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SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437
SB 1437 - PC 1170.95 - SUFFIC OF EVID NEEDED TO DENY
Def convicted of aid/abet 187 by natural/Probable consequences theory. Def eligible for PC 1170.95 relief UNLESS DDA can show BEYOND A REASONABLE DOUBT that def "could" have also been convicted under IMPLIED MALICE theory. --- JUDGE, not JURY, decides.
LOPEZ P. v. () 10/30/2020 **6:**

MISCELLANEOUS / ATTY ETHICS
CONFLICT OF INTEREST - APPELLATE REVIEW - NEED FOR PREJUDICE
Ten years ago, Public Defender declared Conflict and represented def's co-def. Def now seeks PC 1170.95 relief, and Public Defender appt'd for def. No objection. PC 1170.95 petition denied. HELD: NO automatic reversal for Conflict. Def must show prejudice.
LOPEZ P. v. () 10/30/2020 **6:**

MISCELLANEOUS / RETROACTIVE
BENEFIT TO DEF - STATUTE CHANGES - 859.5 PC - RECORDING STATEMENTS
PC 859.5 imposes standards for the recording of suspect interviews in some cases. HELD: 2017 amendments to 859.5 are NOT retroactive. ESTRADA reasoning does NOT apply.
CERVANTES P. v. () 10/14/2020 **5:**

APPELLATE / MISC APPELLATE
BENEFIT TO DEF - STATUTE CHANGES - PLEA BARGAINS, EFFECT ON
Def enters into 10-yr plea bargain that included two one-year priors under 667.5 (b). Then 667.5(b) is amended making it not applicable to def. --- Def wants an 8 year sentence. HELD: NO. DDA has choice, accept 8 years or go back to square one and renegotiate.
HERNANDEZ P. v. () 10/14/2020 **5:**

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437
SB 1437 - NOT A VIOLATION OF SEPARATION OF POWERS / MARSY'S
SB 1437 (aka PC 1170.95) does NOT violate MARSY's Law, and does NOT violate Separations of Powers doctrine.
MARQUEZ P. v. () 10/20/2020 **4:3**

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437
VETERANS - 1170.91 PC
The January 1, 2015 cutoff date for possible re-sentencing for VETERANS sentenced BEFORE that date is firm. A sentencing that occurred after that date cannot be re-addressed under PC 1170.91(b).
VALLIANT P. v. () 10/14/2020 **4:3**

CONSTITUTIONAL ISSUES / RIGHT TO JURY TRIAL
JURY RIGHT - 1170.95 PC PETITIONS
Def convicted of aid/abet 187 by natural/Probable consequences theory. Def eligible for PC 1170.95 relief UNLESS DDA can show BEYOND A REASONABLE DOUBT that def "could" have also been convicted under IMPLIED MALICE theory. --- JUDGE, not JURY, decides.
LOPEZ P. v. () 10/30/2020 **6:**

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437
SB 1437 - PC 1170.95 - FACTUAL ISSUES - NO JURY
Def convicted of aid/abet 187 by natural/Probable consequences theory. Def eligible for PC 1170.95 relief UNLESS DDA can show BEYOND A REASONABLE DOUBT that def "could" have also been convicted under IMPLIED MALICE theory. --- JUDGE, not JURY, decides.
LOPEZ P. v. () 10/30/2020 **6:**

MOTIONS / PLEA BARGAINING
BARGAIN - COURT OPTIONS IF LAW CHANGES
Def enters into 10-yr plea bargain that included two one-year priors under 667.5 (b). Then 667.5(b) is amended making it not applicable to def. --- Def wants an 8 year sentence. HELD: NO. DDA has choice, accept 8 years or go back to square one and renegotiate.
HERNANDEZ P. v. () 10/14/2020 **5:**

MISCELLANEOUS / RETROACTIVE
BENEFIT TO DEF - APPELLATE DECISIONS - GALLARDO
GALLARDO (2017) held that trial courts could NOT do any independent fact-finding when determining if a non-Calif prior conviction matched up with a Calif felony. They were limited to facts found by prior jury/guilty plea. HELD: GALLARDO is NOT retroactive. HABEAS denied.
NELSON In Re () 10/21/2020 **5:**

EVIDENCE / MISC - EVID
LAY OPINION - DESCRIPTION OF VIDEO (VIDEO IN EVIDENCE)
Video of crime (admitted as exhibit) was grainy, poorly lit, and things happened fast. Detective viewed it 50 times, including very slow motion, and told jury what he saw. HELD: this was NOT improper. This was just a guide to assist jury in their own viewing.
SON P. v. () 10/19/2020 **4:3**

