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MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - ELEMENT ADDED - GANGS - 186.22 PC

AB 333 amendments to PC 186.22 are retroactive. -- All gang enhancements REVERSED and remanded for new trial.

RODRIGUEZ P. v. () 3/1/2022 5:

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - HEARING - RECORD OF CONVICTION - PRELIM TRANSCRIPT

Def's PC 1170.95 petition cannot be SUMMARILY DENIED based on HEARSAY statement of a Co-def presented at co-def's Preliminary Hearing. Co-def's prelim is NOT part of def's Record of Conviction. --- Plus, 1170.95(d)(3) amended to limit such hearsay.

FLORES P. v. () 3/29/2022 5:

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - ELIGIBILITY - GANG SPEC CIRC

In 2008, def convicted of aid/abet 187 on nat/prob conseq theory. Def also convicted of GANG Spec Circ. HELD: the GANG Spec Circ does NOT make def ineligible as a matter of law for PC 1170.95 relief. --- SUMMARY denial is Reversed

PACHECO P. v. () 3/9/2022 4:3

APPELLATE / MISC APPELLATE

STANDARD OF REVIEW - PC 1170.95 FACTUAL FINDINGS

DCA declines invitation of def to engage in DE NOVO review of factual findings made by lower court in denying a PC 1170.95 petition -- even though the lower court heard no testimony and based its decision solely on what it READ, not heard.

CLEMENTS P. v. () 3/16/2022 4:2

INSTRUCTIONS/ELEMENTS / MISC -

DOMESTIC VIOLENCE - 273.5 PC - 273.5(f)(1) - PRIOR OFFENSE

PC 273.5(f)(1) provides for enhanced punishment if def has a prior conviction for domestic violence. HELD: a prior conviction for ATTEMPT 273.5 does NOT qualify.

KIGER P. v. () 3/30/2022 4:2

MISCELLANEOU / WRITS

HABEAS - RETROACTIVE CHANGES - SEEKING BENEFIT OF - BANKS / CLARK

In 2002, 16-yr old def convicted of aid/abet spec circ 187 as an adult. In 2020, def seeks HABEAS relief under BANKS/CLARK. HELD: While def's status as a minor is a factor in the analysis, it is only one factor. Trial Ct and DCA agree def was Major Participant w/ Reckless Disregard.

HARPER In Re () 3/17/2022 4:2

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - SUMMARY DENIALS - BARE-BONES PETITIONS

Trial court summarily denied def's PC 1170.95 petition because it was bare-bones boilerplate with no details. REVERSED. Yes, it was conclusionary, but, if the conclusions are true, a prima facie petition is presented. Atty must be appt'd and hearing held.

FLORES P. v. () 3/29/2022 5:

TRIAL / MISC - TRIAL

MISC - MASSIVE DELAYS IN MID-TRIAL - NO NEED FOR MISTRIAL - COVID

Trial began on eve of Pandemic. Trial was "paused" for 10 weeks. Def's multiple requests for mis-trial denied. UPHELD. (on these facts)

BRECEDA P. v. () 3/9/2022 4:3

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - APPELLATE REVIEW - REVIEW STANDARD

DCA declines invitation of def to engage in DE NOVO review of factual findings made by lower court in denying a PC 1170.95 petition -- even though the lower court heard no testimony and based its decision solely on what it READ, not heard.

CLEMENTS P. v. () 3/16/2022 4:2

CONSTITUTIONAL ISSUES / MISC CONSTITUTIONAL ISSUES

BEAR ARMS, RIGHT TO - 2d AMENDMENT - NON-VIOLENT FELONS

Def convicted of possessing drugs and guns (H&S 11370.1). Def claims his 2nd Amend right to possess guns cannot be denied unless he commits a VIOLENT crime. Possessing drugs is a non-violent crime. DCA disagrees.

GONZALEZ P. v. () 3/3/2022 4:2

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

VETERANS - 1170.91 PC - MILITARY VETS WITH MENTAL ISSUES

In 2005, Def plea bargains for a specific sentence. In 2019, def seeks resentencing under newly enacted PC 1170.91 (resentencing for military vets w/ military injuries). HELD: Since original sentencing court had no discretion, nor would 1170.91 sentencing ct have discretion, 1170.91 does NOT apply.

PIXLEY P. v. () 3/4/2022 4:2

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - ELIGIBILITY - NO CO-DEF'S IN ORIGINAL PLEADING

In 2001, def convicted of 187. No co-def's. Def argued some mystery dude did 187, def just stole from corpse. 2001 appeal affirmed trial court refusal to Instruct on Mystery Dude defense. --- Held: def is ineligible as a matter of law for PC 1170.95 relief. Def was convicted as the actual killer.

