

**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. Arbeyta et al. and Karagiannopoulos (H046453)

Panel attorneys: David Beaudreau and Peggy Headley

Date: January 21, 2022

There was insufficient evidence to support a conviction for assault with a deadly weapon when one of the defendants had a knife, but only brandished it, while he punched the victim during a robbery. (Staff attorney Lori Quick)

People v. Shaun Moore (H046446)

Staff attorney: Jonathan Grossman

Date: January 19, 2022

There was insufficient evidence of a prior serious felony conviction and a prior strike conviction based on a conviction of Penal Code section 185.22, subdivision (a) before 2012, because the law defining the crime has changed since then.

**ERROR AT TRIAL OR HEARING**

People v. Juan Nava and Rogelio Castillo (D079040)

Panel attorneys: Solomon Wollack and Jennifer Mannix

Date: March 30, 2022

The gang allegations were reversed due to A.B. 333. (Staff attorney Lori Quick)

People v. Scott Conway (H044790)

Panel attorney: Ed Haggerty

Date: March 24, 2022

The gang allegations were reversed due to A.B. 333. (Staff attorney Lori Quick)

People v. Andrew Zumini (D079447)

Panel attorney: Solomon Wollack  
Date: March 11, 2022

Appellant's murder conviction was reversed because the court improperly excluded evidence of the victim's prior threats and violence toward appellant, which was relevant to the claim of self-defense. (Staff attorney Patrick McKenna)

People v. Cesar Rosales (H045615)  
Panel attorney: Patricia Lai  
Date: February 28, 2022

The gang crime, gang enhancements, and gang murder special circumstance were reversed due to A.B. 333. (Staff attorney Patrick McKenna)

People v. David Russell (H046908)  
Panel attorney: Candace Hale  
Date: January 31, 2022

The defendant could not be convicted of both kidnapping and aggravated kidnapping. Further the punishment for assault by force likely to cause great bodily injury must be stayed pursuant to Penal Code section 654. (Staff attorney Anna Stuart)

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

People v. Jackson Dapont (H047903)  
Panel attorney: Shannon Chase  
Date: March 24, 2022

CDCR reported the sentence was unauthorized. Without transporting the defendant. the trial court exercised its discretion in modifying the sentence. The court of appeal reversed, holding that resentencing without the defendant violated his right to be present. (Staff attorney Lori Quick)

People v. Jacob Benitez (H048647)  
Panel attorney: Don Landis  
Date: March 14, 2022

The order denying recalling the sentence under former Penal Code section 1170(d)(1) was reversed in light of the changes brought by A.B. 1540. (Staff attorney William Robinson)

People v. Marcellous Drummer (H048576)  
Panel attorney: Alan Siraco  
Date: March 9, 2022

The order summarily denying appellant's petition to vacate the murder conviction under Penal Code section 1170.95 was reversed. A felony murder special circumstance before *Banks* did not preclude relief. (Staff attorney Patrick McKenna)

People v. Alex Rosales (H048876)  
Staff Attorney: Lori Quick  
Date: March 8, 2022

The order summarily denying appellant's petition to vacate the murder conviction under Penal Code section 1170.95 was reversed. A felony murder special circumstance before *Banks* did not preclude relief. (Staff attorney Patrick McKenna)

People v. Matthew Jennings (H049043)  
Panel attorney: Vanessa Place  
Date: February 17, 2022

The court held a felony murder special circumstance finding before *People v. Banks* (2015) 61 Cal.4th 788 did not automatically preclude relief under S.B. 1437. (Staff attorney Jonathan Grossman)

People v. Love Miller (H047367)  
Panel attorney: Edward Mahler  
Date: February 15, 2022

The order summarily denying an S.B. 1437 petition was reversed because the trial court impermissibly made factual findings in determining there was not a prima facie case. (Staff attorney William Robinson)

People v. Richard Ambroise (H046633)  
Panel attorney: Paul Kleven  
Date: February 8, 2022

