

**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. Joshua Collins (H049051)

Penal attorney: Carrie Kojimoto

Date: December 22, 2022

There was insufficient evidence for a robbery when the defendant snatched a cell phone from the victim because the force must be greater than the force necessary to accomplish the theft and there was none. (Staff attorney Paul Couenhoven)

People v. Isaac Benavidez (H049693)

Panel attorney: Evan Greenberg

Date: October 20, 2022

A homeless person entered a hotel room to use the bathroom after being told to leave. There was insufficient evidence of trespassing under Penal Code section 602, subdivision (m), which requires the person to be “occupying” the property, which has been construed to mean a long-term, not transitory, occupation. (Staff attorney Jonathan Grossman)

People v. Stephanie Barbosa (H049101)

Panel attorney: Sangeeta Sinha

Date: July 13, 2022

Two separate domestic violence cases were consolidated into a single information. Trial counsel was ineffective for failing to object to the addition of misdemeanor charges from the other case because there had never been a preliminary hearing on those charges. Further, there was insufficient evidence of knowingly violating a restraining order when there was a lack of evidence the defendant received notice of the order. Finally, the unpaid portions of the probation supervision fee, presentence report, and the criminal justice administration fee were unenforceable and must be vacated under A.B. 1869. (Staff attorney Lori Quick)

People v. Andrew Trujillo (H047126)

Panel attorney: Julie Caleca

Date: June 30, 2022

The defendant tried to evade arrest by getting into an unoccupied, running police car and driving off. He abandoned the car a distance away and hid. He was later apprehended and convicted of auto theft (Veh. Code, § 10851, subd. (a)) by intending to permanently deprive the owner of possession. The Court of Appeal held there was insufficient evidence of an intent to permanently deprive the owner of possession. Further, the defendant was entitled to a restitution hearing upon demand. (Staff attorney William Robinson)

People v. Edward Ruiz (H047959)

Panel attorney: Michael Sampson

Date: June 24, 2022

There was insufficient evidence of assault when there was no evidence a gun was loaded and the defendant never threatened to use the gun as a bludgeon. Further, the punishment for robbery must be stayed because of the punishment for carjacking. (Staff attorney Lori Quick)

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 Guerra et al. (H049093)

Panel attorney: Randy Kravis

Date: December 29, 2022

The gang enhancement was reversed under A.B. 333. (Staff attorney Paul Couenhoven)

People v. Jacqueline Giusto (H047363)  
Panel attorney: Sara Coppin  
Date: December 6, 2022

The admission of a prior conviction after trial must be reversed because the court failed to advise her of the consequences of the admission. (Staff attorney Anna Stuart)

People v. Adrian Calvert (H047146)  
Panel attorney: Heather MacKay  
Date: November 22, 2022

The gang allegations must be reversed due to a change in the law under A.B. 333. Further, the defendant must be resentenced under S.B. 567 and A.B. 124, which amended Penal Code section 1170. (Staff attorney Paul Couenhoven)

People v. Larry Rodgers (H047232)  
Panel attorney: Ed Mahler  
Date: October 28, 2022

The defendant was accused of kidnapping. He was released on bail. Two days later, he was driving a car not registered to him and apprehended by the bail bond company for failing to comply with the terms of his bail. Three hours later, while he was at the jail, the police stopped a woman driving the same car. The officers were unaware he was in the jail. After removing and arresting the driver, the police searched the car and found a backpack. They searched the backpack and found paraphernalia and appellant's wallet. The court reversed the denial of a suppression motion. Appellant had a reasonable privacy expectation in his backpack in the car. The police could not search the backpack incident to arrest because the driver had been removed and arrested. (Staff attorney Anna Stuart)

People v. Sergio Torres (H047709)  
Panel attorney: Scott Handleman  
Date: October 27, 2022

The summary denial of the petition to vacate the murder conviction was reversed. The existence of a felony murder special circumstance before the decisions in *People v. Banks* (2015) 61 Cal.4th 788 and *People v. Clark* (2016) 63 Cal.4th 522 did not automatically preclude relief. (Staff attorney Lori Quick)

