attorney: J. Wilder Lee

Date: August 8, 2019

There was insufficient evidence an occupant was present during a residential burglary. There

was also insufficient evidence of passing a fictitious check when the defendant submitted a real check that was actually signed by the account holder, though the defendant passed it knowing there was insufficient funds to cover the amount. (Staff attorney Patrick McKenna)

People v. Dino Arucan (H044848)

Panel attorney: Peggy Headley

Date: August 9, 2019

Appellant, a convicted felon, was accused of stealing a friend's gun from his room. Appellant was convicted of residential burglary, grand theft of a gun, possession of a firearm by a felon, and illegal possession of ammunition, among other things. The conviction for theft must be reduced to a misdemeanor because there was no evidence the gun was worth more than \$950. The punishment for theft must be stayed under Penal Code section 654 in light of the punishment for being a felon in possession. The punishment for possessing ammunition must be stayed for the same reason. (Staff attorney Lori Quick)

People v. Vladimir Licina (H044643)

Panel attorney: Matthew Watts

Date: May 6, 2019

Appellant drove his car at a low rate of speed into the car of his ex-wife, who felt a jolt. The court of appeal decided this was insufficient force to amount to an indirect battery. There was sufficient evidence of assault but insufficient evidence of assault against a child in the back of the car when there was no evidence appellant was aware she was present. (Staff attorney William Robinson)

People v. Jaquelyn Edens (H045098)

Panel attorney: Karlene Navarro

Date: May 2, 2019

The felony conviction for auto theft was reduced to a misdemeanor because there was insufficient evidence of the value. (Staff attorney Paul Couenhoven)

In re A.E. (H046013)

Panel attorney: Kelley Fleming

Date: March 21, 2019

The minor entered another's car. The issue at the jurisdictional hearing was whether he took anything. The victim testified some things were recovered by the police, but he also said those items

were never missing from the car. The court of appeal ruled there was insufficient evidence to find the minor committed theft. (Staff attorney Lori Quick)

People v. Wilder (H043486)  
Panel attorney: Sara Coppin  
Date: January 24, 2019

A jury convicted appellant of attempted possession of child pornography and attempting to use a minor for sex acts. A 16 year-old girl was sitting at a table in a public library. Appellant photographed her from under the table and behind her. She was fully clothed and not doing anything suggestive, and thus there was insufficient evidence to support the convictions. (Staff attorney William Robinson)

People v. Gonzalez (H045206)  
Staff attorney: Lori Quick  
Date: January 14, 2019

There was insufficient evidence of committing continuance lewd acts with a minor for at least three months.

#### **ERROR AT TRIAL OR HEARING**

People v. Edgar Martinez (H045108)  
Panel attorney: Candace Hale  
Date: December 31, 2019

Appellant could not be convicted twice of hit and run with injury for the same act against two victims. (Staff attorney Patrick McKenna)

People v. Sang Quoc Tran (H046967)  
Panel attorney: Nicholas Seymour  
Date: December 26, 2019

A jury convicted appellant of possession of contraband in jail (Pen. Code, § 4573.6) and possession of drugs in jail (Pen. Code, § 4573.8). The second conviction must be dismissed because it was necessarily included in the first conviction. (Staff attorney Lori Quick)

People v. Patrick Barraza (H045987)  
Panel attorney: Garrick Byers

Date: December 20, 2019

Appellant entered a plea for a certain term on condition he report to probation and return to court for sentencing. He did report to probation, but not in time for the probation report to be prepared for the sentencing hearing. Based on this, the court determined he violated the condition of the *Cruz* waiver. The court of appeal reversed because the court had not ordered him to report to probation before a deadline. (Staff attorney Jonathan Grossman)

People v. Daniel Petty (H045503)

Panel attorney: John Dwyer

Date: December 12, 2019

Appellant was convicted of taking or driving a motor vehicle. (Veh. Code, § 10851, subd. (a).) Because he could have been convicted of theft and the jury was not instructed on the amount, the conviction must be reversed. The prosecution had the option of seeking a retrial or reducing the conviction to a misdemeanor. (Staff attorney Jonathan Grossman)

People v. Christian (H044243)

Staff attorney: Anna Stuart

Date: October 31, 2019

The court of appeal reversed a life sentence due to a coerced verdict. The jury reported to the trial court that it was deadlocked, 11-1. The court asked who the holdout juror was and urged the person to deliberate further. The court of appeal also found trial counsel was ineffective for failing to object.