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437
PROP 47 - ELIGIBILITY - 10851 VC - AUTO THEFT - EVID OF CAR VALUE
Def seeks a Prop 47 reduction of his felony 1998 auto theft conviction for the theft of a 1979 AMC Concord. Def presented 1998 Kelly Blue Book that said car was worth \$500. DDA presented nothing. Court denied request. REVERSED. No substantial evid that car was worth more than \$950.
ZORICH P. v. () 10/13/2020 **4:3**

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

SB 1437 - 1170.95 PC - MAJOR PARTICIPANT RECKLESS INDIFF

Def's PC 1170.95 petition re: his 2005 Felony/Murder is properly denied after a full hearing. Court applied the BANKS/CLARK version of Major Participant / Reckless Indifference and finds that def WAS, and DID. UPHELD. (there was no Spec Circ alleged in 2005)

BASCOMB P. v. () 10/16/2020 4:2

SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - DUI CASES - 23640 VC

VC 23640 prohibits ANY pretrial Diversion in DUI cases. This includes mental health diversion under PC 1001.36.

TELLEZ def v. SUP CT 10/23/2020 4:2

INSTRUCTIONS/ELEMENTS / MISC -

RECKLESS DRIVING W/ INJURY - 23103/23105 VC

Opinion acknowledges the CALCRIM 2200's definition of WANTON for purposes of Reckless Driving causing Injury per VC 23103/23105 may not exactly match up with language in some appellate opinions, it is CLOSE ENOUGH.

BARBER P. v. () 10/9/2020 4:1

TRIAL / JUROR/VERDICT ISSUES

MISCONDUCT - DELIBERATIONS - REFUSAL TO DELIBERATE - REVERSED

Holdout juror excused for Failure to Deliberate. REVERSED. Yes, juror was fairly uncommunicative, and failed to articulate rational reasons WHY she disagreed with the others, BUT, she was not TOTALLY uncommunicative. She tried to deliberate, she was just bad at it.

BARTON P. v. () 10/26/2020 4:1

MOTIONS / 1385

LIMITS ON - 5-YEAR PRIORS UNDER 667(A) PC - 2019 AMENDMENT

Trial courts' newly granted authority to Strike 5-year priors is NOT unfettered. Long-standing PC 1385 criteria apply.

SHAW P. v. () 10/26/2020 4:1

SEARCH & SEIZURE / MISC - SEARCH

GOVT ACTION - PRIVATE SEARCHES BY BIG TECH

Def sends child porn as e-mail attachments through GMAIL. Artificial Intelligence program looks at ALL attachments and sends suspected CHILD PORN to Police. HELD: GMAIL is not the govt. 4th Amendment does not stop Private Company searches. Police may look at what GMAIL gives them.

WILSON P. v. () 10/21/2020 4:1

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

SB 1437 - 1170.95 IS NOT FORUM TO APPLY BANKS RETROACTIVELY

PC 1170.95 is NOT the proper forum to seek to apply BANKS and CLARK to an old SPEC CIRC conviction. Def must first have the SPEC CIRC set aside via HABEAS petition, then seek PC 1170.95 relief.

JONES P. v. () 10/23/2020 4:2

EVIDENCE / 352 / RELEVANCE

352 - DEF EVID - REMOTE REASON FOR VICTIM TO LIE

After giving statement to police and after testifying at prelim, VICTIM learns of Immigrant VISA available to Domestic Violence victims, and seeks and gets such VISA. HELD: Yes, this marginally relevant, but trial Ct's EV 352 decision to exclude it is UPHELD.

VILLA P. v. () 10/16/2020 4:2

INSTRUCTIONS/ELEMENTS / ENHANCEMENTS

GBI - 12022.7 PC - BASE CRIME - RECKLESS DRIVING VC 23103/23105

VC 23105 is NOT a stand-alone crime and it is NOT an enhancement. It is a sentencing provision that directs that certain PC 23103 convictions be sentenced differently. Therefore, both 23105 and PC 12022.7 -- GBI enhancement -- can apply to same case.

BARBER P. v. () 10/9/2020 4:1

INSTRUCTIONS/ELEMENTS / LESSER

OBSTRUCTING 69 PC / 148 PC

If it is alleged the PC 69 was accomplished by THREATS, then PC 148 is NOT a lesser. If the PC 69 is allegedly accomplished by force, then PC 148 is a lesser.

