



NEWS RELEASE

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Summary of Cases Accepted During the Week of January 1, 2008

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#08-01 *People v. Dieck, S158076.* (C052606; nonpublished opinion; Trinity County Superior Court; 05F169.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Was defendant entitled to seven days of presentence credits for the five days he spent in jail prior to sentencing (see Pen. Code, § 4019, subd. (f) [“a term of six days will be deemed to have been served for every four days spent in actual custody”]) or only five days (see Pen. Code, § 4019, subd. (e) [“No deduction may be made under this section unless the person is committed for a period of six days or longer”])?

#08-02 *Guzman v. County of Monterey, S157793.* (H030647; 155 Cal.App.4th 645; Monterey County Superior Court; M71543.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Does the California Safe Drinking Water Act (Health & Saf. Code, § 116270 et seq.) impose specific mandatory duties upon the County of Monterey within the meaning of Government Code section 815.6 and thus expose the county to monetary liability for the breach of a duty to review and respond to water quality monitoring reports submitted by water systems within its jurisdiction?

#08-03 *People v. McNeal, S157565.* (E041226; 155 Cal.App.4th 582, mod. 155 Cal.App.4th 1612d; San Bernardino County Superior Court; CRA4177.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the

following issues: (1) Should evidence of the range and variability between individuals of the “partition ratio,” which defines the percentage of alcohol in a breath sample that corresponds to a given level of alcohol in the blood, be admissible in a prosecution for driving under the influence in violation of Vehicle Code section 23152, subdivision (a)? (2) Should evidence of a defendant’s personal partition ratio be admissible in such a case?

#08-04 *People v. Randall, S157645.* (C053878; 155 Cal.App.4th 228; Amador County Superior Court; 04CR6656.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Does Penal Code section 1191.1 grant the victim of a crime the right to be heard by a trial court at all sentencing hearings? (2) If not, what is the scope of the trial court’s discretion to hear from the victim at sentencing?

#08-05 *People v. Superior Court (Smith), S158084.* (E041331; nonpublished opinion; Riverside County Superior Court; SWF012388.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issues: (1) Does Penal Code section 1191.1 grant the victim of a crime the right to be heard by a trial court at all sentencing hearings? (2) If so, was it harmless error here for the trial court not to allow the victim, who spoke at the original sentencing hearing, to speak at the time of resentencing after the trial court recalled the original sentence?

#08-06 *People v. Allison, S158278.* (F051941; nonpublished opinion; Fresno County Superior Court; F069034760.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Towne*, S125677 (#04-75), and *People v. French*, S148845 (#07-10), which present issues concerning the use as aggravating sentencing of such factors as being on probation or parole when a crime was committed and prior unsatisfactory performance on probation or parole, and whether the trial court violated defendant’s Sixth Amendment right to a jury trial, as interpreted in *Cunningham v. California* (2007) 549 U.S. ___, 127 S.Ct. 856, by imposing an upper term sentence based on aggravating factors not found true by the jury, where the defendant entered a no contest plea and was sentenced in accordance with his plea agreement.

#08-07 *People v. Garcia, S157870.* (B187968; 155 Cal.App.4th 929; Los Angeles County Superior Court; BA278762.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Ramirez*, S156775 (#07-463), which presents the following issue: Is grossly negligent discharge of a firearm (Pen. Code, § 246.3) a lesser included offense of discharge of a firearm at an inhabited dwelling (Pen. Code, § 246)?

#08-08 *Vasquez v. County of Los Angeles, S157933.* (B192189; nonpublished opinion; Los Angeles County Superior Court; BC345589.) Petition for review after the Court of

Appeal affirmed the judgment in a civil action. The court ordered briefing deferred pending decision in *Conroy v. Regents of University of California*, S153002 (#07-391), which presents the following issue: Could the surviving spouse of a person who donated his body for medical research sue in contract or in tort based on claim the university failed to keep track of her husband's body, failed to contact her before disposing of the remains, and allegedly mishandled or treated the remains improperly or in a manner not permitted by the donative contract?

#08-09 *People v. Viera*, S158301. (A115546; nonpublished opinion; San Francisco County Superior Court; 189944.) Petition for review after the Court of Appeal modified and affirmed a judgment of a conviction of criminal offense. The court ordered briefing deferred pending decision in *People v. Towne*, S125677 (#04-75), which presents issues concerning the use as aggravating sentencing of such factors as being on probation or parole when a crime was committed and prior unsatisfactory performance on probation or parole.

#08-10 *People v. White*, S158179. (B166502; nonpublished opinion; Los Angeles County Superior Court; VA072175.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Towne*, S125677 (#04-75), and *People v. Nguyen*, S154847 (#07-416), which present issues concerning the use as aggravating sentencing of such factors as being on probation or parole when a crime was committed and prior unsatisfactory performance on probation or parole, and whether a prior juvenile adjudication of a criminal offense in California can constitutionally subject a defendant to the provisions of the three strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) although there is no right to a jury trial in juvenile wardship proceedings in this state.

DISPOSITION

Review in the following case was dismissed in light of *Sprint Telephony PCS, L.P. v. County of San Diego* (9th Cir. 2007) 490 F.3d 700:

#06-103 *Sprint Telephony PCS, L.P. v. County of San Diego*, S145541.

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