People v. Conner (H045304)

Panel attorney: Brian McComas

Date: September 26, 2019

Appellant was charged with possession of child pornography. The police officer said he received a spreadsheet from a private firm devoted to enforcing laws against child pornography that indicated appellant had visited sites the firm designated as child pornography sites. The court of appeal reversed, holding the evidence was hearsay and violated appellant's right to confrontation. (Staff attorney William Robinson)

People v. Oscar Jimenez (H043629)

Attorney: Steven Alan Torres

Date: July 23, 2019

The court erred in admitting testimonial hearsay through the expert witness. (SDAP was not involved in this appeal)

People v. Jose Hernandez (H044870)  
Panel attorney: Jonathan Roberts  
Date: February 19, 2019

Appellant was convicted of felony cultivation of marijuana and misdemeanor possession for sale. The court erred in telling the jury it would instruct on the lesser included offense of simple possession but failing to do so. Further, his felony conviction must be a misdemeanor under Proposition 64. (Staff attorney Jonathan Grossman)

People v. Justin Skannal (H044449)  
Panel attorney: Joseph Shipp  
Date: January 31, 2019

Appellant entered the victim's apartment and said he would kill everyone inside and later said not to play with him or he would kill her. He was convicted of making a criminal threat, among other things. The court of appeal decided the failure to give a unanimity instruction was prejudicial error. (Staff attorney William Robinson)

People v. Randall Atkins (H044999)  
Panel attorney: Brian McComas  
Date: January 30, 2019

In a published decision, the court determined that to be guilty of threatening an executive officer under Penal Code section 69, the defendant must know the person being threatened is an executive officer. (Staff attorney Paul Couenhoven)

#### **PRETRIAL AND POSTTRIAL MOTIONS**

People v. Aaron Martinez (H046229)  
Panel attorney: Teresa Biagini  
Date: October 1, 2019

The judgment was reversed because of a failure to hold a *Marsden* hearing. (Staff attorney Lori Quick)

People v. Superior Court (S.L.) (H046598)

Attorney: Jeffrey Dunn  
Date: September 20, 2019

In a published decision, a split court held that SB 1391, banning the transfer of 14 and 15 year-olds to adult court, was constitutional. (SDAP was not involved in the matter)

People v. Alec Bevington (H045605)  
Panel attorney: Marc McKenna  
Date: September 17, 2019

The court erred in failing to hold a hearing whether to substitute appointed counsel under *People v. Marsden* (1970) 2 Cal.3d 118 and for failing to provide on the minute order the statutory basis for the penalty assessments. (Staff attorney Patrick McKenna)

In re P.R. (H046227)  
Panel attorney: Thomas Deremigio  
Date: September 10, 2019

The matter was remanded because the juvenile court apparently did not understand it had the discretion to seal the minor's juvenile record, though he had an offense listed under Welfare and Institutions Code section 707, subdivision (b). (Staff attorney Patrick McKenna)

People v. Laura Risdal (H043219)  
Panel attorney: Tyrone Sandoval  
Date: August 30, 2019

Appellant was entitled to have a felony theft conviction reduced to a misdemeanor under Proposition 47 even though she had successfully completed probation and had the plea set aside under Penal Code section 1203.4. (Staff attorney Lori Quick)

People v. Esteban Montiel (H046204)  
Panel attorney: Christopher Johns  
Date: August 28, 2019

Appellant consented to a pat search for weapons. The officer pulled out drug paraphernalia. There was no evidence why the officer did this. Because there was insufficient evidence the nature of the object in the pocket was apparent from feeling the outside of the clothing, the denial of the motion to suppress was reversed. (Staff attorney Jonathan Grossman)

People v. Ramon Lucatero (H044942)  
Panel attorney: Mary Jo Strnad  
Date: August 14, 2019

Appellant violated probation and was sentenced. Appellate counsel filed a motion in the trial court to reduce fines and fees. Trial counsel entered an agreement that appellant pay certain fines and fees as a condition of probation. The court of appeal decided the trial court lacked the authority to order conditions of probation after probation had been revoked. Further, the court could not impose punishment for a prison prior that was based on a conviction that had been reduced to a misdemeanor under Proposition 47. (Staff attorney Patrick McKenna)