KRUSE P. v. () 10/30/2020 4:1

SEARCH & SEIZURE / EXPECTATION OF PRIVACY

THINGS - EMAIL CONTENT - ATTACHMENTS

Def sends child porn as e-mail attachments through GMAIL. Artificial Intelligence program looks at ALL attachments and sends suspected CHILD PORN to Police. HELD: GMAIL is not the govt. 4th Amendment does not stop Private Company searches. Police may look at what GMAIL gives them.

WILSON P. v. () 10/21/2020 4:1

INSTRUCTIONS/ELEMENTS / GENERALLY

UNANIMITY/DDA ELECTION - D.A. ELECTION

UNANIMITY Instruction would normally be appropriate on these facts, BUT, the DDA, in argument, made an election of what facts went with what count.

Therefore there was no need for an Unanimity Instruction.

WILSON P. v. () 10/21/2020 4:1

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INSTRUCTIONS/ELEMENTS / MISC -

GANG RECRUITMENT - 186.26 PC

LONG discussion on Sufficiency of Evidence to support a conviction of SOLICITING or RECRUITING a person to join a criminal street gang under PC 186.26. This case: evidence was overwhelming.

MARTINEZ P. v. () 10/2/2020 3:

SENTENCING / DIVERSION

DIVERSION - PRIMARY CAREGIVERS - 1001.83 PC

PC 1001.83 - diversion for Primary Caregivers - when into effect 1/1/2020. Question: is it RETROACTIVE? Answer: Maybe. Opinion leans that way, but, issue DUCKED because County of def's conviction has not yet created the Program. (which they have discretion to do).

PACK-RAMIREZ P. v. () 10/8/2020 3:

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

1170(d) PC - DEPT CORRECTIONS RECOMMENDATION

Dept of Corrections RECOMMENDS to trial court that it RECALL def's 23-year prison sentence per PC 1170(d)(1) due to def's exemplary prison record. HELD: this recommendation does NOT trigger a right to hearing and/or right to atty. Court has DISCRETION to order either/both.

FRAZIER P. v. () 10/13/2020 2:7

SENTENCING / ONE-STRIKE SEX

ONE STRIKE - 667.61 PC - 2010 AMEND TO 667.61(j)(2) - 288(a) CASES

One-Strike law was amended in 2010 by adding PC 667.61(j)(2). HELD: 667.61(j)(2) can apply to non-force PC 288(a) convictions. RULE of Interpretation to avoid making language SURPLUSAGE does NOT prevail over clear legislative intent.

BETTS P. v. () 10/1/2020 2:6

INSTRUCTIONS/ELEMENTS / DEFENSES

MISTAKE OF FACT - NEGATING SPECIFIC INTENT

If the defendant's UNREASONABLE (but honestly held) belief in some fact negates a necessary SPECIFIC INTENT for crime X, then def does NOT have the Specific Intent. There is no requirement that def's belief be Reasonable. (this case was a burglary case)

HENDRIX P. v. () 10/19/2020 2:6

MENTAL HEARINGS / 1026

NGI EXTENSIONS - JURY WAIVERS

Def atty MIGHT be able to waive jury on def's behalf for a PC 1026.5 extension hearing if def incompetent to do so, BUT, in this case, the def was NOT PRESENT when waiver made. Waiver is NOT VALID.

FORD P. v. () 10/23/2020 2:4

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - NEW DIVERSION PROGRAMS

PC 1001.83 - diversion for Primary Caregivers - when into effect 1/1/2020. Question: is it RETROACTIVE? Answer: Maybe. Opinion leans that way, but, issue DUCKED because County of def's conviction has not yet created the Program. (which they have discretion to do).

PACK-RAMIREZ P. v. () 10/8/2020 3:

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

GENERALLY - AID/ABET - MAJOR PARTICIPANT; RECKLESS INDIFFERENCE

Def files PC 1170.95 petition AND a HABEAS petition seeking to overturn 2003 SPEC CIRC finding as an aid/abetter due to CLARK and BANKS. HELD: Even under CLARK and BANKS, def was a MAJOR Participant who acted with RECKLESS disregard. --- not a close call, says the DCA.

DOUGLAS P. v. () 10/20/2020 2:8

SENTENCING / MISC - SENTENCING

CRUEL AND UNUSUAL - LWOP FOR 18-YEAR OLD

Def was 18 when he committed robbery/murder. Def sentenced to LWOP. UPHeld. Yes, 18 is semi-arbitrary, but, you have to draw the line somewhere, and the line must be sharp, not fuzzy. Sentencing Court considered all the MILLER factors. Sentence is not cruel or unusual.