People v. Gerardo Menchaca (H049069)  
Panel attorney: Michael Sampson  
Date: October 26, 2022

The order summarily denying the petition to vacate the murder conviction under Penal Code section 1172.6 was reversed. The natural and probable consequence theory of aiding and abetting was one of the theories at trial. The court improperly weighed the evidence in denying an order to show cause. (Staff attorney Joseph Doyle)

People v. Alejandro Ramirez (H043461)  
Panel attorney: Jennifer Peabody  
Date: May 17, 2022

Two convictions for conspiracy to commit murder were reversed because the court erroneously instructed that guilt can arise if murder was the natural and probable consequence of a conspiracy to sell drugs. (Staff attorney William Robinson)

People v. James Gonzalez (H046836)  
Panel attorney: Randy Kravis  
Date: May 19, 2022

Two convictions for conspiracy were reversed because the court failed to instruct on the possibility of there being one conspiracy. The conviction for making criminal threats was reversed because of the failure to instruction on attempted criminal threats. Finally, the gang allegations were reversed due to A.B. 333. (Staff attorney Lori Quick)

People v. Burgos at al. (H045212)  
Panel attorneys: Laurie Wilmore, Jean Marinovich, Solomon Wollack  
Date: April 15, 2022

In a published decision, the court held that AB 333 is fully retroactive to convictions not yet final. Not only do the changes to Penal Code section 186.22 apply retroactively, but so does the addition of Penal Code section 1109 permitting a bifurcated trial on the gang allegations. Since the gang evidence was prejudicial to the other charges, the judgment was reversed. (Staff attorney Jonathan Grossman)

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. Marcellous Drummer (H048576)

Panel attorney: Alan Siraco

Date: December 23, 2022

The felony murder special circumstance did not categorically preclude relief under S.B. 1437. (Staff attorney from FDAP)

People v. Alex Rosales (H048876)  
Staff attorneys: Lori Quick and Jonathan Grossman  
Date: December 22 2022

The felony murder special circumstance did not categorically preclude relief under S.B. 1437.

People v. Eddy Pereles (H049218)  
Panel attorney: Jeff Kross  
Date: December 22, 2022

The felony murder special circumstance did not categorically preclude relief under S.B. 1437.  
(Staff attorney Lori Quick)

People v. Luis Arellano (H049413)  
Panel attorney: Peter Goldscheider  
Date: December 16, 2022

In a published decision, the court held an enhancement cannot be added when redesignating a murder conviction to the underlying felony under Penal Code section 1172.6. (Staff attorney Lori Quick)

People v. Jose Ferreira (H049826)  
Panel attorney: Paul Kleven  
Date: December 12, 2022

Proposition 36 of 2000 permitted three drug-related violations of probation before a defendant on drug probation could be sentenced to prison. Appellant already had one violation. He violated the drug terms of probation and then did it again before he was served with the notice to violate probation. The court of appeal held this amounted to only one violation. (Staff attorney Anna Stuart)

People v. Reynaldo Maldonado (A161817)  
Panel attorney: Scott Cameron  
Date: December 8, 2022

Appellant was convicted as an aider and abettor of first degree murder, though the lying in wait special circumstance, which required the intent to kill, was not found to be true. The superior court denied his S.B. 1437 petition because the jury was not given the standard instructions on felony

murder or on the natural and probable consequence theory of aiding and abetting. However, the jury was instructed appellant could be an aider and abettor if he intended to aid in the commission of a “crime.” In a published decision, the court of appeal reversed, holding the instruction permitted the jury to convict appellant of aiding and abetting on a natural and probable consequence theory. (Staff attorney Jonathan Grossman)

