

# CaseBank: Cases Added during January 2021 (sorted by Court)

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## MISCELLANEOUS / WRITS

HABEAS - CRUEL AND UNUSUAL SENTENCE - AFTER PAROLE DENIAL

After 30 years in Prison, and 10 Parole Denials, Def (who got LIFE for Kidnap/Robbery) files HABEAS saying sentence has now become Cruel and Unusual. HELD: this a proper subject for Habeas, and the proper time to raise the issue.

**PALMER** In Re () 1/28/2021 CAL

## PAROLE / PAROLE DECISIONS

PAROLE AFTER RELEASE FOR CRUEL & UNUSUAL SENTENCE

After 30 years in Prison, and 10 Parole Denials, Def (who got LIFE for Kidnap/Robbery) files HABEAS saying sentence has now become Cruel and Unusual. DCA Grants Habeas, AND, strikes Parole requirement. --- REVERSED only as to Striking Parole requirement.

**PALMER** In Re () 1/28/2021 CAL

## TRIAL / MISC - TRIAL

SPECTATOR RESTRICTIONS - OFF-DUTY OFFICERS IN UNIFORM

Def is charged with killing Police Officer while on duty. -- Long discussion of the issue of uniformed officers wishing to attend the trial. Trial court fashioned ad hoc, but balanced, solutions to problem. UPHELD. Closing Arguments had packed courtroom, including 18 uniforms.

**RAMIREZ** P. v. () 1/28/2021 CAL

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

VICTIM IMPACT - THINGS WRITTEN BY VICTIM

Victim was Police Officer. Penalty evidence included a short autobiographical essay Victim had written about a particular event. Victim was prolific writer. Court limited evidence to ONE essay. UPHELD. Victim impact evidence is about telling jury who the victim was. This essay did this.

**RAMIREZ** P. v. () 1/28/2021 CAL

## INSTRUCTIONS/ELEMENTS / DRUGS

PRISON CRIME - MJ POSSESSION POST PROP 64

Notwithstanding Prop 64, possession of less than an ounce of MJ in prison REMAINS a violation of PC 4573.6. --- DCA's are in conflict.

**TAYLOR** P. v. () 1/22/2021 6:

## APPELLATE / WAIVER OF APPEAL

WAIVER - FAILURE TO OBJECT - SENTENCING - ABILITY TO PAY - DUENAS

This DCA says failure to raise DUENAS ability-to-pay issue at sentencing is NOT a waiver of right to appeal on this issue. --- DCA's in conflict.

**MONTES** P. v. () 1/15/2021 5:

## SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - LIFE - AFTER 10 PAROLE DENIALS

After 30 years in Prison, and 10 Parole Denials, Def (who got LIFE for Kidnap/Robbery) files HABEAS saying sentence has now become Cruel and Unusual. DCA Grants Habeas, AND, strikes Parole requirement. --- REVERSED only as to Striking Parole requirement.

**PALMER** In Re () 1/28/2021 CAL

## INSTRUCTIONS/ELEMENTS / HOMICIDE

PREMED & DELIB - NOT MATURE AND MEANINGFUL REFLECTION

Trial court added PC 189 statutory language about "mature and meaningful reflection" not being needed for Premed & Deliberation. (Def intoxication was an issue) UPHELD.

**RAMIREZ** P. v. () 1/28/2021 CAL

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

VICTIM IMPACT - CO-WORKER WIT'S - DEF WAS POLICE OFFICER

Victim was Police Officer. Penalty evidence included 3 fellow officers/friends telling jury what a good cop the victim was. -- UPHELD

**RAMIREZ** P. v. () 1/28/2021 CAL

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

MITIGATING FACTORS - LINGERING DOUBT

Trial court denies def request for LINGERING DOUBT instruction. Permits def atty to argue that Lingered Doubt can be considered mitigation. UPHELD.

**RAMIREZ** P. v. () 1/28/2021 CAL

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

PROP 64 - MARIJUANA POSSESS/USE IN PRISON UNAFFECTED - 4573 PC

Notwithstanding Prop 64, possession of less than an ounce of MJ in prison REMAINS a violation of PC 4573.6. --- DCA's are in conflict.

