

# CaseBank: Cases Added during July 2022 (sorted by Court)

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## D. P. / SPEC. CIRC. / JURY SELECTION

CHALLENGE FOR CAUSE - ANSWERS CONTRADICTORY

Potential Juror says X on her questionnaire, and NOT-X in court questioning.

Trial court expressly finds that X is the true situation and excuses Juror for cause. UPHELD. Appellate court defers to trial court. (X = juror inability to vote for death.)

**MATAELE** P. v. () 7/21/2022 **CAL**

## EVIDENCE / HEARSAY

SPONTANEOUS DECLARATION - QUESTIONS 15 MINUTES AFTER - WITNESS

10 minutes after 187, police arrive and interview eyewitness X. X appears "nervous" but otherwise okay. X says shooter was medium to slim. (Def is x-large). X is NOT available for trial. Trial ct holds X's statement was NOT Spontaneous Exclamation. UPHELD.

**MATAELE** P. v. () 7/21/2022 **CAL**

## EVIDENCE / IMPEACH/INCONSIS

PRIOR INCONSISTENT - I DON'T REMEMBER

In trial, X says "I don't remember." Trial court finds X is untruthful. Allows X to be impeached with prior statements describing the event he claims to not remember. UPHELD.

**MATAELE** P. v. () 7/21/2022 **CAL**

## MENTAL HEARINGS / 1368

THRESHOLD TO START PROCESS - CT NOT BOUND BY DEF OPINION

What do you do when a PRO PER Def asks the court to start PC 1368 proceedings? Answer: DENY the request. Tell the def he is competent and to please stop manipulating the system. UPHELD. -- Pro Per Status was NOT revoked (at that time. That came later.)

**NG** P. v. () 7/28/2022 **CAL**

## MOTIONS / REPRESENTATION

MULTIPLE ISSUES - THIS CASE HAS IT ALL

37 MARSDEN motions (2 granted); multiple FARETTA motions (one granted - for a while); Advisory Counsel, Standby Counsel, alleged Conflict between Advisory and Standby Counsel, and a Def OBSESSED with getting the lawyer of his choice appointed. -- this case has it all.

**NG** P. v. () 7/28/2022 **CAL**

## MOTIONS / FARETTA / PRO PER ISSUES

GROUND TO REVOKE - FAILURE TO GET READY FOR TRIAL

Pro Per Def loses Pro Per status due do his failure to get ready for trial. (after many continuances) UPHELD.

**NG** P. v. () 7/28/2022 **CAL**

## D. P. / SPEC. CIRC. / JURY SELECTION

CHALLENGE FOR CAUSE - SUBSTANTIAL IMPAIRMENT TEST AFFIRMED

Def asks Cal Supreme Court to revisit the "substantial impairment" test for juror challenges for cause. Court revisits and affirms "substantial impairment".

**MATAELE** P. v. () 7/21/2022 **CAL**

## EVIDENCE / IMPEACH/INCONSIS

PRIOR INCONSISTENT - PRIOR STATEMENT AMBIGUOUS

DDA witness X says Def did it. Shortly after crime, X was asked by a friend who did it, and X gave an evasive/ambiguous answer. HELD: Statement was too ambiguous to qualify has a Prior Inconsistent Statement.

**MATAELE** P. v. () 7/21/2022 **CAL**

## D. P. / SPEC. CIRC. / PEN -

MITIGATION - LINGERING DOUBT EVIDENCE

Def Witness X was UNAVAILABLE for Guilt phase. Became available for Penalty Phase. DDA objects - Relevance. Def atty says X is relevant on LINGERING DOUBT. Trial court Sustains the relevance objection. HELD: ERROR, but harmless. Lingered doubt evidence is always relevant.

**MATAELE** P. v. () 7/21/2022 **CAL**

## MOTIONS / FARETTA / PRO PER ISSUES

MULTIPLE ISSUES - THIS CASE HAS IT ALL

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**NG** P. v. () 7/28/2022 **CAL**

## MOTIONS / REPRESENTATION

ADVISORY / STANDBY - ONE ATTY CAN DO BOTH - NO CONFLICT

Def is PRO PER. Same atty is appt'd as both Advisory Counsel and Standby Counsel. Def objects asserting Advisory atty has Conflict of Interest with Standby atty. The atty agrees with the def. Court disagrees. UPHELD.