HARDEN P. v. () 3/11/2022 4:1

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SENTENCING / MISC - SENTENCING

PROTECTIVE ORDERS - STAY-AWAY ORDERS - KNOWINGLY

While the PC 646.9 restraining order does not say the def must KNOWINGLY stay 400 yards away from victim, any violation of the order must be KNOWING per PC 166(c)(1). Therefore, the restraining order itself is not void for vagueness.

KELLEY P. v. () 3/29/2022 3:

PAROLE / PAROLE DECISIONS

PROP 57 - DEPT OF CORRECTIONS REGULATIONS

PROP 57 resentencing regulations for CDCR do NOT require in-person hearings on inmate requests for resentencing. UPHELD.

BAILEY In Re () 3/28/2022 3:

INSTRUCTIONS/ELEMENTS / GENERALLY

UNANIMITY/DDA ELECTION - PC 245 CASES - TWO POSSIBLE WEAPONS

In the course of a single beating, def uses two objects as weapons. HELD: Jury does NOT have to UNANIMOUSLY agree on which object is the basis for their conclusion that a DEADLY WEAPON was used for PC 245 conviction.

GARCIA P. v. () 3/28/2022 2:8

APPELLATE / MISC APPELLATE

REMAND PROCEDURE - REMAND RE: SENTENCING - ADDING NEW TERMS

Def appeals part of PROBATION sentence. Def wins and case remanded for new sentencing hearing. QUESTION: On remand, can the court add additional terms of probation that were not imposed the first time? --- Without discussion, this DCA says YES.

GARCIA P. v. () 3/28/2022 2:8

MOTIONS / 170 - CAUSE

CAUSE - TRIAL CT FAILED TO FOLLOW REMAND INSTRUCTIONS

Appeal 1 - case remanded for New Sentencing Hrg re: consideration of MILLER factors for LWOP sentence to a minor. On remand: trial Ct holds no hearing and simply says he considered MILLER factors. Appeal 2 - case remanded again for a HEARING, and DCA orders NEW sentencing judge per CCP 170.1 (c).

GUERRERO P. v. () 3/14/2022 2:7

MENTAL HEARINGS / SexVioPredator

TRIAL - JURY WAIVERS - NEED FULL ADVISEMENT?

SexVioPredator statute does NOT explicitly require a fully advised personal waiver of def's right to a jury trial. NGI and MDO statutes do. -- Case REMANDED for hearing on EQUAL PROTECTION evaluation.

MAGANA P. v. () 3/14/2022 2:7

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170(d)(1) / 1170.03 PC - DEPT CORRECTIONS RECOMMENDATION

AB 1540 moved PC 1170(d)(1) to PC 1170.03. PLUS, now when CDCR recommends a resentencing, (1) a hearing MUST be held, and (2) there is a PRESUMPTION that a resentencing is appropriate. Court must resentence absent a finding def is unreasonable DANGER to public.

McMURRAY P. v. () 3/30/2022 3:

TRIAL / MISC - TRIAL

Q&A - RIGHT TO CONFRONTATION - COVID FACE MASKS

COVID based order that all witnesses wear MASKS in court does NOT violate def's Right to Confrontation. (Well, it might violate it a little, but there was a GOOD REASON for the order.)

EDWARDS P. v. () 3/18/2022 2:8

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - NEW SENTENCE RESTRICTION - 1170 PC - UPPER TERM

AB 124 / SB 567 - which amend PC 1170 to require factors leading to an UPPER TERM be proved Beyond a Reasonable Doubt - are RETROACTIVE. Therefore this case is REMANDED for new sentencing hearing.

GARCIA P. v. () 3/28/2022 2:8

APPELLATE / MISC APPELLATE

REMAND PROCEDURE - REMAND RE: SENTENCING - NEED FOR HEARING

Appeal 1 - case remanded for New Sentencing Hrg re: consideration of MILLER factors for LWOP sentence to a minor. On remand: trial Ct holds no hearing and simply says he considered MILLER factors. Appeal 2 - case remanded again for a HEARING, and DCA orders NEW sentencing judge per CCP 170.1 (c).

GUERRERO P. v. () 3/14/2022 2:7

CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - SVP's / MDO's / NGI's - JURY WAIVERS

SexVioPredator statute does NOT explicitly require a fully advised personal waiver of def's right to a jury trial. NGI and MDO statutes do. -- Case REMANDED for hearing on EQUAL PROTECTION evaluation.

MAGANA P. v. () 3/14/2022 2:7

MOTIONS / BAIL / OR

BAIL - POST HUMPHREY - POVERTY CANNOT BE REASON FOR DETENTION

HABEAS GRANTED - case remanded for new BAIL hearing where trial court will FULLY follow In Re HUMPHREY and not permit poverty to be the reason def was not released.