People v. Franklin Farias (H042301)  
Panel attorney: Alexis Haller  
Date: July 31, 2019

Appellant's wife consented to officers searching the house. She explained appellant had illegal items in the garage. The officers searched containers in the garage and found contraband. A split court decided that the wife's consent did not extend to containers under appellant's exclusive control. (Staff attorney William Robinson)

People v. Siawash Ghasseminezhad (H045713)  
Attorney: Mark Arnold  
Date: July 30, 2019

The defense filed a motion to unseal the search warrant affidavit. The trial court denied the motion on the ground it had reviewed the sealed affidavit earlier in the case. Because this was not true, the matter was remanded for a new hearing. (SDAP was not involved in this appeal)

People v. Trevor Ryan-Tauber  
Panel attorney: Jeffrey Glick  
Date: July 26, 2019

The trial court ordered that a certain shotgun be confiscated and destroyed under Penal Code section 29300. The court of appeal held there was insufficient evidence the weapon was involved in the commission of a crime. (Staff attorney Lori Quick)

People v. Christopher Weaver (H045301)  
Panel attorney: Rudolph Alejo  
Date: July 1, 2019

In a published decision, the court of appeal determined the new mental health diversion scheme applies retroactively to cases on appeal when the new law was enacted. (Staff attorney Paul Couenhoven)

People v. Matthew Richardson (H045367)  
Attorney: David Dudley  
Date: June 25, 2019

Appellant entered into a plea bargain. There was no *Arbuckle* waiver. The judge then recused himself. As a different judge sentenced appellant, he moved to withdraw his plea, which was denied. On appeal, the court decided that a general waiver of the right to withdraw his plea on the plea waiver form did not apply to an *Arbuckle* violation. It further held that if the judge who took his plea could not sentence him because of recusal, he may withdraw his plea. (SDAP was not involved in this case)

People v. Castellero (H044944)  
Panel attorney: Michael Sampson  
Date: March 25, 2019

The minor committed a set of crimes when he was 16 years old, one when he was 15, and one might have been when he was 15 or 16 years old. He entered into a plea bargain in adult court, and Proposition 57 became law during his appeal. For purposes of the appeal, it was assumed that the law prohibiting minors to be transferred to adult court was constitutional. In a published decision, the court held that when there is a remand under Proposition 57, the juvenile court shall hold a transfer hearing, and if the matter is not transferred to adult court, the minor is not able to withdraw his guilty pleas; instead, the court schedules a disposition hearing. The juvenile court shall determine if the minor was 15 or 16 when the crime was committed. If only some of the charges are transferred to adult court, then this does not undo the pleas, but the adult court might need to resentence him. (Staff attorney Williams Robinson)

People v. David Bennett (H045394)  
Staff attorney: Paul Couenhoven  
Date: March 21, 2019

An enhancement for committing a felony while released on a felony must be stricken because the predicate felony conviction had been reduced to a misdemeanor under Proposition 47.

People v. Chi Ung (H044599)  
Panel attorney: Lise Breakey

Date: February 22, 2019

Officers were at a motel parking lot investigating possible crimes and running license plates of cars to determine if they were stolen. They saw appellant asleep in the driver's seat of a car parked in the lot. An officer opened the unlocked driver's door and noticed a gun under appellant's leg. The trial court denied the motion to suppress evidence based on the community caretaker exception. The court of appeal reversed. If there was truly a concern for his safety not related to criminal investigations, the officer should have knocked on the window to ascertain if appellant was in need of assistance. (Staff attorney Paul Couenhoven)

People v. Raymond Garbin (H045938)

Panel attorney: Raymond Garbin

Date: February 21, 2019

Appellant's conviction for identity theft can be reduced to misdemeanor shoplifting under Proposition 47 if he can show the amount taken was not more than \$950. (Staff attorney Patrick McKenna)

People v. Flores (H045080)

Staff attorney: Anna Stuart

Date: January 18, 2019

The court erred in refusing to expunge appellant's record for a misdemeanor conviction because he had successfully completed probation.