**NG** P. v. () 7/28/2022 **CAL**

## MOTIONS / MARSDEN

COURT DUTY TO HOLD HEARING - W/ OR W/OUT WITNESSES

The court MAY, but also MAY NOT permit witnesses at a MARSDEN hrg. Court's only obligation is to gather SUFFICIENT information in order to make an informed decision.

**NG** P. v. () 7/28/2022 **CAL**

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## MOTIONS / REPRESENTATION

MISC - APPT - INDIGENT DEF NEED NOT GET ATTY OF CHOICE

Trial court was willing to honor def's request that X be appointed to represent him. BUT, X and the Court Administration could not negotiate compensation terms. --- So be it. X is under no obligation to take assignment; Court under no obligation to pay X more than others.

NG P. v. () 7/28/2022 CAL

## MOTIONS / VENUE/JURISDICTIONS

VENUE - CHANGE OF VENUE - PUBLICITY - PICKING NEW VENUE

Def seeks new venue due to pretrial publicity. Motion Granted. Def has no basis to insist on a particular NEW venue. Any county where def can get an unbiased jury pool will do.

NG P. v. () 7/28/2022 CAL

## EVIDENCE / MISC - EVID

PRIOR TESTIMONY - CONTESTED EXTRADITION HRG IN CANADA

Def arrested in Canada. Witness X testified against def at Contested Extradition Hrg. X was FULLY cross-examined. X dies before trial. HELD: Def's interest at Extradition Hrg sufficiently similar to his trial interests. X's Prior Testimony admissible under EV 1291.

NG P. v. () 7/28/2022 CAL

## MOTIONS / VENUE/JURISDICTIONS

VICINAGE - COURT ISSUE, NOT JURY ISSUE

VICINAGE is a COURT issue, not a JURY issue.

NG P. v. () 7/28/2022 CAL

## TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - GENERALLY - HEARING - DEF'S PRESENCE

During deliberations, courts learns of POSSIBLE act of def calling juror from jail. Court EXCLUDES def from courtroom while the the juror is questioned. HELD: this is NOT a critical proceeding requiring def's attendance. Def's guilt or innocence is NOT at issue.

NG P. v. () 7/28/2022 CAL

## SEARCH & SEIZURE / AUTOS / CONTAINERS

DETAIN - AUTO - DURATION - PROLONGING FOR DOG SNIFF

Traffic Infraction stop prolonged about ten minutes waiting for the drug-sniffing K-9 to arrive. HELD: this is too long. 1538.5 should have been granted.

AYON P. v. () 7/6/2022 6:

## MOTIONS / REPRESENTATION

MISC - APPT - INDIGENT DEF NEED NOT GET ATTY OF CHOICE

Pro Per asks court to appoint Atty X to represent him. X tells court he would need long continuance. Court declines to appoint X. UPHELD. (A previously appt'd STANDBY counsel was ready to take case without a continuance.)

NG P. v. () 7/28/2022 CAL

## TRIAL / COURT SECURITY

SHACKLING DEF - FACTORS - DEF'S PAST GOOD COURT BEHAVIOR

Yes, the def was a Serial Killer w/ 11 victims, yes the def had attempted escape in the past, BUT, that was all past. He now had a 12-year track record of good in-court behavior. BUT, BUT, it was 12 years of being shackled in court. HELD: Court still justified to restrain def.

NG P. v. () 7/28/2022 CAL

## EVIDENCE / HEARSAY

EVID 356 - PARTS OF CO-DEF'S DIARY

Co-def was psychotic Serial Killer who committed suicide after arrest. Co-def kept a diary describing his KILLS. Def seeks to introduce parts of Diary. DDA say OK if the parts of diary that said DEF HELPED are admitted under Ev 356. Court agrees. Def choses to NOT admit anything. UPHELD.

NG P. v. () 7/28/2022 CAL

## TRIAL / JUROR/VERDICT ISSUES

MISC - JUROR CONTACTED BY DEF

During Deliberations of a Serial Killer DP case, Juror X receives a phone call, at home, from a person saying he is the def. (juror could not recognize voice). Juror said no threats made - caller was polite and complementary. Juror told court she was OK to stay on case. She stayed. UPHELD.

NG P. v. () 7/28/2022 CAL

## TRIAL / MISC - TRIAL

DEF PRESENCE - HRGS RE: JUROR MISCONDUCT

During deliberations, courts learns of POSSIBLE act of def calling juror from jail. Court EXCLUDES def from courtroom while the the juror is questioned. HELD: this is NOT a critical proceeding requiring def's attendance. Def's guilt or innocence is NOT at issue.

