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# NEWS RELEASE

Release Number: **S.C. 09/07**

Release Date: **March 2, 2007**

## **Summary of Cases Accepted During the Week of February 26, 2007**

*[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.]*

**#07-70 *People v. Allen, S148949.*** (E039518; 144 Cal.App.4th 1132; San Bernardino County Superior Court; FSB47031.) Petition for review after the Court of Appeal affirmed an order of commitment as a sexually violent predator. This case presents the following issue: Does a defendant represented by counsel have the right to testify over counsel's objection in a proceeding to commit the defendant as a sexually violent predator?

**#07-71 *Hernandez v. City of Pomona, S149499.*** (B182437; 145 Cal.App.4th 701; Los Angeles County Superior Court; BC228397.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) Does an action against a police officer for injury resulting from the use of deadly force implicate a single primary right, such that a final judgment in favor of the police officer on a civil rights claim in federal court is res judicata in a subsequent negligence action in state court based on the same circumstances and injury? (2) Where a federal court renders a final judgment that a police officer's use of deadly force was objectively reasonable under the Fourth Amendment and the court subsequently declines to exercise pendent jurisdiction over a state law negligence claim, does the rule against splitting a cause of action bar a subsequent state court action on the negligence claim? (3) Does collateral estoppel bar a subsequent negligence claim based on "pre-seizure" conduct by the police officer that gave rise to the circumstances in which the officer was required to use deadly force?

(over)

**#07-72 *Konig v. U-Haul Co. of California, Inc.*, S149883.** (B190547; 145 Cal.App.4th 1243; Los Angeles County Superior Court; BC335055.) Petition for review after the Court of Appeal affirmed an order granting a motion to compel arbitration in a civil action. The court ordered briefing deferred pending decision in *Gentry v. Superior Court*, S141502 (#06-46), which presents issues regarding the enforceability of an arbitration provision that prohibits employee class actions in litigation concerning alleged violations of California's wage and hour laws.

**#07-73 *People v. Nelson*, S149597.** (H029738; nonpublished opinion; Santa Clara County Superior Court; CC590029.) 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?

**#07-74 *Shevchuk v. Workers' Comp. Appeals Bd.*, S149173.** (A112724; nonpublished opinion.) Petition for review after the Court of Appeal annulled a decision of the Board. The court ordered briefing deferred pending decision in *Brodie v. Workers' Comp. Appeals Bd.*, S146979 (#06-124), and *Welcher v. Workers' Comp. Appeals Bd.*, S147030 (#06-125), which present the following issues: (1) Did the repeal of Labor Code section 4750 and the enactment of new apportionment statutes (Stats. 2004, ch. 34) change the law of apportionment of permanent disability indemnity as determined by this court in *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1? (2) If so, how is permanent disability indemnity to be apportioned between injuries?

In the following cases, which present issues relating to the effect of *Cunningham v. California* (2007) 549 U.S. \_\_\_, 127 S.Ct. 856, on California sentencing law, the court ordered briefing deferred pending further order of the court:

**#07-75 *People v. Akins*, S149722.** (B175562; nonpublished opinion; Los Angeles County Superior Court; KA050387.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#07-76 *People v. Green*, S149670.** (B185652; nonpublished opinion; Los Angeles County Superior Court; BA279164.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#07-77 *People v. Hulton*, S149696.** (H029635; nonpublished opinion; Santa Clara County Superior Court; CC440394.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#07-78 *People v. Manuel T., S148484.*** (B188514; nonpublished opinion; Los Angeles County Superior Court; YA060900.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

**#07-79 *People v. Markland, S149618.*** (C047136; nonpublished opinion; Sacramento County Superior Court; 03F05117.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#07-80 *People v. Myers, S149657.*** (A114474; nonpublished opinion; Sonoma County Superior Court; SCR479926.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#07-81 *People v. Myles, S149601.*** (B186146; nonpublished opinion; Los Angeles County Superior Court; BA255077.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#07-82 *People v. Velasco, S149615.*** (F048350; nonpublished opinion; Merced County Superior Court; 28804.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

**#07-83 *People v. Washington, S149729.*** (A109989; nonpublished opinion; Solano County Superior Court; 212976.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

## **DISPOSITION**

Review in the following case was dismissed in light of *Priebe v. Nelson* (2006) 39 Cal.4th 1112:

**#04-161 *Adams v. Lewis, S129187.***

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