In re E.M. (H049467)  
Panel attorney: David Beaudreau  
Date: December 6, 2022

CDCR wrote to the court recommending recall of the sentence. The court refused, and the prisoner appealed. In the meantime, CDCR rescinded its recommendation. Reversing, the court of appeal held in a published decision the appeal was not moot because the superior court had jurisdiction to recall the sentence once the recommendation was made, even if it were later rescinded. Further, the prisoner was entitled to retroactive application of changes in the law concerning recalling the sentence that went into effect in January 2022. (Staff attorney Joe Doyle)

People v. Arturo Mendoza (H047430)  
Panel attorney: Alissa Bjerkhoel  
Date: December 5, 2022

A felony murder special circumstance before 2015 did not categorically preclude relief under S.B. 1437. (Staff attorney Paul Couenhoven)

People v. Tony Nguyen (H049094)  
Panel attorney: Larenda Delaini  
Date: November 10, 2022

A police officer stopped the defendant’s car for expired registration tags. Upon reaching the driver, the officer noticed the odor of burnt marijuana. After asking if he had anything illegal, the defendant showed a sealed jar of a small amount of marijuana. The officer ordered him out of the car and searched it, finding contraband. The court of appeal reversed the denial of the suppression motion. An odor of burnt marijuana in itself did not create probable cause to search the car. Appellant possessing a lawful amount of marijuana in a sealed jar did not provide cause to search the car. (Staff attorney Joe Doyle)

People v. James Barnes (H049588)  
Panel attorney: Alan Siraco  
Date: August 29, 2022

The superior court denied the petition for resentencing under S.B. 1437 because defendant was convicted of attempted murder. With the passage of S.B. 775, reversal of the order was required. (Staff attorney Paul Couenhoven)

People v. Rincon (H048331)  
Panel attorney: Paul Kraus  
Date: August 5, 2022

The matter was remanded to consider placing appellant on mental health diversion. (Staff attorney William Robinson)

People v. Miguel Sandoval (H048929)  
Staff attorney: Paul Couenhoven  
Date: July 19, 2022

The denial of an S.B. 1437 petition was reversed because the court used the wrong burden of proof, finding the defendant “could be” convicted of murder under current law.

People v. Daniel Aragon (H048398)  
Staff Attorney: Paul Couenhoven  
Date: July 14, 2022

The court erred in summarily denying the S.B. 1437 petition based on findings made before an evidentiary hearing.

People v. Moises Birelas (H049139)  
Staff attorney: Paul Couenhoven  
Date: July 6, 2022

The trial court summarily denied an S.B. 1437 petition because the jury had found true the felony murder special circumstance. The Court of Appeal reversed, holding the existence of the special circumstance before *Banks* did not automatically preclude relief.

People v. Vu Bui (H049032)  
Panel attorney: William Safford  
Date: May 16, 2022

The denial of CDCR’s recommendation for resentencing under former Penal Code section

1170, subdivision (d)(1) was reversed in light of AB 1540. (Staff attorney William Robinson)

People v. Rodwick Johnson (H049193)

Attorney: Milena Blake

Date: April 21, 2022

The denial of CDCR's recommendation for resentencing under former Penal Code section 1170, subdivision (d)(1) was reversed in light of AB 1540. (SDAP was not involved in the matter)

People v. Jaime Valenzuela (H048232)

Staff attorney: William Robinson

Date: April 7, 2022

Appellant was convicted of second degree murder. One of the prosecution theories at trial was the natural and probable consequence theory of aiding and abetting. After the conviction was affirmed, appellant filed a petition to vacate the conviction under S.B. 1437. The court denied the petition without issuing an order to show cause on the ground he failed to show he "could not be convicted" of murder because of the changes in sections 188 and 189. The order was reversed with direction to issue an order to show cause.

People v. Miller (H048932)

Panel attorney: Ed Haggerty

Date: April 7, 2022

The defendant was sentenced in 1993 to life without parole for murder with a felony murder special circumstance. His petition to vacate the conviction was denied because of the felony murder special circumstance. The court of appeal reversed, holding this did not automatically disqualify him. (Staff attorney Paul Couenhoven)

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. Johnson (H048633)

Panel attorney: Steven Schorr

Date: December 29, 2022

The matter was remanded for the court to consider its new discretion under A.B. 518 to decide which punishment to stay under Penal Code section 654. (Staff attorney Lori Quick)

People v. Amanda Owens (H049566)

Staff attorney: William Robinson

Date: December 21, 2022

Appellant was entitled to a new sentencing hearing under SB 567.