Telephone calls from the defendant at the jail were recorded. Some of the recorded calls were given to the district attorney's office. Because there might not have been a mandatory warning at the beginning of some calls that they were being recorded, the district attorney's office was not

authorized to retain those calls for more than 90 days under the Electronic Communication Privacy Act. The matter was remanded for the trial court to determine which calls were involved. (Staff attorney Anna Stuart)

People v. Uriel Luengas (H048788)  
Panel attorney: Karriem Baker  
Date: February 7, 2022

The trial court denied the request by CDCR to resentence appellant pursuant to Penal Code section 1170, subdivision (d). The matter must be remanded in light of A.B. 1540. (Staff attorney William Robinson)

People v. Danny Franco (H047797)  
Panel attorney: Michael McCormick  
Date: February 3, 2022

Appellant had been convicted of attempted murder. He appealed the denial of his S.B. 1437 petition. The matter was reversed in light of S.B. 775. (Staff attorney Jonathan Grossman)

People v. Sherwin McDonald (H048826)  
Staff attorney: Joe Doyle  
Date: January 27, 2022

In light of S.B. 775, the matter was remanded to consider the defendant's petition to vacate his conviction for attempted murder under S.B. 1437.

People v. Manuel Mendoza (H048031)  
Staff attorney: Lori Quick  
Date: January 25, 2022

CDCR recommended the court recall the defendant's sentence to consider dismissing a prior serious felony conviction under S.B. 1393, though the enhancement was mandatory at the time of the sentencing hearing. The court denied the request on the ground that S.B. 1393 did not apply retroactively to final sentences. The Court of Appeal reversed. CDCR's request to recall the sentence under former Penal Code section 1170(d) gave the court the authority to consider dismissing the prior conviction. Further, the court on remand shall consider its new discretionary guidelines under A.B. 1540.

## **SENTENCING**

People v. Scott Webb (H045312)

Panel attorney: James Thomson

Date: March 28, 2022

The matter was remanded to give the court the opportunity to exercise its discretion whether to dismiss the prior serious felony conviction under S.B. 1393. (Staff attorney Lori Quick)

People v. Juan Fonseca (H048030)

Panel attorney: Jeff Glick

Date: March 24, 2022

The court miscalculated the amount of the court security fee and the court administration fee. (Staff attorney Jonathan Grossman)

People v. Dabid Duran (H049118)

Panel attorney: Susannah McNamara

Date: March 16, 2022

Unpaid portions of the criminal justice fee is unenforceable under A.B. 1869. (Staff attorney Anna Stuart)

People v. Sally Foster (H048344)

Panel attorney: David Beaudreau

Date: March 16, 2022

Unpaid portions of the probation supervision fee is unenforceable under A.B. 1869, and the length of probation is limited by A.B. 1950. (Staff attorney William Robinson)

People v. Soulik (H049254)

Panel attorney: Laura Arnold

Date: March 15, 2022

There was insufficient evidence to require gang registration. (Staff attorney Anna Stuart)

People v. Nicholas Ortiz (H048364)

Panel attorney: Kathleen Sherman

Date: March 10, 2022

The length of probation is limited by A.B. 1950, and one of the probation conditions should be stricken as being duplicative (Staff attorney Anna Stuart)

People v. Fabian Alvarado (H048753)  
Panel attorney: George Schraer  
Date: March 9, 2022

The matter was remanded to give the court an opportunity to exercise its discretion to impose a lesser enhancement to Penal Code section 12022.53(d). (Staff attorney Lori Quick)

People v. Fidadelfo Ortiz (H046704)  
Panel attorney: Kyle Gee  
Date: March 2, 2022

Unpaid portions of the criminal justice fee is unenforceable under A.B. 1869. (Staff attorney Lori Quick)

People v. Michael Edwards (H048646)  
Panel attorney: William Safford  
Date: March 1, 2022

Appellant was entitled to resentencing under S.B. 567. (Staff attorney Lori Quick)

People v. Fidadelfo Ortiz (H046704)  
Panel attorney: Kyle Gee  
Date: March 2, 2022

Unpaid portions of the criminal justice fee is unenforceable under A.B. 1869. (Staff attorney Lori Quick)