**TAYLOR** P. v. () 1/22/2021 6:

## INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GANG - 186.22 PC - SUFFIC OF EVID

Def chooses to commit a crime with X, a fellow GANG member, BECAUSE he is a fellow Gang member. HELD: A jury may reasonably conclude that the crime was committed with the intent to benefit the gang under the Gang Enhancement - PC 186.22(b).

**JAIMES** P. v. () 1/25/2021 5:

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## INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GANG - 186.22 PC - CRIME "IN ASSOCIATION WITH" GANG

In response to jury question during deliberations, court gives common sense dictionary definition to the word "association" as used in CALCRIM 1401. HELD: PREJUDICIAL ERROR. "Association" under PC 186.22(b) requires MORE than mere "association".

JAIMES P. v. () 1/25/2021 5:

## PAROLE / PAROLE DECISIONS

3051 PC PAROLE - FRANKLIN HEARINGS

Def was given his life sentences in 1995. Def qualifies for PC 3051 early parole hearings. In 2019, def makes a request for a FRANKLIN hearing. HELD: Def should get his Franklin Hearing, and, he should get an atty to help him prepare for it.

LIPPTRAPP P. v. () 1/11/2021 4:3

## EVIDENCE / HEARSAY

UNAVAILABILITY - DUTY TO KEEP TRACK OF WITNESSES

After prelim, DDA moves witness out of state for her safety. DID NOT maintain regular contact. 3 months before trial, investigator starts looking for her, can't find her. HELD: Due Diligence does NOT require regular monitoring.

WINDFIELD P. v. () 1/4/2021 4:2

## INSTRUCTIONS/ELEMENTS / HOMICIDE

ATTEMPT 187 - KILL ZONE - DEF UNAWARE OF ALL INSIDE

KILL ZONE depends on def's intent re: a space (kill anything and everything in it); not def's intent re: individuals inside the space. KILL ZONE would apply even if def was NOT aware that a particular victim was even in the Kill Zone.

WINDFIELD P. v. () 1/4/2021 4:2

## SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - LWOP FOR 18-YEAR OLD

Age 18 is a bright, clear, line. Def one day BEFORE 18th birthday gets MILLER protections against LWOP sentences. Def's one day past 18th birthday get no such protection. --- Def is 18. His LWOP sentence is not cruel and unusual.

WINDFIELD P. v. () 1/4/2021 4:2

## APPELLATE / WAIVER OF APPEAL

WAIVER - FAILURE TO OBJECT - SENTENCING - PROBATION TERMS

If a def wishes to appeal the application of a particular PROBATION term to himself, failure to raise the issue at sentencing PRECLUDES an appeal. BUT, if def wishes to assert the TERM is unConstitutional as to all defendants, failure to raise earlier is NOT fatal to the appeal.

BRAND P. v. () 1/11/2021 4:1

## MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

1473.7 PC - DELAYED IMMIGRATION MTNS - MEANINGFULLY UNDERSTAND

Trial Ct denies PC 1473.7 motion. REVERSED by DCA. Written advisement and waiver was GOOD. Verbal advisement and waiver was GOOD. NO claim of atty incompetence. BUT, def now says he did not MEANINGFULLY UNDERSTAND immigration consequences. -- That is enough.

JUNG P. v. () 12/15/2020 4:3

## PRELIMS / 995 / MISC - PRE/995

PRELIM - CONTINUANCES TO DATE BEYOND 60 DAYS

Def agrees to continue his PRELIM to a date certain that is beyond the PC 859b 60-day deadline. HELD: this is NOT a General Time Waiver. If Prelim is continued beyond that date, def has a good motion to dismiss.

FAVOR def v. SUP CT 1/13/2021 4:2

## EVIDENCE / HEARSAY

UNAVAILABILITY - DUE DILIGENCE - APPELLATE REVIEW IS DE NOVO

Appellate review of whether DDA did DUE DILIGENCE in trying to find and serve witness before using Wit's prior testimony is DE NOVO. -- This case: Due Diligence finding upheld. Due Diligence is NOT perfection, is NOT "everything" possible.

