

CaseBank: Cases Added - September 2014 (sorted by Court)

www.casebanklaw.com

CONSTITUTIONAL ISSUES / SEPARATION OF POWERS

SEPARATION OF POWERS - EXECUTIVE / JUDICIAL

Separation of Powers is NOT violated when a court clerk prepares and files an FTA complaint under PC 951(c) BECAUSE the D.A.'s Office authorizes the practice. Due Process does NOT require a case-by-case evaluation by a prosecutor before a complaint can be authorized.

STEEN def v. SUP 8/11/2014 **CAL**

MENTAL HEARINGS / SexVioPredator

PROCEDURE - EARLY RELEASE REQUESTS - 6608 PC

SexVioPredator makes request for conditional release under PC 6608(e). HELD: (1) Court may give DDA opportunity to be heard before deciding whether or not request is "frivolous". (2) DDA is limited to arguing frivolousness based ONLY on the face of the petition itself.

OLSEN P. v. () 9/12/2014 **6:**

SENTENCING / V/P'S

MISC - CONTINUING HRG FOR YEARS BEYOND TERM LIMIT

As probation is about to expire with def not having paid full restitution, court summarily revokes, and then continues V/P hearing indefinitely (years), waiting for def to pay. REVERSED. Court has no authority to continue V/P for this purpose.

SEM P. v. () 9/17/2014 **6:**

INSTRUCTIONS/ELEMENT / MISC - FELONY

GANG MEMBERSHIP - 186.22(a) PC - GANG FELON CARRYING GUN

Def carries gun (illegally) to protect two fellow gang members (A and B) while they go to dangerous part of town for a non-criminal purpose. HELD: Def gun possession did not aid A and B commit any crime, therefore, PC 186.22(a) does NOT apply.

JOHNSON P. v. () 9/11/2014 **5:**

SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - LIFE FOR SEX WITH CHILD

Def with no record gets 27-to-life sentence for molest of 5 children. Def's Cruel and Unusual claim on appeal is denied.

CHRISTENSEN P. v. () 9/10/2014 **4:3**

MOTIONS / HITCH/TROMBETTA

GENERALLY - NEED FOR BAD FAITH - NOT ALWAYS

If destroyed/lost evid is merely "potentially useful" to defense, as opposed to obviously useful, then the def must separately establish BAD FAITH on the part of the police. This case: def TOLD police item was exculpatory before the item was destroyed. This equals BAD FAITH.

ALVAREZ P. v. () 9/10/2014 **4:3**

MOTIONS / STATUTE OF LIMITATIONS

GENERALLY - APPEAL - DEF'S FAILURE TO RAISE ISSUE BELOW

Information plead facts that would make this OLD case w/in the Statute of Limitations, BUT, in this COURT-TRIAL, neither side asked court to make specific findings re: these facts. --- DCA REMANDS case for "new hearing" on these facts. (with new evid? - unclear)

DOOLITTLE P. v. () 9/8/2014 **6:**

MENTAL HEARINGS / SexVioPredator

PROCEDURE - EARLY RELEASE REQUESTS - 6608 PC

SexVioPredator makes request for conditional release under PC 6608(e). HELD: "FRIVOLOUS" as used in 6608(e) is "indisputably has no merit - when any reasonable attorney would agree that the request is totally and completely without merit."

OLSEN P. v. () 9/12/2014 **6:**

SENTENCING / ENHANCEMENTS

GENERALLY - FIXING MIS-MATCH OF ENHANCEMENT TO LESSER

Def charged with 187 with 12022.53(d) enhancement. Convicted of Manslaughter w/ 12022.53(d) enhancement. BUT, subdivision (d) does not apply to Manslaughter. HELD: remedy is NOT to dismiss enhancement. Remedy is to change enhancement to PC 12022.5(a).

FIALHO P. v. () 9/23/2014 **6:**

EVIDENCE / HEARSAY

UNAVAILABILITY - DUE TO MENTAL STRESS

Sexual child abuse victim testifies at first trial. Jury hangs. Victim held UNAVAILABLE to testify at second trial due to mental/emotional stress caused by first trial. UPHELD. -- This is extreme case. Child has borderline AUTISM.

CHRISTENSEN P. v. () 9/10/2014 **4:3**

MOTIONS / HITCH/TROMBETTA

GENERALLY - DEF TELLS POLICE ITEM IS EXCULPATORY

At arrest, def tells cops, "check the video, it will show I didn't do it." City police operated cameras in this part of downtown. Cop told def that video showed he did it. Video was NEVER checked, and was erased two weeks later. UNKNOWN what video would have shown. Dismissal UPHELD.