BROWN In Re () 3/14/2022 2:7

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<p>SENTENCING / ONE-STRIKE SEX <i>CONSEC SENTENCING - 667.61(c)(9)</i></p> <p>PC 667.61 requires Mandatory consec for multiple victims of crimes listed in 667.61(c)(1)thru(7). Def violated 667.61(c)(9) - continuous abuse. HELD: Consec sentences are NOT mandatory. Case remanded for trial court to exercise discretion.</p> <p>LOPEZ <i>P. v. ()</i> 3/14/2022 2:7</p>	<p>JUVENILE / SENTENCING <i>WOBBLERS - EXPLICIT "FELONY" WITH A JAIL OPTION SENTENCE</i></p> <p>Prop 83 amended PC 311.11(a) -- possession of child porn -- to explicitly state it is a FELONY, but it still has the option of a JAIL sentence. --- DCA holds the 311.11 remains a WOBBLER and therefor Juvenile Court has discretion to declare it a MISD.</p> <p>H. N. <i>In Re ()</i> 3/29/2022 2:6</p>
<p>MOTIONS / 17b <i>17(b) PC - WHAT CRIMES ARE WOBBLERS</i></p> <p>Prop 83 amended PC 311.11(a) -- possession of child porn -- to explicitly state it is a FELONY, but it still has the option of a JAIL sentence. --- DCA holds the 311.11 remains a WOBBLER and therefor Juvenile Court has discretion to declare it a MISD.</p> <p>H. N. <i>In Re ()</i> 3/29/2022 2:6</p>	<p>MOTIONS / WITHDRAW PLEA / STRIKE PRIOR <i>1473.7 PC - DELAYED IMMIGRATION MOTIONS - DEF NOT CREDIBLE</i></p> <p>Def seeks to w/draw 1989 no contest plea in 2020 per PC 1473.7. 1989 def atty is now dead. Def says he was never advised re: immigration issues. BOTH the trial ct and the DCA conclude Def is lying. Also, 1989 charge (robbery) was so strong def had no choice but to take offered deal.</p> <p>DIAZ <i>P. v. ()</i> 3/9/2022 2:5</p>
<p>D. P. / SPEC. CIRC. / MISC - D.P./SPEC. CIRC. <i>HABEAS - POST PROP 66 - SUBSEQUENT PETITIONS</i></p> <p>Death Penalty case. 1st Habeas denied. 2nd Habeas raised new issues that "could have been" raised in 1st petition. -- Saying 1st Habeas atty was incompetent is NOT ENOUGH. Must show that a competent atty would have included the issues (i.e. that they have merit) otherwise, 2nd should be dismissed</p> <p>FRIEND <i>In Re ()</i> 3/22/2022 1:3</p>	<p>MOTIONS / SPEEDY <i>TRIAL DELAY - CAUSE - COVID-19 PANDEMIC - BACKLOG</i></p> <p>Def's Writ seeks Speedy Trial dismissal after waiting over 12 weeks AFTER the Covid Shut-down ENDED. -- DENIED. Covid created a non-routine BACKLOG, the Backlog is a valid reason for the delay. DISSENT - San Francisco Sup Ct has LEISURELY pace of clearing Backlog.</p> <p>HERNANDEZ- <i>def v. SUP CT</i> 3/3/2022 1:3</p>
<p>INSTRUCTIONS/ELEMENTS / MISDEMEANORS AND INFRACTIONS <i>TRAFFIC INFRACTION - TURN SIGNALS - 22108 VC</i></p> <p>Drugs found after traffic stop for failing to signal before making right turn at four-way stop intersection. 1538.5 denied by trial court. REVERSED. Def did NOT violate VC 22107/22108. And, no REASONABLE officer would believe that he did.</p> <p>HOLIMAN <i>P. v. ()</i> 3/28/2022 1:2</p>	<p>SEARCH & SEIZURE / GOOD FAITH <i>RELIANCE ON - GOOD FAITH MISTAKE OF LAW - MUST BE REASONABLE</i></p> <p>Drugs found after traffic stop for failing to signal before making right turn at four-way stop intersection. 1538.5 denied by trial court. REVERSED. Def did NOT violate VC 22107/22108. And, no REASONABLE officer would believe that he did.</p> <p>HOLIMAN <i>P. v. ()</i> 3/28/2022 1:2</p>
<p>SENTENCING / DIVERSION <i>DIVERSION - MISD - PC 1001.95 - DUI'S ARE ELIGIBLE - NO</i></p> <p>Misd DUI's are NOT eligible for misd Diversion under PC 1001.95. VC 23640 prevails.</p> <p>TAN <i>def v. SUP CT</i> 3/10/2022 1:1</p>	<p>INSTRUCTIONS/ELEMENTS / DUI'S <i>DIVERSION - 1001.95 PC - DUI'S ARE ELIGIBLE - NO</i></p> <p>Misd DUI's are NOT eligible for misd Diversion under PC 1001.95. VC 23640 prevails.</p> <p>TAN <i>def v. SUP CT</i> 3/10/2022 1:1</p>