WINDFIELD P. v. () 1/4/2021 4:2

## INSTRUCTIONS/ELEMENTS / HOMICIDE

ATTEMPT 187 - KILL ZONE - MULTIPLE SHOTS INTO A CROWD

KILL ZONE instruction properly given in shooting-into-a-crowd case. The "crowd" was only two people who were walking side by side. Defs continued shooting even after both victims were on the ground on top of each other.

WINDFIELD P. v. () 1/4/2021 4:2

## JUVENILE / UNFITNESS

PROP 57 - RETROACTIVE - CASE ON APPEAL - DEF NOW OVER AGE 25

17 yr old commits 187 in 2009. Originally AFFIRMED in 2014. Appeal bounces back and forth between DCA and Supreme Ct until 2020. After Prop 57, def adds issue to appeal. HELD: REMANDED for UNFITNESS hearing. (this is the 4th DCA opinion on this case.)

WINDFIELD P. v. () 1/4/2021 4:2

## SENTENCING / PROBATION

TERMS - MUST - TELL P.O. OF ALL LAW ENFORCEMENT CONTACTS

San Diego has a boilerplate PROBATION term requiring def to notify P.O. of any police contact that involved the def being QUESTIONED by police. HELD: this is not vague. this is not overbroad.

BRAND P. v. () 1/11/2021 4:1

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## SENTENCING / MISC - SENTENCING

MISC - MANDATORY MITIGATION - VET / PTSD - 1170.9 & 1170.91 PC

Def's military service and resulting PTSD was discussed at def's sentencing. BUT, the record showed no indication that court was aware that PC 1170.9 and 1170.91 REQUIRES the court to consider such things as MITIGATION. -- case REMANDED for new sentencing hearing.

**PANOZO** P. v. () 1/8/2021 4:1

## SEARCH & SEIZURE / AUTOS / CONTAINERS

PC TO SEARCH AUTO - EVID OF MUNI ORDINANCE VIOLATION

Def arrested for violating Municipal Ordinance while sitting in his car. Car is searched for evidence related to the Municipal Ordinance violation. UPHELD under general auto exception.

**SIMS** P. v. () 1/12/2021 4:1

## MENTAL HEARINGS / SexVioPredator

PROCEDURE - PROBABLE CAUSE HRG - USE OF HEARSAY - SANCHEZ

HEARSAY may be considered and used by the expert evaluating def for possible inclusion into SexVioPredator program. HEARSAY may be considered by the COURT at the PROBABLE CAUSE stage of the proceedings under W&I 6602. -- DCA's in conflict.

**MORSE** In Re () 1/5/2021 4:1

## INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GANG - 186.22 PC - SUFFIC OF EVID - DEF IS SOLO ACTOR

Def, a GANG member, commits 3 robberies. Does NOT share proceeds with anyone. Does NOT communicate to victims his Gang status. HELD: Gang enhancements REVERSED for insufficient evidence.

**GONZALEZ** P. v. () 1/6/2021 2:8

## INSTRUCTIONS/ELEMENTS / MISC -

WITNESS INTIMIDATION - 136.1 PC

Def pulls phone away from Victim's ear and throws it down causing it to break. Def convicted of PC 136.1 -- preventing victim from reporting crime to police. UPHELD.

**COOK** P. v. () 1/5/2021 2:8

## MISCELLANEOU / STATUTORY CONSTRUCTION

RULE - DRAFTSMAN'S ERROR RULE

DCA finds a Draftman's error in SB 1437's changes to FELONY MURDER - PC 189(f). -- HELD: Malice is NOT needed for Felony 187 if the victim is Peace Officer in performance of duties AND def knew or should have known. -- Not correcting the error would lead to absurd result.

**HERNANDEZ** P. v. () 1/22/2021 2:7

## SEARCH & SEIZURE / INCIDENT TO ARREST

SITUATION - ARREST FOR MUNICIPAL ORDINANCE VIOLATION

Def arrested for violating Municipal Ordinance while sitting in his car. Car is searched incident to the arrest. UPHELD.

**SIMS** P. v. () 1/12/2021 4:1

## MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - PROBATION LENGTH - 1203.1 PC

AB 1950's cap of 2 years for length of felony probation is RETROACTIVE.