## **SENTENCING**

People v. William Burnes (H045562)

Panel attorney: Edward Mahler

Date: December 20, 2019

Appellant was convicted in two cases. The court imposed sentence, creating a principal term in each case. This was error. There can be only one principal term in a single commitment, regardless of the number of cases. After the opinion was issued, SB 136 became law. A petition for review was filed to raise this issue, and the supreme court remanded the case back to the court of appeal. On remand, the court of appeal ordered the prison prior be stricken. (Staff attorney William Robinson)

People v. Celerino (H045325)

Panel attorney: Michelle Peterson

Date: December 20, 2019

The court set the restitution fine at the minimum of \$300. Because the crime occurred in 2010, the statutory minimum fine was \$200. (Staff attorney Paul Couenhoven)

People v. Daniel Lopez (H043323)

Panel attorney: Allen Weinberg

Date: December 19, 2019

The drug trafficking prior must be stricken under SB 180. (Staff attorney Patrick McKenna)

People v. Dwight Johnson (H044901)

Panel attorney: Randy Kravis

Date: December 10, 2019

The court of appeal reversed the sentence because the superior court erroneously denied appellant's timely motion to represent himself at sentencing. (Staff attorney Jonathan Grossman)

People v. Ramon Bernal (H045620)

Panel attorney: J. Frank McCabe

Date: December 5, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Patrick McKenna)

People v. Ricardo Guerrero (H045244)

Staff attorney: Anna Stuart

Date: November 27, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393.

People v. Ivan Vargas-Arellano (H045538)

Panel attorney: Jean Matulis

Date: November 25, 2019

The matter was remanded so that the superior court could exercise its discretion whether to

strike the prior serious felony conviction under Senate Bill No. 1393 or to strike the prior prison commitment enhancement under Senate Bill No. 136. (Staff attorney Patrick McKenna)

People v. Juan Hernandez-Delgado (H044577)  
Staff attorney: Paul Couenhoven  
Date: November 7, 2019

The matter was remanded for a *Franklin* proceeding.

People v. Daniel Ruiz (H043582)  
Panel attorney: Candace Hale  
Date: October 30, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Lori Quick)

People v. Robert Bueno (H046128)  
Panel attorney: Matthew Watts  
Date: October 30, 2019

The court erred in trebling victim restitution for receiving stolen property. While Penal Code section 496, subdivision (c) allows for treble damages in a civil suit, this did not apply to victim restitution. (Staff attorney Lori Quick)

People v. Carlos Pool (H045567)  
Panel attorney: Laurie Wilmore  
Date: October 9, 2019

The court remanded the matter to give the trial court the discretion to place the defendant on mental health diversion. (Staff attorney Jonathan Grossman)

People v. Jesse Yanez (H044528)  
Panel attorney: Steven Torres  
Date: October 3, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620 or the prior serious felony conviction under Senate Bill No. 1393. Further, the punishment for assault with a firearm must be stayed in

light of the punishment for robbery. Finally, the abstract of judgment needed to be corrected. (Staff attorney Lori Quick)

People v. Kevin Figueroa (H045646)

Panel attorney: J. Wilder Lee

Date: September 30, 2019

The punishments for attempted voluntary manslaughter and shooting into an occupied vehicle was stayed under Penal Code section 654 in lieu of the punishment for assault with a firearm. (Staff attorney Paul Couenhoven)

People v. Clarence Arostegui (H045744)

Panel attorney: William Hassler

Date: September 30, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Lori Quick)

People v. Orlando Rojas (H045486)

Panel attorney: Frank McCabe

Date: September 27, 2019

The matter was remanded for the juvenile court to conduct a transfer hearing under *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299 and for the court to consider striking the firearms enhancement under Senate Bill No. 620. (Staff attorney Patrick McKenna)

People v. Karen Scarbrough (H046161)

Panel attorney: Gabriel Bassan

Date: September 27, 2019

In a published decision, the court held a defendant sentenced to prison cannot be ordered to pay victim restitution for the cost of extraditing her to California for a pending violation of probation. (Staff attorney Paul Couenhoven)

People v. Michael Gomez (H044545)

Staff attorney: Lori Quick

Date: September 25, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620 or the prior serious felony conviction under Senate Bill No. 1393.