People v. Merlin Jones (H049264)

Panel attorney: Victoria Stafford

Date: December 21, 2022

Appellant was entitled to a new sentencing hearing under SB 567. (Staff attorney Jonathan Grossman)

People v. John Wardzala (H049050)

Panel attorney: Ed Mahler

Date: December 20, 2022

Appellant was entitled to additional presentence credits, and the abstract of judgment must be corrected to not list fees the court did not order. (Staff attorney William Robinson)

People v. Montielmesa (H049731)

Panel attorney: Michael Sampson

Date: December 2, 2022

Starting in September 2010, the punishment for certain one strike offenses increased from 15 years to life to 25 years to life. It violated the ex post facto clause to impose the increased punishment for offenses occurring before September 2010. (Staff attorney Joe Doyle)

People v. Daniel Gonzalez (H049227)  
Panel attorney: Jean Marinovich  
Date: November 28, 2022

The order to collect certain fees was vacated pursuant to A.B. 177. (Staff attorney William Robinson)

People v. Diego Castillo (H049829)  
Panel attorney: Rachel Varnell  
Date: November 21, 2022

A condition of probation to stay away from a courthouse unless he is a criminal defendant, is subpoenaed, or has permission of the probation officer was overbroad and modified to include when a family member is a victim. (Staff attorney William Robinson)

People v. Joseph Lugo (H049501)  
Staff attorney: Lori Quick  
Date: November 10, 2022

The court of appeal reversed the denial of a request by CDCR to recall the sentence under former Penal Code section 1170, subdivision (d)(1), now section 1172.1. Under current law, the sentencing court used the wrong standard for denying recall of the sentence.

People v. Burge (H049003)  
Panel attorney: Christopher Muller  
Date: November 10, 2022

The defendant must be resentenced under S.B. 567 and A.B. 124, which amended Penal Code section 1170. The punishment for two prison priors must be stricken because the prior cases had been dismissed. Finally, the defendant was entitled to an additional day of presentence credits. (Staff attorney Joe Doyle)

People v. Garcia et al. (H046635)  
Panel attorneys: Gene Vorobyov and Jeff Glick

Date: November 9, 2022

The matter was remanded for a new sentencing hearing under current law. (Staff attorney Paul Couenhoven)

People v. Oscar Sencion (H049664)

Panel attorney: William Safford

Date: November 3, 2022

The court of appeal reversed the denial of a request by CDCR to recall the sentence under former Penal Code section 1170, subdivision (d)(1), now section 1172.1. Under current law, the sentencing court used the wrong standard for denying recall of the sentence. (Staff attorney William Robinson)

People v. Aaron Steward (H046931)

Panel attorney: Candace Hale

Date: November 3, 2022

The prison prior must be stricken under S.B. 136, (Staff attorney William Robinson)

People v. Lawrence Wood (H047308)

Panel attorney: Steven Torres

Date: October 31, 2022

The prison prior must be stricken under S.B. 136, and he must be resentenced under S.B. 567 and A.B. 124, which amended Penal Code section 1170. Finally, the balance of his booking fee must be stricken under A.B. 1869. (Staff attorney William Robinson)

People v. Adan Espinoza (H048940)

Staff attorney: Lori Quick

Date: October 25, 2022

A violation of probation was filed more than two years after appellant had been on probation. Under A.B. 1950, the length of the probationary term was two years, and the court lacked jurisdiction to proceed with the violation. Further, the unpaid balance of the criminal justice administration fee (booking fee) must be stricken as void.

