

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

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

1170.95 PC - FORUM TO APPLY BANKS RETROACTIVELY - YES

Murder Spec Circ conviction PRE BANKS/CLARK cannot be used to summarily deny def's PC 1170.95 petition.

**ERVIN** P. v. () 11/30/2021 4:3

## MISCELLANEOUS / WRITS

HABEAS - NEW EVIDENCE - 1473.6 PC - AFTER DEF HAS SERVED SENTENCE

Def files PC 1473.6 petition to vacate an old conviction based on new evidence of misconduct by govt officer involved in the case. (1473.6 is for def's who can't file Habeas because they completed their sentence.) HELD: Habeas procedures apply. This case: petition could NOT be SUMMARILY denied.

**MURILLO** P. v. () 10/25/2021 4:3

## MOTIONS / PLEA BARGAINING

PLEA GENERALLY - ADVISEMENT OF COLLATERAL CONSEQUENCES - SVP

Def pleads guilty to child sex abuse. HELD: Risk of later being declared a SexVioPredator is NOT a direct consequence of the guilty plea. Def does NOT have to be advised of this risk.

**CODINHA** P. v. () 11/24/2021 4:1

## MOTIONS / BAIL / OR

FTA'S - DEF HAD NO NOTICE DUE TO COVID - BENCH WARRANT ANYWAY

Due to COVID, def's last hearing was vacated/continued w/ notice to def's counsel only. Def FTA's. Atty says he can't find def to give notice. Ultimately (after more continuances and FTA's) Bench Warrant issued. UPHeld. Bench Warrant and conviction of PC 1320 are two different things.

**VALDERAS** def v. SUP CT 11/30/2021 4:1

## SEARCH & SEIZURE / DETAIN/ARREST/PAT-DOWN

PC TO DETAIN - CURFEW VIOLATION - PARKING LOTS AINT "PUBLIC"

Parking lots are private property. It did not violate L.A. County's Emergency Curfew for def to be out late in a parking lot. Curfew only prohibited being out in Public. -- Therefore the detention as unlawful, therefore the gun found on def's person is NOT admissible.

**CUADRA** P. v. () 11/5/2021 2:8

## MOTIONS / STATUTE OF LIMITATIONS

GENERALLY - DISCOVERY - DISCOVERY OF LOSS IS NOT ENOUGH

The victim's discovery of a LOSS, without more, does NOT start the Stat of Limits clock. There must be some indication the LOSS "might" be due to criminal activity. And, this indication of criminal activity must be known to the VICTIM -- not a friend/coworker of the Victim.

**RODRIGUEZ** P. v. () 11/18/2021 2:8

## INSTRUCTIONS/ELEMENTS / ROBBERY / ASSAULTIVE CRIMES

FAILURE TO APPEAR - BENCH WARRANT - 1320 PC ELEMENTS NOT CONTROLLING

Def and V meet at bar and V becomes too intox to resist anything. Def drives V to a location and rapes her. Rape conviction stands, but KIDNAPPING to commit rape REVERSED. V got in car willingly. No force/threats used, only deception as to purpose.

**LEWIS** P. v. () 11/29/2021 4:3

## INSTRUCTIONS/ELEMENTS / ROBBERY / ASSAULTIVE CRIMES

GASSING - 243.9(a) PC

Def throws open cup of URINE at jail officer - PC 243.9 - Gassing. No sample preserved / tested. Victim testified to smell, color, and taste (salty). HELD: (1) no statutory DUTY to preserve / test. PC 243.9(c) testing is for benefit of victim. (2) Evid was sufficient to convict.

**GIDDENS** P. v. () 11/5/2021 4:2

## INSTRUCTIONS/ELEMENTS / MISC -

FAILURE TO APPEAR - BENCH WARRANT EVEN IF DEF HAD NO NOTICE

Due to COVID, def's last hearing was vacated/continued w/ notice to def's counsel only. Def FTA's. Atty says he can't find def to give notice. Ultimately (after more continuances and FTA's) Bench Warrant issued. UPHeld. Bench Warrant and conviction of PC 1320 are two different things.