NG P. v. () 7/28/2022 CAL

## APPELLATE / HARMLESS ERROR

HARMLESS RETROACTIVE ERROR - SB 567 - UPPER TERM HURDLES

SB 567 - re: restrictions on giving UPPER TERM - is RETROACTIVE. But, in this case, the Retroactive-Error is HARMLESS.

DUNN P. v. () 6/30/2022 5:

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## SENTENCING / STRIKE CASES

1385 AUTHORITY - REASONS, SUFFICIENCY OF

Judge A gives indicated of striking strikes if def pleads guilty. Next appearance, Judge B is covering A's calendar. B honors A's indicated, but fails to articulate good reasons for it. DDA appeals under ROMERO. HELD: DCA can't see any good reasons either. REVERSED.

**BEASLEY** P. v. () 7/21/2022 4:3

## MENTAL HEARINGS / MDO

MDO TRIAL - WAIVER OF RIGHT TO CALL WITNESSES

Court advised MDO def of her right to a jury trial, but did NOT advise of her right to call, and confront witnesses. Def WAIVED jury trial, and then def atty agreed to submit the matter on the reports. HELD: Statute PC 2966 only requires JURY advisement/waiver. UPHELD.

**M. H.** P. v. () 7/15/2022 4:2

## SENTENCING / DIVERSION

DIVERSION - MISD - PC 1001.95 - DUI'S ARE ELIGIBLE - NO

Vehicle Code 23640 trumps PC 1001.95. MISD DUI defendants are NOT eligible from Misd Diversion. -- 3 opinions. Court/Concurring/Dissent. 107 pages total. Single issue.

**ORTIZ** P. v. SUP CT 7/28/2022 4:2

## SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - NOT ALL MENTAL ISSUES QUALIFY

Not ALL mental disorders qualify a def for Mental Health Diversion. DDA expert said def suffered from a PERSONALITY DISORDER and DRUG ABUSE, not BiPolar or other Psychosis. Diversion denied. UPHELD

**GERSON** P. v. () 7/8/2022 4:1

## APPELLATE / HARMLESS ERROR

HARMLESS RETROACTIVE ERROR - AB 124 - LOW TERM PRESUMPTION

MID-TERM sentence is REMANDED due to retroactive application of AB 124 making LOW-TERM presumptive sentence if def had childhood trauma. This retroactive-error is NOT HARMLESS in this case.

**GERSON** P. v. () 7/8/2022 4:1

## INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

OUT ON BAIL - 12022.1 PC - NEED FOR AN 2ND "ARREST"

While out on bail, def commits new crime. Case Filed, warrant issued, BUT, def never ARRESTED. Def consented to a AMENDED complaint including the new crime (and an out-on-bail enhancement.) HELD: PC 12022.1 expressly requires def to be ARRESTED. Bail Enhancement reversed.

**MAZUR** In Re () 7/14/2022 4:1

## APPELLATE / HARMLESS ERROR

HARMLESS RETROACTIVE ERROR - AB 333 - GANG ELEMENTS

In this case, DCA finds the Retroactive-Error caused by AB 333's change in 186.22's Gang elements is HARMLESS.

**CLARK** P. v. () 6/28/2022 4:2

## INSTRUCTIONS/ELEMENTS / DUI'S

DIVERSION - 1001.95 PC - DUI'S ARE ELIGIBLE - NO

Vehicle Code 23640 trumps PC 1001.95. MISD DUI defendants are NOT eligible from Misd Diversion. -- 3 opinions. Court/Concurring/Dissent. 107 pages total. Single issue.

**ORTIZ** P. v. SUP CT 7/28/2022 4:2

## SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - ABUSE OF DISCRETION TEST

Def denied Mental Illness Diversion - PC 1001.36 - after a 3 day hearing with conflicting expert testimony. HELD: the appellate standard is ABUSE of DISCRETION. On this record, the denial was not an abuse of discretion.

**GERSON** P. v. () 7/8/2022 4:1

## SENTENCING / CTS/GOOD TIME

GOOD TIME - TIME SPENT ON HOME DETENTION W/ELECT MONITORING

Def was given pretrial home confinement with a GPS monitor without reference to PC 1203.018. HELD: EQUAL PROTECTION requires def be given the same CTS/Goodtime credits a PC 1203.018 defendant gets.