**SIMS** P. v. () 1/12/2021 4:1

## APPELLATE / MISC APPELLATE

WENDE BRIEF - NOT APPLICABLE TO APPEALS OF 1473.7 DENIALS

Def seeks to vacate a 2014 conviction under PC 1473.7 -- re: immigration consequences. Motion Denied. Def appeals. Appointed counsel files WENDE brief. HELD: This is not an appeal from a judgment of conviction. DCA need NOT do an independent review of the entire record.

**RAMIREZ** P. v. () 1/26/2021 3:

## MOTIONS / REPRESENTATION

ADVISORY COUNSEL

Notwithstanding court's casual comment to the effect that he ALWAYS denies requests for ADVISORY Counsel, the record shows that court knew that he must exercise discretion on EACH request. -- Denial is UPHELD.

**CHOI** P. v. () 1/7/2021 2:8

## INSTRUCTIONS/ELEMENTS / HOMICIDE

FELONY 187 - POST SB 1437 - MURDER OF PEACE OFFICER

DCA finds a Draftman's error in SB 1437's changes to FELONY MURDER - PC 189(f). -- HELD: Malice is NOT needed for Felony 187 if the victim is Peace Officer in performance of duties AND def knew or should have known.

**HERNANDEZ** P. v. () 1/22/2021 2:7

## MISCELLANEOU / COLLATERAL

LAW OF THE CASE DOCTRINE - RELATION TO PC 1170.95

Because of verdict form screw up, def was convicted of 2nd Degree Felony Murder in 1988. HELD: Court is NOT bound by this when evaluating def's PC 1170.95 motion 30 years later. Law of the Case Doctrine does NOT apply.

**HERNANDEZ** P. v. () 1/22/2021 2:7

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## PRELIMS / 995 / MISC - PRE/995

PRELIM - CONTINUANCES TO DATE BEYOND 60 DAYS

Def consents to a specific date (or deadline) for his Prelim that is beyond 60 days. This is NOT a general time waiver. It is limited to the precise terms of the waiver.

**ARNOLD** P. v. SUP CT 1/12/2021 2:7

## INSTRUCTIONS/ELEMENTS / HOMICIDE

INVOL - NEGLIGENT SUPERVISION OF ELDERLY W/ DEMENTIA

A Residential Care Facility for Elderly (RCFE) is NOT authorized to accept Dementia patients. Director of RCFE accepts Victim in facility KNOWING V has dementia. V was not properly supervised. V runs into busy street and is killed. Director convicted of INVOL and ELDER ABUSE. UPHELD.

**SKIFF** P. v. () 1/4/2021 2:6

## SENTENCING / RESTITUTION

ITEM - VICTIM'S ATTY'S FEES - FOR VARIOUS TASKS

Restitution for victim's legal fees in getting Restraining Order on Def -- NO. For legal fees in gathering evidence to give to DDA -- YES. For legal fees in seeking restitution from def -- YES. Total attys fees approved by trial court \$221,140.40. UPHELD.

**KELLY** P. v. () 12/23/2020 2:6

## SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - MINORS - ONE-STRIKE SEX CASES

In 1998 def, age 17, was sentenced to 66 years to life under ONE-STRIKE sex law -- PC 667.61. HELD: Equal Protection does NOT require that PC 3051 early parole hearings be granted to lifers sentenced as minors under PC 667.61.

**MOSELEY** P. v. () 1/20/2021 2:2

## SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - MINORS - ONE-STRIKE SEX CASES - PRE-MILLER

In 1998 def, age 17, was sentenced to 66 years to life under ONE-STRIKE sex law -- PC 667.61. HELD: This is defacto LWOP and Cruel and Unusual. HABEAS petition is granted and remanded for consideration of MILLER factors.

**MOSELEY** P. v. () 1/20/2021 2:2

## MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - PROBATION LENGTH - 1203.1 PC

AB 1950, effective 1/21/21, amends PC 1203.1 to set maximum length of felony probation to TWO YEARS. HELD: this is RETROACTIVE to all open cases.

**QUINN** P. v. () 1/11/2021 1:4

## PRELIMS / 995 / MISC - PRE/995

PRELIM - CONTINUANCES - TIME NOT TOLLED BY CCP 170.1 MOTION

Pending Prelim, def files CCP 170.1 against the entire DA's office. HELD: Absent express time waivers by def, the time requirements for holding the prelim are NOT TOLLED while the 170 issues are litigated.