**VALDERAS** def v. SUP CT 11/30/2021 4:1

## TRIAL / MISC - TRIAL

MISTRIAL - JURY SEES WITNESS DOCTOR SAVE A LIFE IN COURT

Juror becomes ill while DDA's expert Doctor was testifying. Doctor assists the juror with other jurors watching. All jurors later questioned. All said they could evaluate Doctor's testimony without regard to what happened. Def request for mistrial denied. UPHeld. (The ill juror was replaced)

**REVELS** P. v. () 11/8/2021 3:

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

1170.95 PC - ELIGIBILITY - OLD ATTEMPT CONVICTIONS - YES DUE TO AMEND

Effective 1/1/2022, amendment to PC 1170.95 now permits def's convicted of ATTEMPT 187 to seek 1170.95 relief. --- Not all convictions for ATTEMPT 187 necessarily require a jury finding that def had the specific intent to kill.

**MONTES** P. v. () 11/23/2021 2:8

## SENTENCING / 654

954 PC - WHEN MULTIPLE ACTS ARE ONE CRIME, OR MULTIPLE CRIMES

Def charged with fraudulent use of an Engineer's Seal. B&P 6735 mandates that the Seal be stamped on Every Page. It does NOT violate PC 954 to charge Each use of the Seal (i.e. each page) as separate crime. (but only one sentence per PC 654)

**RODRIGUEZ** P. v. () 11/18/2021 2:8

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## SENTENCING / 654

954 PC - SAME ACT CAN BE BOTH FORGERY AND IDENTITY THEFT

Def charged with fraudulent use of an Engineer's Seal. This can be charged as BOTH FORGERY and IDENTITY THEFT. Both convictions can stand under PC 954. Only one sentence can stand under PC 654.

**RODRIGUEZ** P. v. () 11/18/2021 2:8

## MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - PROP 57 - JUVI UNFITNESS - 1170.95 PC RESENTENCE

Def convicted in 2005 as an unfit minor. In 2019, his PC 1170.95 petition is denied after full hearing. DCA REVERSES and remands for new sentencing. DCA also holds def is entitled to retroactive Prop 57 UNFITNESS hearing. ¶

**RAMEREZ** P. v. () 11/23/2021 2:7

## JUVENILE / UNFITNESS

POST 57 - "PREVIOUS DELINQUENT HISTORY" DEFINED

At minor's UNFITNESS hearing, "previous delinquent history" includes everything prior to the hearing -- including things minor did AFTER the crime that is the subject of the UNFITNESS hearing.

**D. C.** def v. SUP CT 11/9/2021 1:5

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

1170.95 PC - SUMMARY DENIALS - USE OF PRELIM TRANSCRIPT

Def's PC 1170/95 petition was summarily denied based on testimony from def's 2007 preliminary hearing. REVERSED. Def's No Contest plea did NOT mean def admitted the truth of everything said at the Prelim.

**DAVENPORT** P. v. () 11/10/2021 1:4

## SENTENCING / REALIGNMENT

EQUAL PROTECTION - DISPARATE TREATMENT - DESTRUCTIVE DEVICES

The GREATER crimes - public possession of bomb, sale/transport of bomb get REALIGNMENT sentence under PC 1170(h). The LESSER crime - simple possession of bomb is NOT on realignment list. HELD: Equal Protection requires that Simple possession get REALIGNED.

**FISHER** P. v. () 11/16/2021 1:4

## SENTENCING / 654

954 PC - 2800.2 VC AND ASSAULTING COPS W/CAR - TWO SEPARATE CRIMES

Trying to get away, def drives car AT the officers. Chase ensues. HELD: on these facts, def CAN be convicted of BOTH PC 245 on officers AND VehC 2800.2 under PC 954, BUT, It was a single course of conduct with a single motive, and therefore, PC 654 prevents a sentence as to BOTH.

**L. J.** In Re () 11/30/2021 1:4

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

1170.95 PC - HEARING - MAJOR PARTIC, RECK INDIFF - AGE, SUFF EVID

After full hearing, def's PC 1170.95 petition is denied due to def being a major participant w/ reckless indifference. DCA REVERSES for insuff evid. Def knew his co-robber had a gun, but, as 15 year old, he lacked experience/maturity to appreciate the risk. Plus he was pressured by gang to do crime.