People v. Harwinder Singh (H048065)

Panel attorney: Maria Rogers  
Date: October 17, 2022

The balance of certain fines and fees was stricken. (Staff attorney Paul Couenhoven)

People v. Kokhow Heng (H048570)  
Staff attorney: Joe Doyle  
Date: October 13, 2022

The matter was remanded so that the court could exercise its new discretion under A.B. 518 to stay the longer sentence under Penal Code section 654.

People v. Gary Harmon (H047526)  
Panel attorney: Jeff Kross  
Date: October 12, 2022

The matter was remanded so that the court could properly exercise its authority whether to impose the upper or middle term under S.B. 567. (Staff Attorney William Robinson)

People v. Carlos Cardenas (H049100)  
Panel attorney: Jeffrey Manning-Cartwright  
Date: October 11, 2022

A probation condition not to associate with people who traffic controlled substances was modified to not associate with people who traffic in non-prescribed controlled substances (the defendant can associate with a pharmacist). The balance of certain fines and fees was stricken. (Staff attorney Anna Stuart)

People v. Albaro Amaral (H049476)  
Panel attorneys: Marcia Clark  
Date: October 6, 2022

The matter was remanded so that the court could exercise its new discretion under A.B. 518 to stay the longer sentence under Penal Code section 654. (Staff attorney Jonathan Grossman)

People v. Davion Smith (H048422)  
Panel Attorney: Candace Hale  
Date: September 28, 2022

The matter was remanded so that the court could exercise its new discretion under A.B. 518 to stay the longer sentence under Penal Code section 654 and for the court to properly exercise its authority whether to impose the upper or middle term under S.B. 567. (Staff Attorney William Robinson)

In re J.M. (H048921)  
Panel attorney: Heather Shallenberger  
Date: September 21, 2022

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

People v. Sean Melody (H047978 et al.)  
Staff attorneys: Dallas Sacher and Paul Couenhoven  
Date: September 19, 2022

The defendant was convicted of numerous charges, including four counts of grand theft. The court concluded that three of the grand theft convictions must be reversed because they were part of the same theft. The court also corrected a mathematical error in determining the amount of victim restitution.

People v. Jomar Salvador (H048162)  
Staff attorney: William Safford  
Date: September 9, 2022

The Court of Appeal upheld a condition of probation not to access social media but struck a condition not to access the internet at all without prior approval of the probation officer. (Staff attorney Joe Doyle)

People v. Jacob Valenzuela (H047920)  
Panel attorney: Patricia Lai  
Date: September 1, 2022

The matter returned to the trial court due to a letter from CDCR requesting that the sentence be corrected. The court of appeal determined that the defendant was now entitled to resentenced under the current changes to Penal Code section 1170. (Staff attorney Jonathan Grossman)

People v. Joshua Ebarb. (H048407)

Panel attorney: Nicholas Seymour  
Date: August 25, 2022

A condition of probation not to “socialize” with certain people was unconstitutionally vague and overbroad. Further, the unpaid balance of the criminal justice administration fee (booking fee) must be stricken as void. (Staff attorney Lori Quick)

People v. Antonio Cortez  
Panel attorney: Timothy Prentiss  
Date: August 24, 2022

The matter was remanded because the superior court failed to pronounce in full the defendant’s sentence. (Staff attorney Lori Quick)

People v. Ezequiel Aguilar (H046900)  
Panel attorney: Rachel Varnell  
Date: August 22, 2022

The abstract of judgment needed to be corrected. (Staff attorney William Robinson)

People v. Joshua Bacci (H048478)  
Panel attorney: Sara Ruddy  
Date: August 17, 2022

The case was remanded for the court to properly exercise its authority whether to impose the upper term under S.B. 567. (Staff attorney Paul Couenhoven)

People v. Michael Arias (H049647)  
Staff attorney: Lori Quick  
Date: August 17, 2022

The case was remanded for the court to properly exercise its authority whether to impose the upper term under S.B. 567.