People v. Thann Von (H045207)  
Panel attorney: Rachel Varnell  
Date: September 24, 2019

The court should have struck a prison prior when the underlying conviction had been reduced to a misdemeanor under Proposition 47. (Staff attorney Paul Couenhoven)

People v. Ray Ledesma (H045176)  
Panel attorney: Edward Hagerty  
Date: September 10, 2019

With an indeterminate term, a gang enhancement can sometimes increase that mandatory minimum term before the defendant is eligible for parole, but it cannot serve to add a determinate term. Further, the matter was remanded so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney Jonathan Grossman)

People v. Richard Cortez (H042811)  
Staff attorneys: Nerissa Nuertas and William Robinson  
Date: September 10, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393.

In re K.L. (H046236)  
Panel attorney: Heather Shallenberger  
Date: September 9, 2019

A probation condition not to possess “sexual images” was unconstitutionally vague. (Staff attorney Lori Quick)

People v. Jose Samayoa (H044346)  
Panel attorney: Allen Weinberg  
Date: August 26, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620 or the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney William Robinson)

In re J.M. (H046178)  
Panel attorney: Laurel Simmons  
Date: August 23, 2019

The matter was remanded for the court to determine if the offense was a felony or misdemeanor under *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204. (Staff attorney Lori Quick)

People v. Joshua Bringazi (H046098)  
Panel attorney: Randy Kravis  
Date: August 20, 2019

The court could not impose a sentence consecutive to a parole violation. (Staff attorney Lori Quick)

People v. John Santos (H045518)  
Panel attorney: Lori Quick  
Date: August 15, 2019

In a published decision, the court held that a *Duenas* claim is cognizable on appeal without an objection below if sentencing was before the *Duenas* decision. The court remanded the matter for the trial court to consider appellant's ability to pay fees.

People v. William Burnes (H045562)  
Panel attorney: William Burnes  
Date: August 13, 2019

Appellant was convicted in two cases. The court imposed sentence, creating a principal term in each case. This was error. There can be only one principal term in a single commitment, regardless of the number of cases. (Staff attorney William Robinson)

Christian Salinas-Torres (H045393)  
Panel attorney: Gordon Brownell  
Date: August 7, 2018

Appellant was convicted of false imprisonment and robbery. The punishment for false imprisonment must be stayed under Penal Code section 654. Further, the court lacked the authority to issue a protective order. (Staff attorney William Robinson)

People v. Robert Vasser (H045603)  
Panel attorney: Matthew Watts  
Date: July 31, 2019

The punishment for possession and transportation of drugs should have been stayed in light of the punishment for possession for sale. (Staff attorney William Robinson)

People v. Joseph Antuna (H042678)  
Panel attorney: Alexis Haller  
Date: July 30, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. Further, appellant was entitled to a hearing under *People v. Franklin* (2016) 63 Cal.4th 261. (Staff attorney Jonathan Grossman)

People v. Ricardo Espana (H046062)  
Staff attorney: Jonathan Grossman  
Date: July 11, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620 or the prior serious felony conviction under Senate Bill No. 1393.

People v. Luis Madrigal (H044892)  
Panel attorney: Jean Matulis  
Date: July 9, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney William Robinson)

People v. Jose Santacruz (H042630)  
Staff attorneys: Patrick McKenna and Nerissa Huertas  
Date: June 24, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393.

People v. Adrian Sanchez (H045455)

Panel attorney: Marc McKenna

Date: June 13, 2019

Trial counsel was ineffective for not requesting to reduce the restitution order for future damages by factoring the net present value. (Staff attorney Lori Quick)

People v. James Moran (H046163)

Panel attorney: Richard Fitzer

Date: June 11, 2019

The judgment was made clarified by dismissing a charge that was to be dismissed as part of the plea bargain. (Staff attorney Patrick McKenna)

People v. Jimenez (H044238)

Panel attorney: Alexis Haller

Date: May 16, 2019

Appellant was charged with various offenses with a certain one strike allegation that carried a potential sentence of 15 years to life. In a published decision, the court decided he could not be punished with a different one strike provision that carried a sentence of 25 years to life. (Staff attorney William Robinson)

People v. Raymond Estrada (H045588)

Staff attorney: Paul Couenhoven

Date: May 16, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393.