ALVAREZ P. v. () 9/10/2014 **4:3**

INSTRUCTIONS/ELEMENT / HOMICIDE

ATTEMPT 187 - KILL ZONE

The def need not specifically intend to kill everyone in the KILL ZONE before Kill Zone instructions apply. He needs only to intend to "create a zone of fatal harm".

CANIZALES P. v. () 9/10/2014 **4:2**

CaseBank: Cases Added - September 2014 (sorted by Court)

www.casebanklaw.com

APPELLATE ISSUES / MISC APPELLATE ISSUES

RECORD ON APPEAL - ATTEMPT TO AUGMENT BY JUDICIAL NOTICE

While appeal is pending, potentially exculpatory evidence is found. Def asks DCA to take Judicial Notice. HELD: Even assuming it is the kind of evidence subject to judicial notice, it is NOT part of record in lower court, therefore has no role to play in appeal.

BATCHELOR P. v. () 9/16/2014 4:2

SENTENCING / STRIKE CASES

QUALIFYING PRIOR - GANG MEMBER W/GUN - 12025(b)(3) PC

Gang member caught with gun. Convicted of PC 12025(b)(3) FELONY. HELD: this felony prior can be alleged as a STRIKE PRIOR, as this would constitute a FELONY violation of PC 186.22 (a).

CHAIDES P. v. () 9/17/2014 4:2

APPELLATE ISSUES / MISC APPELLATE ISSUES

WENDE BRIEF - NOT APPLICABLE TO ALL APPEALS

Def appeals from a denial of request to be re-sentenced under Prop 36 Three-strike law. Appellate lawyer files WENDE brief. HELD: No obligation of DCA to do independent WENDE review.

ANDERSON P. v. () 9/12/2014 3:

APPELLATE ISSUES / MISC APPELLATE ISSUES

MISC - DISMISSAL OF APPEAL DUE TO MOOTNESS

Def found 1368. Def appeals. During appeal, def restored to competency and enters plea bargain. People move to dismiss appeal as MOOT. HELD: Since a prior 1386 finding may negatively affect def in a future case, appeal is NOT moot.

De La ROSA P. v. () 9/8/2014 3:

MOTIONS / REPRESENTATION ISSUES

PRO PER - REVOKING PRO PER STATUS FOR DELAYING CASE

DCA upholds everything trial court did, BUT, says trial court would have been upheld if it had REVOKED def's PRO PER status. Def tried 170.6; 170.1; writs; civil suits; etc in effort to get trial court off his case. Once def starts abusing the process, he should lose PRO PER status.

PEYTON P. v. () 9/16/2014 2:6

INSTRUCTIONS/ELEMENT / MISC - FELONY

PEACE OFFICER DEFINED - HARBOR PATROL OFFICERS

PC 830.33(b)'s definition when a Harbor Patrol officer qualifies as a Peace Officer has TWO possible types of duties. They are either/or, not "AND".

PENNINGTON P. v. () 9/22/2014 2:6

TRIAL / MISC - TRIAL

MISC - TELLING JURY OF EARLIER CONVICTION OF LESSER CRIMES

Trial one: Jury hung on greater count 1, convicted def of LESSER-RELATED count 2. Trial two: over def's objection, jury not told of count 2, and DDA argued only a conviction on count 1 would "hold def accountable". REVERSED. Jury was misled.

BATCHELOR P. v. () 9/16/2014 4:2

INSTRUCTIONS/ELEMENT / DEFENSES GENERALLY

MISTAKE OF FACT

Def raises a MISTAKE of FACT defense. Must this Mistake be "reasonable" (objectively or subjectively)? Neither. It must be held "IN GOOD FAITH". Reasonableness is relevant, but it is not the legal test.

WATT P. v. () 9/18/2014 4:2

SENTENCING / STRIKE CASES

PROP 36 - ELIGIBILITY - DISQUALIFYING PRIORS

Def seeks Prop 36 3-strike resentencing. HELD: Def's Solicitation for Murder Charge necessarily included intent to cause GBI. Therefore def is not eligible. (there is no requirement that def personally inflicted any GBI)

SCHINKEL P. v. () 9/12/2014 3:

SEARCH & SEIZURE / GOOD FAITH

RELIANCE ON - COURT DECISIONS THAT ARE CHANGED AFTER SEARCH

Officers took blood sample w/out def's consent, or search warrant, after def's DUI arrest in GOOD FAITH reliance on California court decisions that were later overruled by U.S. Supreme Court. Therefore, no suppression of evidence in this case.

YOUN P. v. () 8/15/2014 2:8

CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL

DUE PROCESS - JUDGE'S DUTY TO RECUSE HERSELF

Yes, there is a DUE PROCESS argument that can be made to REMOVE a judge from a case that exists separate from CCP 170.1 statutory basis for removal. BUT, the DUE PROCESS test is tougher than CCP 170.1. -- there is high probability of actual bias.