People v. Michael Edwards (H048646)  
Panel attorney: William Safford  
Date: March 1, 2022

Appellant was entitled to resentencing under S.B. 567. (Staff attorney Lori Quick)

People v. Jose Barajas (H047465)

Panel attorney: Steven Torres  
Date: February 28, 2022

The matter was remanded for the court to exercise its discretion under S.B. 567 (presumption to impose the middle term). (Staff attorney Anna Stuart)

In re J.S. (H047756)  
Panel attorney: Eileen Manning-Villar  
Date: February 18, 2022

The juvenile court miscalculated the maximum time of confinement because the punishment for two counts should have been stayed under Penal Code section 654 and because S.B. 823 requires using the middle term, not the upper term, of the principal term in calculating the maximum confinement time at the Department of Juvenile Justice. (Staff attorney Lori Quick)

People v. Jacob Martinez (H048905)  
Panel attorney: Maggie Shrout  
Date: February 7, 2022

Unpaid portions of the criminal justice fee is unenforceable under A.B. 1869. (Staff attorney Joe Doyle)

People v. Eddie Criado (H048757)  
Panel attorney: Paul Kraus  
Date: February 7, 2022

The prison prior must be dismissed in light of S.B. 567. (Staff attorney Paul Couenhoven)

People v. Jesse Yanez (H044528)  
Panel attorney: Steven Torres  
Date: February 4, 2022

The punishment for assault with a firearm or robbery should have been stayed under Penal Code section 654. The matter must be remanded for the trial court to exercise its new discretion as to which punishment should be stayed. At resentencing, the trial court shall also exercise its discretion under new sentencing laws to determine if the firearms enhancement should be dismissed or reduced, if the defendant should receive the middle term, and whether the prison prior shall be dismissed. (Staff attorney Lori Quick)

People v. Jeffrey Orozco (H046401)  
Panel attorney: Paul Kleven  
Date: January 27, 2022

The matter was remanded to give the court the opportunity to exercise its discretion whether to dismiss the prior serious felony conviction under S.B. 1393. (Staff attorney William Robinson)

People v. Romero (H047034)  
Panel attorney: Patricia Lai  
Date: January 19, 2022

The matter was remanded so that the court could exercise its discretion under A.B. 518 (can stay the longer punishment under Pen. Code, § 654). (Staff attorney Anna Stuart)

People v. Patrick Simmons (H046379)  
Panel attorney: Ed Haggerty  
Date: January 18, 2022

The matter was remanded for the court to exercise its discretion under S.B. 567 (presumption to impose the middle term), A.B. 124 (presumption to impose the lower term) and A.B. 518 (can stay the longer punishment under Pen. Code, § 654). (Staff attorney Patrick McKenna)

People v. Kencio Mendiola (H047240)  
Staff attorney: Anna Stuart  
January 4, 2022

The matter was remanded for the court to exercise its discretion under S.B. 620 (authority to strike firearms enhancement).

#### **DEPENDENCY CASES**

In re A.G. (H049216)  
Panel attorney: Leslie Barry  
Date: March 10, 2022

The court erred in finding the child to be adoptable. (Staff attorney Joe Doyle)

In re B.H. (H049048)  
Panel attorney: Elaine Henderson  
Date: February 9, 2022

The court issued an order to show cause in a habeas proceeding where it was alleged the father was deprived of effective assistance of counsel throughout the dependency. (Staff attorney Jonathan Grossman)

### **HABEAS CORPUS**

In re Pedro Gomez (H047413)

Staff attorney: Joe Doyle

January 6, 2022

The Court of Appeal granted relief on habeas corpus due to trial counsel failing to investigate and impeach the prosecution witness that he had made several inaccurate identifications before fingering the defendant.

In re Michael Jinter (H049374)

Panel attorney: Donald Landis

Date: December 7, 2021

The court issued an order to show cause in a habeas petition where it was alleged CDCR practices at the California Training Facility placed inmates at an undue risk of harm caused by Covid-19. (Staff attorney William Robinson)

### **MISCELLANEOUS**