People v. Eugene Aguilar (H044120)

Panel attorney: Alex Green

Date: May 15, 2019

The matter was remanded so that the superior court could exercise its discretion whether to

strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Jonathan Grossman)

People v. Troy Stone (H045462)  
Panel attorney: Michael Sampson  
Date: May 14, 2019

The punishments for possession for sale, possession of a firearm by a felon, possession of ammunition by a felon, and carrying a concealed firearm must be stayed pursuant to Penal Code section 654 because of the punishment for possession of drugs while armed with a loaded firearm. (Staff attorney William Robinson)

People v. Jesse Cortez (H046237)  
Panel attorney: Elisa Brandes  
Date: May 8, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney William Robinson)

People v. Joshua Rios (H045661)  
Panel attorney: Brian McComas  
Date: May 8, 2019

The punishment for making criminal threats should have been stayed under Penal Code section 654 because of the punishment for assault with a deadly weapon. Further, the matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Lori Quick)

People v. Fabian Alvarado (H045500)  
Panel attorney: George Schraer  
Date: May 7, 2019

The court cannot punish appellant for a gang enhancement when it punished him for being vicariously armed in a gang crime under Penal Code section 12022.53. (Staff attorney Lori Quick)

People v. Arturo Maya Perez (H045775)  
Panel attorney: Alan Siraco

Date: May 2, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Jonathan Grossman)

People v. Corona (H044585)

Panel attorney: Eric Weaver

Date: May 1, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Jonathan Grossman)

In re B.M. (H046404)

Panel attorney: Heather Shallenberger

Date: April 29, 2019

A probation condition not to possess weapons was modified to avoid constitutional problems. (Staff attorney Lori Quick)

In re Q.M. (H045254)

Panel attorney: Sylvia Ronnau

Date: April 26, 2019

The punishment for assault with a deadly weapon and burglary should be stayed under Penal Code section 654 in lieu of the punishment for attempted murder with a weapon. (Staff attorney Paul Couenhoven)

People v. Patagua (H046138)

Panel attorney: Ronald Boyer

Date: April 18, 2019

The AIDS education fine was unauthorized. (Staff attorney Jonathan Grossman)

People v. Rozsa (H045520)

Panel attorney: John Dwyer

Date: April 18, 2019

The court was required to dismiss the counts that the defendant did not plead to as part of the plea bargain. (Staff attorney John Dwyer)

People v. Louis Bernabei (H045459)  
Panel attorney: Heather Mackay  
Date: April 16, 2019

A no contact order was unauthorized. (Staff attorney Lori Quick)

People v. Ernesto Contreras (H044218)  
Panel attorney: Paul Carroll  
Date: April 12, 2019

The abstract of judgment needed to be corrected to reflect the proper sentence. (Staff attorney Paul Couenhoven)

People v. Victor Reyes (H045457)  
Panel attorney: Susannah McNamara  
Date: April 9, 2019

A no alcohol condition of probation was unconstitutionally vague. (Staff attorney Paul Couenhoven)

People v. Aparicio (H045319)  
Panel attorney: Geoff Jones  
Date: April 3, 2019

The court was required to dismiss the counts that the defendant did not plead to as part of the plea bargain. (Staff attorney Patrick McKenna)

People v. Rojas (H045848)  
Panel attorney: Gordon Brownell  
Date: February 28, 2019

Appellant pled to four counts but was erroneously sentenced on five counts. (Staff attorney Jonathan Grossman)

People v. Robert Bagwell (H044526)  
Panel attorney: Renee Paradis  
Date: February 14, 2019

Appellant was convicted of possession of controlled substances while armed with a firearm, possession of a firearm as a felon, possession of drugs, and possession of drug paraphernalia, among other things. The court of appeal decided the punishment for a felon in possession of a firearm and possession of paraphernalia must be stayed under Penal Code section 654. (Staff attorney Jonathan Grossman)

People v. Freddie Mendoza (H045134)  
Panel attorney: Alan Siraco  
Date: February 26, 2019

Appellant entered a plea bargain for a split sentence of three years in jail followed by six years on mandatory supervision. At sentencing, however, the court ordered he serve 3 years 69 days in jail. This violated the plea bargain. (Staff attorney Patrick McKenna)

People v. Campuzano (H045365)  
Panel attorney: Michael Sampson  
Date: February 26, 2019

A probation condition limiting with whom appellant can socialize was modified to avoid problems with vagueness. (Staff attorney Lori Quick)