MONTELONGO P. v. () 10/15/2020 2:7

MISCELLANEOUS / STATUTORY CONSTRUCTION

RULE - AVOID RESULT OF "MERE SURPLUSAGE"

One-Strike law was amended in 2010 by adding PC 667.61(j)(2). HELD: 667.61(j)(2) can apply to non-force PC 288(a) convictions. RULE of Interpretation to avoid making language SURPLUSAGE does NOT prevail over clear legislative intent.

BETTS P. v. () 10/1/2020 2:6

MISCELLANEOUS / RETROACTIVE

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

In 2014, 17-yr old Def commits crime and is convicted and sentenced as Adult. Affirmed on Appeal. Case final. Then, def gets a new sentencing through a HABEAS. While 2nd sentencing is pending, def seeks PROP 57 unfitness hearing. HELD: Too late. Case is FINAL.

LIZARRAGA P. v. () 10/22/2020 2:5

SENTENCING / ONE-STRIKE SEX

ONE STRIKE - 667.61 PC - MULTIPLE VICTIMS

Def is charged and convicted of molesting child A. Then child B comes forward. Def charged on convicted of molesting child B during the same time period child A was molested. HELD: PC 667.61(e) -- multiple victim ONE-Strike law -- requires both victims to be charged and tried together.

FOLEY P. v. () 10/23/2020 2:3

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DEFENDANT'S STATEMENTS / MIRANDA

SITUATION - BOOKING STATEMENTS

As part of BOOKING process, minor stated his age and date of birth. No MIRANDA given. HELD: Answers to "core" booking questions are admissible without Miranda. Age and date of birth are CORE questions.

J. W. *In Re ()* 10/23/2020 2:2

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

SB 1437 - 1170.95 IS NOT FORUM TO APPLY BANKS RETROACTIVELY

PC 1170.95 (SB 1437) is NOT the proper forum to attack a Pre BANKS/CLARK aid/abet SPEC CIRC conviction. Def must first bring a HABEAS.

ALLISON *P. v. ()* 10/2/2020 2:1

SENTENCING / VP'S

PRCS VIOLATIONS - EFFECT OF TOLLING

Court has discretion to TOLL def's time on PRCS while def is in REVOKED status -- even if doing so extends def's time on PRCS beyond three years.

BRAUD *P. v. ()* 10/30/2020 1:5

MISCELLANEOUS / RETROACTIVE

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

Minor convicted as Adult in 2009. Case becomes FINAL. In 2019, Dept of Corrections recommends new sentencing under PC 1170(d). Trial court agrees to new sentencing hearing. HELD: Case is no longer FINAL. Def entitled to new UNFITNESS hearing under Prop 57.

LOPEZ *P. v. ()* 10/29/2020 1:4

MISCELLANEOUS / STATUTORY CONSTRUCTION

RULE - AMBIGUITIES - GIVING DEF BENEFIT OF THE DOUBT - LENITY

Using Fraud to persuade someone to not report a FUTURE crime to the police is NOT a violation of PC 136.1. (statute ambiguous re: Future Crimes - Rule of Lenity invoked.)

REYES *P. v. ()* 10/30/2020 1:4

INSTRUCTIONS/ELEMENTS / THEFT / FRAUD CRIMES

IDENTITY THEFT OF ELDERLY - 368(d) PC

Per the language of PC 368(d), before an ID theft of an elderly person can qualify as a FELONY violation of 368(d), the value of property taken or obtained must be over \$950. (Even though ordinary ID theft under PC 530.5 has no such threshold.)

BARATANG *P. v. ()* 10/22/2020 1:3

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

SB 1437 - AID/ABET 187'S - ATTEMPTS

SB 1437 (aka PC 1170.95) has NO EFFECT on ATTEMPT 187 cases -- Past, Present, or Future.

LOVE *P. v. ()* 10/1/2020 2:2

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

SB 1437 - PC 1170.95 - WATSON/DUI 187'S

In 2008, def convicted of DUI/Watson 2nd degree 187. Def seeks PC 1170.95 resentencing on theory the WATSON itself is a deviation of Natural/Probable Consequences theory. HELD: Def is wrong.

ROLDAN *P. v. ()* 10/30/2020 2:1

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

GENERALLY - AID/ABET - MAJOR PARTICIPANT; RECKLESS INDIFFERENCE

Def HABEAS petition to reduce his 2004 felony murder conviction w/Spec Circ was properly DENIED after full hearing. Def was Major Participant who acted with Reckless Indifference even under the new BANKS and CLARK standard.

