



NEWS RELEASE

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Summary of Cases Accepted During the Week of January 15, 2006

[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.]

#07-03 *People v. Brookfield, S147980.* (F048767; nonpublished opinion; Kern County Superior Court; BF107031B.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case includes the following issue: Is a violation of Penal Code section 246 for shooting at an inhabited dwelling, which was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22, subdivision (b)(4)(B), a “felony punishable by . . . imprisonment in the state prison for life” within the meaning of section 12022.53, subdivision (a)(17), such that sentence can be enhanced under subdivisions (b) and (e) of section 12022.53 for a principal’s personal use of a firearm? (See *People v. Jefferson* (1999) 21 Cal.4th 86, 101; *People v. Briceno* (2004) 34 Cal.4th 451, 460, fn. 7.)

#07-04 *People v. Jones, S148463.* (F047448; nonpublished opinion; Fresno County Superior Court; 2671154-3, 1912707-7, 658557-4.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case includes the following issue: Is a violation of Penal Code section 246 for shooting at an inhabited dwelling, which was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22, subdivision (b)(4)(B), a “felony punishable by . . . imprisonment in the state prison for life” within the meaning of section 12022.53, subdivision (a)(17), such that sentence can be enhanced under

(over)

subdivision (c) of section 12022.53 for the defendant's personal and intentional discharge of a firearm? (See *People v. Jefferson* (1999) 21 Cal.4th 86, 101; *People v. Briceno* (2004) 34 Cal.4th 451, 460, fn. 7.)

#07-05 *Gueyffier v. Ann Summers, Ltd., S148568.* (B186996; 144 Cal.App.4th 166; Los Angeles County Superior Court; BS095483.) Petition for review after the Court of Appeal reversed a judgment confirming an arbitration award. This case presents the following issue: Was an arbitration provision in a franchise agreement that prohibited the arbitrator from modifying any material terms of the agreement an absolute limitation, or did it permit application of equitable or legal defenses, such as excusing the franchisee's failure to give the franchisor the required notice of a breach of the agreement and an opportunity to cure it, on the ground the breach could not have been cured and giving notice would have been an idle act?

#07-06 *People v. Clemons, S147821.* (A111628; unpublished opinion; Lake County Superior Court; CR904849.) 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. Crandell*, S134883 (#05-186), which presents the following issue: Does the imposition of a restitution fine under Penal Code section 1202.4, subdivision (b), violate a defendant's plea agreement if the fine was not an express term of the agreement?

STATUS

#06-130 *Edwards v. Arthur Andersen LLP, S147190.* The court limited the issues to be briefed and argued to the following: (1) To what extent does Business and Professions Code section 16600 prohibit employee noncompetition agreements? (2) Does a contract provision releasing "any and all" claims encompass nonwaivable statutory protections, such as the employee indemnity protection of Labor Code section 2802?

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