**GERSON** P. v. () 7/8/2022 4:1

## 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. () 7/12/2022 4:1

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - JUVI INFORMAL PROBATION LIMITS

SB 383, effective 1/1/22, amended W&I 654.3 by eliminating the prohibition to giving age 14-to-16 year olds with felony convictions INFORMAL probation. HELD: SB 383 is RETROACTIVE. Case REMANDED to have trial court rule on Minor's suitability for Informal Probation.

**N. L.** In Re () 7/21/2022 4:1

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

1170.95 PC - HEARING - EFFECT OF A PRIOR 1170.95 HRG

2008, def convicted of both ATTEMPT 187 and 187. In 2019, def's 1170.95 petition re: the 187 was GRANTED. Later, def brought a 2nd petition re: the ATTEMPT conviction. HELD: This is separate. Therefore, any prior finding re: the 187 petition is NOT controlling or relevant.

SAIBU P. v. () 7/26/2022 4:1

## INSTRUCTIONS/ELEMENTS / 290 PC

SEX REGIS - 290 PC - EQUAL PROTECTION - 3 TIER SYSTEM

LEGG v. DEPT OF JUSTICE (PEOPLE): in 2017, PC 290 was amended to create 3 tiers of offenders with 3 tiers of registration requirements. Def remained on the highest tier. Def brings Writ alleging the tiers violate Equal Protection. Writ DENIED.

LEGG OTHER 6/29/2022 3:

## MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - DEF CONVICTED AT TRIAL

AB 1259 amends PC 1473.7 to now permit def's CONVICTED AT TRIAL to bring a motion to vacate the VERDICT if def unaware of Immigration consequences of a trial. -- Def must show he would have accepted a NON-DEPORT pre-bargain if he knew (and if it was available).

SINGH P. v. () 6/29/2022 3:

## APPELLATE / MISC APPELLATE

HARMLESS RETROACTIVE ERROR - SB 567 - UPPER TERM HURDLES

Upper term Sentence remanded due to RETROACTIVE application of SB 567 which makes MID TERM the presumptive choice. This retroactive-error is NOT HARMLESS in this case.

ZABELLE P. v. () 7/11/2022 3:

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

1170.95 PC - HEARING - EVID - DEF'S STATEMENTS AT PAROLE HRGS

At PC 1170.95 (renumbered as PC 1172.6) hearing court considered def's statements to Parole Board at earlier parole hearings over the Def's objections. Based, in part, on those statements, court found def to be a Major Participant acting w/ Reckless Indifference. UPHELD. (2-1 decision)

MITCHELL P. v. () 7/22/2022 2:8

## SENTENCING / MISC - SENTENCING

MISC - MINIMUM SENTENCES - 2800.2 VC - PURSUIT CASES

The wording of VC 2800.2 does NOT mandate a minimum six month custody sentence IF PROBATION is granted.

TORRES P. v. () 6/16/2022 2:6

## CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - SEX REGISTRATION - 3 TIER SYSTEM

LEGG v. DEPT OF JUSTICE (PEOPLE): In 2017, PC 290 was amended to create 3 tiers of offenders with 3 tiers of registration requirements. Def remained on the highest tier. Def brings Writ alleging the tiers violate Equal Protection. Writ DENIED.

LEGG OTHER 6/29/2022 3:

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - PLEA BARGAINS, EFFECT ON

Def's plea-bargain was for a 5-year probation length. Post sentence, AB 1950 reduced probation length to 2 years. HELD: DDA does NOT have a right to undo the plea-bargain.

SHELLY P. v. () 7/14/2022 3:

## DEFENDANT'S STATEMENTS / VOLUNTARY

FACTORS - IMPLIED PROMISE OF (POSSIBLE, NOT CERTAIN) LENIENCY

After Miranda, officer says confessing EARLY may or may not produce a lower sentence. HELD: Confession is Voluntary.

ZABELLE P. v. () 7/11/2022 3:

## MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MOTIONS - APPELLATE REVIEW

Trial court denies def's motion under PC 1473.7 to vacate 2014 guilty plea based on THREE findings. --- DCA de Novo reviews record and reverses all three findings. TAHL form said WILL DEPORT, not MAY DEPORT.