**RAMEREZ** P. v. () 11/23/2021 2:7

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

1170.95 PC - ELIGIBILITY - POST BANKS/CLARK SPEC CIRC VERDICTS

Def's murder/spec circ conviction occurred AFTER BANKS/CLARK. Def is NOT eligible for PC 1170.95 relief as a matter of law. --- Failure to appoint counsel after filing of petition was ERROR, but harmless.

**FARFAN** P. v. () 11/19/2021 2:2

## JUVENILE / UNFITNESS

POST 57 - RELEVANCE OF MINOR'S FICTIONAL WRITINGS

At minor's UNFITNESS hearing, DDA seeks to admit fictional writings by the def -- poems, song lyrics, raps. UPHOLD: while not admitted for the truth of anything stated, they were relevant regarding minor's state of mind, and his attitudes towards crime.

**D. C.** def v. SUP CT 11/9/2021 1:5

## CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

EQUAL PROTECTION - REALIGNMENT - DESTRUCTIVE DEVICE CRIMES

The GREATER crimes - public possession of bomb, sale/transport of bomb get REALIGNMENT sentence under PC 1170(h). The LESSER crime - simple possession of bomb is NOT on realignment list. HELD: Equal Protection requires that Simple possession get REALIGNED.

**FISHER** P. v. () 11/16/2021 1:4

## SENTENCING / 654

2800.2 VC / ASSAULTING COPS W/CAR

Trying to get away, def drives car AT the officers. Chase ensues. HELD: on these facts, def CAN be convicted of BOTH PC 245 on officers AND VehC 2800.2 under PC 954, BUT, It was a single course of conduct with a single motive, and therefore, PC 654 prevents a sentence as to BOTH.

**L. J.** In Re () 11/30/2021 1:4

## JUVENILE / SENTENCING

WARDSHIP TERMS - REPORT ALL POLICE CONTACTS TO P.O.

Juvi probation term that minor tell his P.O. of all contacts with the police "related to criminal activity" is NOT vague or overbroad.

**L. J.** In Re () 11/30/2021 1:4

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## **DEFENDANT'S STATEMENTS / MIRANDA**

*POST INVOKE - INTERVIEW TO EVALUATE DEF FOR NO-BAIL RELEASE*

Minor is arrested and INVOKES Miranda. While in custody, minor is interviewed, voluntarily, by probation officer for the purpose of preparing a report to be used in review of def's custody status pre-trial. HELD: the interview does NOT violate 5th Amend. USING the interview to convict minor would.

**Y. C.** *def v. SUP CT* 11/8/2021 1:4

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

*1170.95 PC - ELIGIBILITY - POST BANKS/CLARK SPEC CIRC VERDICTS*

Def's Spec Circ verdict was before BANKS/CLARK. Appellate opinion affirming the verdict was AFTER and Affirmed the conviction saying the evidence met the BANKS/CLARK standard. HELD: On this record, def's verdict make her INELIGIBLE for PC 1170.95 resentencing.

**PRICE** *P. v. ()* 11/29/2021 1:2

## **PAROLE / PAROLE DECISIONS**

*PAROLE VIOLATIONS - DEF ON LIFETIME PAROLE - NEED FOR 1203.2 RPT*

Def was on LIFER parole when he committed new misds. Parole was revoked on Petition filed by DDA. HELD: Even though court MUST send def back to prison to continue his LIFE sentence, the court MUST STILL get a pre-sentence PAROLE report under PC 1203.2.

**WILLIAMS** *P. v. ()* 11/23/2021 1:1

## **MOTIONS / BAIL / OR**

*BAIL - POST HUMPHREY - CT MINUTES MUST INCLUDE REASONS*

Post HUMPHREY, all Courts making pre-trial detention orders MUST set forth reasons for the detention order and put the reasons in the MINUTES.

**HARRIS** *In Re ()* 11/29/2021 1:3

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

*1170.95 PC - ELIGIBILITY - HOW TO DO BANKS/CLARK EVALUATION*

A Habeas review of an old Spec Circ conviction due to BANKS/CLARK applies a "Substantial Evid" judicial review with no opportunity for def to present new evidence. --- If def seeks a 1170.95 review of pre-BANKS/CLARK Spec Circ conviction - the Habeas rules should apply.

**PRICE** *P. v. ()* 11/29/2021 1:2