PEYTON P. v. () 9/16/2014 2:6

SEARCH & SEIZURE / GOOD FAITH

RELIANCE ON - COURT DECISIONS THAT ARE CHANGED AFTER SEARCH

Police search def's CELL PHONE incident to his arrest in GOOD FAITH reliance on Calif court decisions. (that were overruled by the U.S. Supreme Ct in 2014). Therefore, no suppression of evidence in this case.

MACABEO P. v. () 9/3/2014 2:5

CaseBank: Cases Added - September 2014 (sorted by Court)

www.casebanklaw.com

SENTENCING / STRIKE CASES

PROP 36 - ELIGIBILITY - DISQUALIFYING COUNT WAS 654 STAYED

Def gets 25-to-life 3-strike sentence for crime A, and a STAYED 25-to-life (per PC 654) for crime B. Def would be eligible for Prop 36 re-sentencing under crime A, but not under crime B. HELD: per PC 1170.126(e)(1), only crimes on IMPOSED (life) sentences determine eligibility. Def is eligible.

ATKINS P. v. () 9/4/2014 2:5

MOTIONS / PLEA BARGAINING

MISC - CT WRONGLY REJECTS OPEN PLEA - REMEDY

Def offers to plead to the court if court would CONSIDER striking GANG allegations under PC 1385. Court said it could not under PC 186.22(g). Def goes to trial and loses. HELD: Court HAD 1385 authority. Case REMANDED for lower court to CONSIDER def's offer of open plea.

VENEGAS P. v. () 9/11/2014 2:5

MOTIONS / MISC - MOTIONS

FACTUAL INNOCENCE FINDING - 851.8 PC

Part of the remedy for being found Factually Innocent under PC 851.8 includes an order for the destruction and sealing of all fingerprint impressions taken pursuant to the arrest.

CHRISTIANSEN P. v. () 9/30/2014 2:1

MOTIONS / REPRESENTATION ISSUES

PRO PER - JAIL PRIVILEGES AND COURT PRIVILEGES ARE NOT LINKED

PRO PER def abuses his Pro Per privileges IN JAIL. This is grounds for revoking his JAIL PRIVILEGES, but NOT for revoking court PRO PER status, UNLESS, the abuse convinces court that def will also abuse his COURT privileges. These are two separate issues.

DOSS P. v. () 9/26/2014 1:4

CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL

EQUAL PROTECTION - ORAL COP v. STAT RAPE

Saying that Hofsheier is NOT controlling, DCA finds rational basis for legislature authorizing tougher penalties for committing Oral Cop with a 17 year old (PC 288a(b)(1)) that stat rape (PC 261.5).

FIELDS P. v. () 9/30/2014 1:1

MOTIONS / 1385

LEGISLATIVE PROHIBITION ON 1385 MUST BE EXPLICIT - 186.22(g) PC

Generic "notwithstanding any other law" language is NOT enough to negate court's authority under PC 1385. Therefore, PC 186.22 (g) does NOT prevent court from using 1385 to strike GANG allegations.

VENEGAS P. v. () 9/11/2014 2:5

SENTENCING / MISC - SENTENCING

RECALL - 1170(d) PC - CANNOT USE MODIFY VERDICT

Jury convicts def of 1st Degree murder. Sentenced to 25-to-life. W/in 120 days, court recalls case and modifies verdict to 2nd degree. HELD: PC 1170(d) gives court a window to recall case and RESENTENCE only. Court had no jurisdiction to recall case and modify verdict.

ESPINOZA P. v. () 9/25/2014 2:3

MENTAL HEARINGS / SexVioPredator

MISC - OUTPATIENT RELEASE, REQUIREMENTS OF

SexVioPredator is conditionally released. Per PC 6608.5(f) he can't reside w/in a quarter-mile of a school. HELD: this quarter mile is measured "as the crow files", not by as a human being would walk or drive.

CHRISTMAN P. v. () 9/10/2014 1:4

APPELLATE ISSUES / MISC APPELLATE ISSUES

REMAND PROCEDURE - FARRETA ISSUES

Trial court revokes def's PRO PER status using WRONG standard. Def convicted w/ atty. HELD: REMEDY is to REMAND for reconsideration of revocation decision using correct standard. And, trial court can use post-revocation conduct of def in this reconsideration.

DOSS P. v. () 9/26/2014 1:4

CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL

EQUAL PROTECTION - RATIONAL BASIS TEST - ORAL COP v. STAT RAPE

It is not irrational for Legis to want to deter offenses it perceives as more common, more difficult to detect, and more likely to be committed than similar offenses by imposing more severe punishment for them. This case: oral cop with 17 yr old vs. Stat Rape.

FIELDS P. v. () 9/30/2014 1:1