People v. Antonio Villa (H049140)  
Panel attorney: Karriem Baker  
Date: August 16, 2022

The case was remanded for the court to properly exercise its authority whether to impose the upper term under S.B. 567. (Staff attorney Jonathan Grossman)

People v. Julius Ford (H045602)  
Panel attorney: Jason Szydlik  
Date: August 15, 2022

The case was remanded for the court to properly exercise its authority whether to impose the upper or middle term under S.B. 567. (Staff Attorney Lori Quick)

People v. Richard Walsh (H049553)  
Panel attorney: Teresa Biagini  
Date: August 11, 2022

The case was remanded for the court to properly exercise its authority whether to impose the upper term under S.B. 567. (Staff Attorney Joe Doyle)

People v. Charles Taylor (H046288)  
Panel attorney: Candace Hale  
Date: August 11, 2022

The case was remanded for the court to properly exercise its authority whether to impose the upper term under S.B. 567 and which terms to stay under A.B. 518. (Staff Attorney William Robinson)

People v. Gregory Thompson (H044699)  
Staff attorney: Patrick McKenna  
Date: August 11, 2022

The matter was remanded for the court to dismiss the prison prior and to consider dismissing the prior serious felony and the firearms enhancements under current law.

People v. Riyad Bacchus (H047934)  
Panel attorney: Lise Breakey  
Date: August 3, 2022

The case was remanded for the court to properly exercise its authority whether to impose the upper term under S.B. 567 and which terms to stay under A.B. 518. (Staff Attorney Lori Quick)

People v. Michael Balesteri (H048779)  
Panel attorney: Karriem Baker  
Date: July 29, 2022

The case was remanded for the court to properly exercise its authority whether to impose the upper term under S.B. 567. (William Robinson)

People v. Ricky Sanders (H047615)  
Panel attorney: Robert Angres  
Date: July 26, 2022

The unpaid portion of the criminal justice administration fee is unenforceable and must be vacated under A.B. 1869. (Staff attorney Jonathan Grossman)

People v. Aaron Sepulveda (H049107)  
Panel attorney: Brad Kaiserman  
Date: July 20, 2022

The matter was remanded so that the court could exercise its new discretion under A.B. 518 to stay the longer sentence under Penal Code section 654. Also, the sentence must be corrected to reflect an eight year sentence for a conviction, not nine years which was unauthorized. (Staff attorney Paul Couenhoven)

People v. Henry Lopez (H047665)  
Panel attorney: Rudy Alejo  
Date: July 18 2022

The period of probation is limited to two years under A.B. 1950. (Staff attorney Paul Couenhoven)

People v. Curt Cosey (H049330)  
Panel attorney: Jason Szydlik  
Date: July 18, 2022

Appellant had entered into a plea bargain that certain allegations would be dismissed. However, the court failed to order the allegations be dismissed at the sentencing hearing. The matter was reversed so that the court could dismiss the allegations pursuant to the plea bargain, could specify the basis for the amount of the penalty assessments, and could correct errors in the abstract

of judgment. (Staff attorney Lori Quick)

People v. Enrique Lua (H047760)

Panel attorney: Eric Weaver

Date: July 15, 2022

The matter was remanded for a new sentencing hearing due to the passage of A.B. 518. (Staff attorney Lori Quick)

People v. Miguel Gonzalez (H048806)

Panel attorney: Bess Stiffelman

Date: July 13, 2022

Appellant pled to a number of charges from a single incident. He admitted he had a prior strike and a prior serious felony conviction. The court imposed a 12 years sentence by dismissing the serious felony conviction and imposing some counts to be served concurrently. The prosecution appealed. The judgment was affirmed. The court had discretion under the facts of the case to impose concurrent terms under the Three Strikes Law, and the court did not abuse its discretion in dismissing the prior serious felony conviction. (Staff attorney Jonathan Grossman)

People v. Percella Esquivel (H48810)

Staff attorney: Lori Quick

Date: July 11, 2022

The court was required to calculate appellant's presentence conduct credits.