McDOWELL *In Re ()* 10/15/2020 1:5

INSTRUCTIONS/ELEMENTS / MISC -

WITNESS INTIMIDATION - 136.1 PC

Using Fraud to persuade someone to not report a FUTURE crime to the police is NOT a violation of PC 136.1. (statute ambiguous re: Future Crimes - Rule of Lenity invoked.) --- But it IS a violation of PC 137(b).

REYES *P. v. ()* 10/30/2020 1:4

INSTRUCTIONS/ELEMENTS / MISC -

WITNESS INTIMIDATION - 137 PC / 136.1 PC

Using Fraud to persuade someone to not report a FUTURE crime to the police IS a violation of PC 137(b). (But not PC 136.1)

REYES *P. v. ()* 10/30/2020 1:4

PRELIMS / 995 / MISC - PRE/995

CONTINUANCES - GOOD CAUSE - COVID-19 PANDEMIC

COVID-19 emergency orders did NOT supply Good Cause to continue a Preliminary Hearing beyond the 60-days of PC 859(b).

LACAYO *def v. SUP CT* 10/23/2020 1:3

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MOTIONS / BAIL / OR

BAIL FORFEITURE - CLERICAL ERROR MADE IN DEF'S FAVOR

Due to clerical error, def was released on a \$120,000 bond when court set bail at \$220,000. Def FTA's bail forfeited. HELD: This error did not prejudice bond issuer. Forfeiture stands.

AMERICAN SURETY P. v. () 10/1/2020 1:2

EVIDENCE / HEARSAY

CRAWFORD - TESTIMONIAL - STATEMENTS OF CHILD TO TEACHER / CPS

School reports V said Dad molested her. CPS social worker goes to V home to "assess". V tells CPS that Dad molested her. CPS pulls V from home instantly without a detailed interview with V. HELD: these two statements of V are NOT TESTIMONIAL. V refused to testify. Statements admitted under Ev 1360.

RUIZ P. v. () 10/27/2020 1:2

PAROLE / PAROLE DECISIONS

OVERCROWDING - COVID-19 AT SAN QUENTIN

DCA orders Dept of Corrections to immediately reduce the number of inmates at San Quentin to 1,775 (roughly one-half capacity) due to COVID-19.

STAICH In Re () 10/20/2020 1:2

JUVENILE / MISC - JUVENILE

RECORDS - ACCESS TO - 827 W&I - BRADY MATERIAL

DDA prevented from giving defense BRADY reports re: an EV 1108 minor witness because of W&I 827. HELD: The def's trial judge is without authority to order DDA to turn over report. ONLY Juvenile Court judge can order the release.

STEWART P. v. () 10/9/2020 1:2

EVIDENCE / CORPUS RULE

IS CORPUS NEEDED? - ELEMENTS BASED ON AGE OF VICTIM

11 year, 8 month old victim says Def molested her RECENTLY. Def confesses to molesting V for over a year. HELD: There is NO CORPUS for a sex crime involving a victim 10 years or under.

RUIZ P. v. () 10/27/2020 1:2

EVIDENCE / HEARSAY

CHILD SEX VICTIM - EV 1360

School reports V said Dad molested her. CPS social worker goes to V home to "assess". V tells CPS that Dad molested her. CPS pulls V from home instantly without a detailed interview with V. HELD: these two statements of V are NOT TESTIMONIAL. V refused to testify. Statements admitted under Ev 1360.

RUIZ P. v. () 10/27/2020 1:2

MOTIONS / DISCOVERY

EXCULPATORY - BRADY - RECORDS SEALED PER W&I 827

DDA prevented from giving defense BRADY reports re: an EV 1108 minor witness because of W&I 827. HELD: It this situation, DDA's BRADY obligation was to tell defense of report's existence AND to tell defense the report is EXCULPATORY (w/out details as how and why).

STEWART P. v. () 10/9/2020 1:2

MENTAL HEARINGS / SexVioPredator

PROCEDURE - TIMELINESS OF TRIAL - 13 YRS - PUB DEF STAFFING

Def's SexVioPredator petition is DISMISSED after a 13 year delay in getting it to trial. All the delays agreed to by Alameda Public Defender's Office, but not by def personally. -- at a certain point BOTH the DDA and the Court have an obligation to avoid excessive delay.

BUTLER In Re () 10/7/2020 1:1