People v. Theodore Quezada (H044717)  
Panel attorney: Elisa Brandes  
Date: January 31, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Patrick McKenna)

People v. Frank Stephenson (H045719)  
Panel attorney: Paul Kraus  
Date: January 31, 2019

Mandatory supervision conditions prohibiting appellant from owning, possessing, or having access to “any weapon” and being “adjacent” to a school campus were unconstitutionally vague. The

court modified the conditions. Further, the payment of the court operations assessment and the court facilities assessment could not be made a condition of his mandatory supervision. (Staff attorney Jonathan Grossman)

People v. Anthony Alvarez (H043234)

Panel attorney: Shaneen Porter

Date: January 31, 2019

A prison prior needed to be stricken because the conviction for the prior had been reduced to a misdemeanor under Proposition 47. (Staff attorney Lori Quick)

In re G.V. (H045895)

Panel attorney: Marc McKenna

Date: January 31, 2019

A probation condition to report all police contacts was unconstitutionally vague and modified to apply only if the probationer reasonably knows she is being investigated for illegal activity. (Staff attorney Dallas Sacher)

People v. Jesse Quiming (H043494)

Panel attorney: Alexis Haller

Date: January 31, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. On remand, the trial court should also consider whether appellant is entitled to mental health diversion under newly enacted Penal Code section 1001.36. (Staff attorney William Robinson)

People v. Armando Canchola (H044154)

Panel attorney: Gordon Brownell

Date: January 31, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393 and whether to strike the gang enhancement pursuant to *People v. Fuentes* (2016) 1 Cal.5th 218. (Staff attorney Patrick McKenna)

People v. David Lopez (H045177)

Panel attorney: Maggie ShROUT

Date: January 25, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the firearms enhancement under Senate Bill No. 620. (Staff attorney Lori Quick)

People v. Alonso Ruiz (H044308)  
Panel attorney: Rachel Varnell  
Date: January 14, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Paul Couenhoven)

People v. Fowler (H044621)  
Panel attorney: Steven Schorr  
Date: January 11, 2019

The matter was remanded so that the superior court could exercise its discretion whether to strike the prior serious felony conviction under Senate Bill No. 1393. (Staff attorney Jonathan Grossman)

People v. Alvarez (H044173)  
Panel attorney: Jeffrey Kross  
Date: January 8, 2019

There was insufficient evidence of an ability to pay attorney fees. (Staff attorney Lori Quick)

#### **DEPENDENCY CASES**

In re T.L. (H046942)  
Panel attorney: Alexis Collentine (representing the respondent father)  
Date: December 4, 2019

The court upheld placement of the minor with the father. (Staff attorney Jonathan Grossman)

In re N.L. (H047129)  
Panel attorneys: Paul Swiller, Elaine Henderson  
Date: November 25, 2019

The matter was remanded to comply with the notice requirement of the Indian Child Welfare Act. (Staff attorney Jonathan Grossman)

In re A.V. (H047021)

Panel attorney: Jacob Olson (representing the respondent father)

Date: November 21, 2019

The court of appeal upheld the placement of the minor with the father, notwithstanding the minor's challenge on appeal. (Staff attorney Jonathan Grossman)

In re T.M.E. (H046786)

Panel attorney: Terence Chucas

Date: November 14, 2019

The matter was remanded to comply with the notice requirement of the Indian Child Welfare Act. (Staff attorney Jonathan Grossman)

In re D.D. (H046530)

Panel attorney: Elizabeth Pacheco

Date: October 22, 2019

The court improperly delegated its authority when it ordered as part of the exit orders in terminating the dependency that the father could determine the mother's visitation with the child. (Staff attorney Paul Couenhoven)

E.M. v. Superior Court (H047053)

Attorney: Richard West

Date: October 4, 2019

The court granted an extraordinary writ and reversed the order terminating reunification services. It concluded the father had not received reasonable services when he was not allowed to visit the child. (SDAP was not involved in the matter)

In re N.R. (H046760)

Panel attorney: Jamie Moran

Date: August 30, 2019

The matter was remanded for compliance with the Indian Child Welfare Act. (Staff attorney

Anna Stuart)

In re U.S. (H046308)  
Panel attorney: Kathy Siegel  
Date: June 19, 2019

The court held there was insufficient evidence of emotional abuse from the parents verbally arguing. (Staff attorney Jonathan Grossman)