People v. Andres Rodriguez (H049251)

Staff attorney: Lori Quick

Date: July 8, 2022

The denial of CDCR's recommendation for resentencing under former Penal Code section 1170, subdivision (d)(1) was reversed in light of AB 1540. Further, the unpaid portion of the probation supervision fee is unenforceable and must be vacated under A.B. 1869.

People v. Joel Garcia (H049571)

Panel attorney: Teresa Biagini

Date: July 8, 2022

The matter was remanded for a new sentencing hearing due to the passage of A.B. 518. (Staff

attorney Joe Doyle)

People v. Sebastian Botello (H049538)

Panel attorney: William Melcher

Date: July 8, 2022

The abstract of judgment must be corrected. (Staff attorney Jonathan Grossman)

People v. Miaga (H049219)

Panel attorney: Julie Dunger

Date: June 17, 2022

The period of probation is limited to two years under A.B. 1950. (Staff attorney Paul Couenhoven)

People v. Severiano Negrete (H049396)

Panel attorney: Elisa Brandes

Date: June 17, 2022

The matter was remanded for a new sentencing hearing due to the passage of S.B. 567 and A.B. 518. (Staff attorney Joe Doyle)

People v. Sebastian Chavez (H049067)

Panel attorney: Sebastian Chavez

Date: June 8, 2022

The unpaid portion of the probation supervision fee is unenforceable and must be vacated under A.B. 1869. (Staff attorney Paul Couenhoven)

People v. Greg Carter (H047612)

Panel attorney: Lise Breakey

Date: June 7, 2022

Under SB 567, the court must consider resentencing the imposition of the upper term. (Staff attorney Lori Quick)

People v. Khaliqi (H047928)

Panel attorney: Rachel Varnell  
Date: May 24, 2022

A term of LWOP under Penal Code section 667.61, subdivision (j) was unauthorized when the prosecution only alleged the sentencing provision of subdivisions (b) and (e) applied. (Staff attorney William Robinson)

People v. Thomas Triplett (H045711)  
Staff attorney: Patrick McKenna  
Date: May 23, 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 and to correct an error in the abstract of judgment. Further, the booking fee can no longer be collected.

People v. Stephen Guice (H047989)  
Panel attorney: Eric Weaver  
Date: May 17, 2022

The unpaid portion of the criminal justice fee is unenforceable under A.B. 1869. (Staff attorney Paul Couenhoven)

People v. Darren Sanders (H047960)  
Panel attorney: Carrie Kojimoto  
Date: May 16, 2022

Appellant was entitled to a new sentencing hearing due to a change in Penal Code section 1170. (Staff attorney Jonathan Grossman)

People v. Nieto (H047795)  
Panel attorney: Steven Schorr  
Date: May 13, 2022

Two consecutive terms of 25 years to life under Penal Code section 667.61, subdivision (j) were unauthorized when the prosecution only alleged the sentencing provision of subdivisions (b) and (e) applied. (Staff attorney William Robinson)

People v. Han Hoang (H046550)

Staff attorney: Lori Quick  
Date: May 10, 2022

The court failed to properly exercise its discretion whether to strike the firearms enhancement when it refused to consider imposing instead a lesser included enhancement.

In re I.E. (H048508)  
Panel attorney: Sangeeta Sinha  
Date: May 9, 2022

A condition of probation not to possess pornography was unconstitutionally vague. A condition to stay away from the victim's family needed to be modified when the victim was the minor's step-sister. (Staff attorney Jonathan Grossman)

People v. Michael Atwell (H047618)  
Panel attorney: Lise Breakey  
Date: April 28, 2022

The court ordered that the prison prior be dismissed and the defendant to be resentenced under current law pursuant to SB 483. (Staff attorney Lori Quick)

People v. Shane Thomas (H047467)  
Staff attorney: Anna Stuart  
Date: April 28, 2022

The court ordered that the prison prior be dismissed and the defendant to be resentenced under current law pursuant to SB 483.