**ARNOLD** P. v. SUP CT 1/12/2021 2:7

## INSTRUCTIONS/ELEMENTS / MISC -

ELDER / DEPENDENT ADULT ABUSE - 368 PC

A Residential Care Facility for Elderly (RCFE) is NOT authorized to accept Dementia patients. Director of RCFE accepts Victim in facility KNOWING V has dementia. V was not properly supervised. V runs into busy street and is killed. Director convicted of INVOL and ELDER ABUSE. UPHELD.

**SKIFF** P. v. () 1/4/2021 2:6

## MISCELLANEOU / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - WHEN IS DEF'S CASE FINAL?

2001: def gets 74-to-life for crimes committed at age 15. Case FINAL in 2003. In 2018, Dept of Corrections recommends resentencing under PC 1170(d) because BOTH gun-use and gang-gun-use enhancements were imposed. Court Re-Sentences. HELD: Case NOT final anymore. -- Def gets Prop 57 unfitness hrg.

**HWANG** P. v. () 1/29/2021 2:5

## CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - 3051 PC PAROLE - ONE-STRIKE SEX DEFS

In 1998 def, age 17, was sentenced to 66 years to life under ONE-STRIKE sex law -- PC 667.61. HELD: Equal Protection does NOT require that PC 3051 early parole hearings be granted to lifers sentenced as minors under PC 667.61.

**MOSELEY** P. v. () 1/20/2021 2:2

## SENTENCING / STRIKE CASES

MISC - ALLEGATIONS APPLY TO ALL COUNTS (EVEN IF NOT CHARGED)

Charging document alleged that def had a STRIKE, but tied the Strike allegation to only some counts, not all. HELD: this is adequate notice to def that he must defend for ALL counts. Court DOUBLED sentence on all counts. UPHELD.

**LAANUI** P. v. () 1/8/2021 2:1

## APPELLATE / POST GUILTY PLEA

POST GUILTY PLEA - CAN APPEAL - SENTENCE W/IN BARGAIN

Def's plea bargain was for MAXIMUM of 2 years, 8 months. At sentencing, def sought a lower sentence. Def got 2 years, 8 months. Def appeals sentence. HELD: An appeal based on alleged ILLEGAL Sentence, or Abuse of Discretion can proceed WITHOUT a Certificate of PC.

**HILL** P. v. () 1/21/2021 1:3

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## MENTAL HEARINGS / 1368

THREE YEAR CAP ON HOSPITALIZATION - WHAT TOLLS TIME

Def found 1368. After a year, Health Official certifies def is competent. Def objects. Court holds hearing. Court finds def is STILL incompetent. HELD: The 3-year limit is NOT TOLLED by Health Official's Certification. ONLY the court can officially find that def was Competent.

**CARR** P. v. () 1/19/2021 1:3

## MOTIONS / 1385

LIMITS ON - CAN'T USE TO GIVE LESSER GUN ENHANCEMENT

HELD: the court's PC 1385 authority over GUN Enhancements under PC 12022.53 is limited to a YES/NO decision re: each subdivision found true by the jury. The court does NOT have the authority of replace jury decision with a lesser included subdivision of 12022.53.

**DELAVEGA** P. v. () 1/5/2021 1:1

## TRIAL / MISC - TRIAL

JUDICIAL QUESTIONING OF WITNESSES IN FRONT OF JURY - REVERSED

Court's questioning of DDA's expert, and the Court's frequent interruptions of the defense cross of the same witness, CUMULATIVELY "crossed the line" and gave jurors the strong impression that the court AGREED with the witness. Conviction REVERSED.

**WILLIAMS** P. v. () 1/26/2021 1:3

## SENTENCING / ENHANCEMENTS

GUN USE - 12022.53 PC - 1385 AUTHORITY TO PICK LESSER SUBDIVISION

HELD: the court's PC 1385 authority over GUN Enhancements under PC 12022.53 is limited to a YES/NO decision re: each subdivision found true by the jury. The court does NOT have the authority of replace jury decision with a lesser included subdivision of 12022.53.

**DELAVEGA** P. v. () 1/5/2021 1:1