In re L.D. (H045721)  
Panel attorneys: Carol Koenig, Daniel Rooney  
Date: April 26, 2019

The matter was remanded to comply with the Indian Child Welfare Act. (Staff attorney Patrick McKenna)

In re A.Y. (H045197)  
Panel attorneys: John Dodd and Jacob Olson  
Date: April 5, 2019

After the Department and the parents presented their experts concerning whether the minor suffered from shaken baby syndrome, the Department was allowed over objection to present another expert in rebuttal. However, the court refused to allow the parents to present another expert in surrebuttal. The court of appeal reversed because the excluded evidence concerned the te critical issue of whether the minor suffered from shaken baby syndrome that was discussed by in rebuttal. (Staff attorney Jonathan Grossman)

In re M.B. (H045708)  
Panel attorneys: Linda Harvie and Daniel Rooney  
Date: February 25, 2019

The court remanded the matter for the county to comply with the notice requirement of the Indian Child Welfare Act. (Staff attorney Patrick McKenna)

## **HABEAS CORPUS**

In re Michael Hostia (H046040)  
Panel attorney: Brian McComas  
Date: April 22, 2019

The defendant possessed 0.09 grams of methamphetamine. The defense presented an expert who said this was not a useable amount. The prosecution impeached the defense expert at trial with evidence from a police report that when he was a police officer he had arrested someone for possession 0.1 grams of methamphetamine. Also, the prosecution expert did a demonstration by taking a packet of sugar, which he said weighed one gram, and dividing it into ten parts, each purportedly being 0.1 grams. It was shown on habeas corpus, however, the full police report indicated the person the defense expert had arrested possessed much more than 0.1 grams. Further, the packet of sugar that the prosecution used in the demonstration weighed one ounce, not one gram, and thus the ten parts of the packet were much more than 0.1 grams. The court of appeal issued an order to show cause on claims of not providing material exculpatory evidence and for presenting false evidence. (Staff attorney Jonathan Grossman)

People v. Lee (H042909)  
Attorney: David Reagan  
Date: February 13, 2019

The trial court decided on habeas corpus that the defendant's conviction for first degree murder as an aider and abettor must be reduced to second degree under *People v. Chiu* (2014) 59 Cal.4th 155. The court of appeal agreed. (SDAP was not involved in this appeal)

#### **MISCELLANEOUS**

People v. Gerard Wetle (H046762)  
Attorney: E. Michael Linscheid  
Date: December 13, 2019

Appellant was convicted of setting crab traps in a protected marine sanctuary. However, the traps were set by a third person, and the court failed to properly instruct on vicarious liability. (SDAP was not involved in this appeal)

In re Edward Sagin (H044767)  
Attorneys: Kelley Fleming, John A. Nathanson  
Date: August 30, 2019

A woman was killed in her home, and appellant was convicted 30 years ago. Appellant was identified by the testimony of two jailhouse informants who claimed he admitted committed the crime. Appellant presented an alibi defense. Recent DNA tests showed that a different male's DNA was found under the fingernails and on the bathrobe of the victim. The evidence from under the fingernails was consistent with defensive action taken by a victim in an attack. The court of appeal held in a published decision that this was new evidence that more likely than not would have changed the outcome at trial. (SDAP was not involved in the proceeding)

Carlos Burnett v. Asuncion (N.D. Cal. No. 18-cv-03243-JD)

Attorney: Jason Szydluk

Date: August 27, 2019

The conviction was vacated because the court erred in not permitting the defendant to represent himself under *Faretta v. California* (1975) 422 U.S. 806, 836. (Staff attorney Patrick McKenna in state court; SDAP was not involved in federal court.)

Wade v. Superior Court (H045813)

Attorney: Jeanine G. Strong

Date: March 28, 2019

In a published decision, it was held the court abused its discretion in denying military personnel diversion under Penal Code section 1001.80 solely because of the nature of the offense. (SDAP was not involved in the matter)

Todd Rochelle v. Superior Court (H045357)

Attorney: Elizabeth Caballero

Date: January 29, 2019

The court of appeal reversed the order holding the defendant to answer, ruling that a postal inspector was not a peace officer under California law and could not provide hearsay evidence at a preliminary hearing. (SDAP was not involved in this matter)