People v. Ian Czirban (H048989)  
Panel attorney: Mary Jo Strnad  
Date: April 12, 2022 (partially published on April 27)

The court lacked authority to order interest on victim restitution to start before the victim incurred the loss. (Staff attorney Lori Quick)

People v. Mims et al. (H045591)  
Panel attorneys: Jennifer Mannix, Richard Fitzer, Lise Breakey, Charles Marson  
Date: April 8, 2022

The matter was remanded for the court to dismiss the prison prior and to consider dismissing the prior serious felony and the firearms enhancements under current law. (Staff attorney Jonathan Grossman)

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

The unpaid portion 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

The unpaid portion 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

The unpaid portion 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

The unpaid portion 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

The unpaid portion 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 S.K. (H049837)  
Panel attorneys: Michael Sampson and Patricia Saucier  
Date: August 31, 2022

The matter was remanded to comply with the inquiry requirements of the Indian Child

Welfare Act. (Staff attorneys Joe Doyle and Paul Couenhoven)

In re A.R. (H049342)

Panel attorney: James Haworth

Date: August 22, 2022

The court agreed with the respondent father that the finding that another man was not a presumed father was supported by substantial evidence. (Staff attorney Joe Doyle)

In re E.L. (H049802)

Panel attorney: Terence Chucas

Date: August 16, 2022

The matter was remanded to comply with the inquiry requirements of the Indian Child Welfare Act. (Staff attorney Anna Stuart)

In re B.T. (H049503)

Panel attorney: Elizabeth Klippi

Date: August 9, 2022

The matter was remanded to comply with the inquiry requirements of the Indian Child Welfare Act. (Staff attorney Anna Stuart)

In re G.L. (H049776)

Panel attorney: Jaime Moran

Date: June 23, 2022

Summary reversal was granted due to failure to make proper ICWA inquiry. (Staff attorney Anna Stuart)

In re A.M. (H049613)

Panel attorney: John Dodd

Date: June 17 2022

Summary reversal was granted due to failure to make proper ICWA inquiry. (Staff attorney Jonathan Grossman)

In re M.B. (H049593)  
Panel attorney: Carol Koenig  
Date: May 18, 2022

The department agreed to a summary reversal due to failure to make an adequate inquiry under ICWA. (Staff attorney Jonathan Grossman)

In re S.J. (H049492)  
Panel attorney: Valerie Lankford  
Date: May 18, 2022

The department agreed to a summary reversal due to failure to make an adequate inquiry under ICWA. (Staff attorney Jonathan Grossman)

In re I.F. (H049207)  
Panel attorney: Elizabeth Klippi  
Date: April 6, 2022

In a published decision, the court held there was a reason to believe the child was an Indian child under ICWA because the mother and her relatives reported possible Indian ancestry from the Minnesota area. (Staff attorney Anna Stuart)

In re M.N. (H048489)  
Panel attorney: Linda Tripp for the minor  
Date: April 1, 2022

The disposition orders were affirmed. The court held the juvenile court acted properly in ruling that the minor should not be compelled to testify. (Staff attorney Jonathan Grossman)

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 Darrell Samuels (H049156)

Panel attorney: Lise Breakey

Date: April 8, 2022

When counsel learned that the client was diagnosed in prison with schizophrenia, she filed a petition for writ of habeas corpus seeking mental health diversion. The Court of Appeal issued an order to show cause. (Staff attorney Jonathan Grossman)

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 Jointer (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**

In re M.G. (H050341)

Date: December 22, 2022

Attorney: Brandon Li

In a published decision, the court held a person detained under Welfare and Institutions Code section 5250 who requests a court hearing must be released if an evidentiary hearing is not held within two judicial days of the request. (SDAP did not participate in the matter)

People v. Ernesto Ayon (H047360)

Attorney: Mark Arnold  
Date: July 6, 2022

The police were conducting a drug investigation of the defendant. They decided to stop him for a traffic violation. In a published decision, the court held that while the pretext stop was not in itself illegal, the detention was unlawfully prolonged when they waited for a drug-sniffing dog to arrive. (SDAP was not involved in this appeal)