MANZANILLA P. v. () 6/13/2022 2:8

## APPELLATE / HARMLESS ERROR

HARMLESS RETROACTIVE ERROR - SB 567 - UPPER TERM HURDLES

Def gets UPPER term after trial. DCA agrees SB 567 -- adding new hurdles before Upper Term can be imposed -- is RETROACTIVE, but in this case the retroactive-error is HARMLESS.

FLOWERS P. v. () 7/26/2022 2:6

## D. P. / SPEC. CIRC. / SPECIAL CIRCUMSTANCES

GANG MURDER - AFFECTED BY AB 333 CHANGES TO 186.22 PC

AB 333, which changes GANG elements of PC 186.22, did NOT pass with a 2/3's majority. NONETHELESS, the AB 333 changes apply to the GANG Spec Circ - PC 190.2(a)(22) - which was enacted by Voter Initiative. DCA holds this result was the intent of the voters. --- DCA's in conflict.

LEE P. v. () 6/24/2022 2:4

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## MISCELLANEOU / STATUTORY CONSTRUCTION

RULE - INITIATIVES - INTENT OF THE VOTERS

AB 333, which changes GANG elements of PC 186.22, did NOT pass with a 2/3's majority. NONETHELESS, the AB 333 changes apply to the GANG Spec Circ - PC 190.2(a)(22) - which was enacted by Voter Initiative. DCA holds this result was the intent of the voters. --- DCA's in conflict.

LEE P. v. () 6/24/2022 2:4

## CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

DUE PROCESS - SexVioPredator - UNCONDITIONAL RELEASE HURDLE

While an SVP can petition for a Conditional Release (W&I 6608(m)) without the Hospital Director's recommendation, he may NOT petition for an UnConditional Release unless he has such a recommendation (W&I 6604.9). --- HELD: no DUE PROCESS violation.

PEYTON P. v. () 7/28/2022 2:2

## JUVENILE / SENTENCING

CYA/DJJ - DEADLINE DATE - CORRECTING ERROR AFTER DEADLINE

Minor is sentenced to DJJ 3 days before the deadline of no-more-DJJ commitments. But, the max confinement period was wrongly calculated. HELD: (1) this calculation involves NO DISCRETION. It is ministerial. (2) therefore, error can be corrected NUN PRO TUNC. No new hrg required.

JASON V. P. v. () 7/28/2022 1:2

## SENTENCING / ONE-STRIKE SEX

ONE STRIKE - 667.61 PC - RELATIONSHIP TO PC 220

When PC 667.61(e)(9) says "specified sexual offense" it means sex offenses specified in PC 220.

WANDREY P. v. () 7/7/2022 1:2

## JUVENILE / SENTENCING

CYA/DJJ - SETTING MAX CONFINEMENT TIME

In juvi sentence to CYA/DJJ, the CTS credit is NOT applied to the Maximum Exposure under W&I 726. It is applied to the Maximum Custodial Term under W&I 731.

ERNESTO L. In Re () 7/12/2022 1:1

## MENTAL HEARINGS / SexVioPredator

PROCEDURE - EARLY RELEASE REQUESTS - UNCONDITIONAL - 6604.9 W&I

While an SVP can petition for a Conditional Release (W&I 6608(m)) without the Hospital Director's recommendation, he may NOT petition for an UnConditional Release unless he has such a recommendation (W&I 6604.9). --- HELD: no DUE PROCESS violation.

PEYTON P. v. () 7/28/2022 2:2

## SENTENCING / RESTITUTION

GENERALLY - SETTING THE FINAL AMOUNT AFTER PROBATION EXPIRED

At time of sentencing, def given probation. Restitution was ordered in amount to be determined later. Later, AB 1950 abruptly terminated probation before the amount was set. HELD: Even after probation termination, court has jurisdiction to set the amount of restitution.

McCUNE P. v. () 7/25/2022 1:5

## APPELLATE

## MISC APPELLATE

MISC - CORRECTING JUDICIAL ERROR - NUN PRO TUNC

What errors can be corrected Nun Pro Tunc without a new hearing? HELD: Errors, clerical or judicial, that do not involve any exercise of judgment or discretion.

JASON V. P. v. () 7/28/2022 1:2

## APPELLATE

## HARMLESS ERROR

HARMLESS RETROACTIVE ERROR - SB 567 - UPPER TERM HURDLES

Upper term sentence remanded for new sentencing hrg due to RETROACTIVE effect of SB 567 which made MID-TERM the presumptive term. The retroactive-error was NOT harmless in this case.

WANDREY P. v. () 7/7/2022 1:2