



NEWS RELEASE

Release Number: **S.C. 20/05**

Release Date: **May 20, 2005**

JUDICIAL COUNCIL OF
CALIFORNIA
ADMINISTRATIVE OFFICE
OF THE COURTS
Public Information Office
455 Golden Gate Avenue
San Francisco, CA 94102-3688
www.courtinfo.ca.gov

415-865-7740

Lynn Holton
Public Information Officer

Summary of Cases Accepted During the Week of May 16, 2005

[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.]

#05-110 *Moran v. Murtaugh, Miller, Meyer & Nelson, S132191.*

(G033102; 126 Cal.App.4th 323, mod. 126 Cal.App.4th 1364e; Orange County Superior Court; 03CC07389.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: In assessing whether a vexatious litigant has failed to demonstrate a reasonable probability of success on his or her claim and should be ordered to furnish security before proceeding (see Code Civ. Proc., § 391.3), is the trial court permitted to weigh the plaintiff's evidence, or must the court assume as true all facts alleged in the complaint and determine only whether the plaintiff's claim is foreclosed as a matter of law?

#05-111 *Mt. San Jacinto Community College Dist. v. Superior Court, S132251.* (E035868; 126 Cal.App.4th 619, mod. 126 Cal.App.4th 1364c; Riverside County Superior Court; RIC349900.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: In a "quick take" eminent domain proceeding (Code Civ. Proc., § 1263.110 et seq.), in which the condemnor deposits "probable compensation" for the property and has a right to take possession before any issues are tried, as of what date should the value of the property be determined when the owner of the property does not exercise its right to withdraw the funds and instead litigates the condemnor's right to take the property?

#05-112 *Troppman v. Borucki, S132496.* (A105287; 126 Cal.App.4th 755; San Mateo County Superior Court; CIV434258.) Petition for review

(over)

after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: When a person is lawfully arrested for the offense of driving under the influence, may his or her driver's license be suspended under Vehicle Code section 13353 for refusing to take or complete a chemical test as required by the "implied consent" statute (see Veh. Code, § 23612), in the absence of a finding that he or she was actually driving at the time of the alleged offense?

#05-113 *People v. Birrey*, S133079. (H026596; unpublished opinion; Santa Clara County Superior Court; CC254536.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of a criminal offense.

#05-114 *People v. Davie*, S132795. (B173037; unpublished opinion; Los Angeles County Superior Court; VA074008.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses.

#05-115 *People v. Soto*, S133007. (B175088; unpublished opinion; Los Angeles County Superior Court; BA251906.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses.

#05-116 *People v. Stankewitz*, S132221. (F044592; 126 Cal.App.4th 796; Madera County Superior Court; MCR02356.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Birrey*, *Davie*, *Soto*, and *Stankewitz* deferred pending decision in *People v. Black*, S126182 (#04-83) and *People v. Towne*, S125677 (#04-75), which include the following issues: (1) Does *Blakely v. Washington* (2004) 542 U.S. ___, 124 S.Ct. 2531, preclude a trial court from making findings on aggravating factors in support of an upper term sentence? (2) What effect does *Blakely* have on a trial court's imposition of consecutive sentences?

DISPOSITIONS

#03-44 *Review in Mandel v. Household Bank (Nevada) National Association*, S113699, was dismissed in light of the settlement of the action.

#04-10 *Review in Regents of University of California v. SSW, Inc.*, S120791, was dismissed in light of *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376.

STATUS

#05-42 *People v. Trujillo*, S130080. In this case, in which briefing was previously deferred pending decision in *People v. Samples*, S112201 (#03-30), the court ordered briefing on the following issue: May the People appeal a finding that a prior conviction was not a serious felony within the meaning of the three strikes law? (See Pen. Code, § 1238, subds. (a) & (d).)

#03-30 *People v. Samples*, S112201. The court ordered further action deferred pending decision in *People v. Trujillo*, S130080 (#05-42).

#05-94 *Branick v. Downey Savings & Loan Assn.*, S132433. The court directed the parties to brief the following issue in addition to the issue previously specified: Does Business and Professions Code section 17204 (as amended by Prop. 64, Gen. Elec. (Nov. 2, 2004)), which limits standing to bring an action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) to “any person who has suffered injury in fact and has lost money or property as a result of such unfair competition” (*id.*, § 17204), apply to actions filed before November 3, 2004, the date on which Proposition 64 took effect?

#05-95 *Kibler v. Northern Inyo County Local Hospital Dist.*, S131641. The court limited the issues to be argued to the following issue: Is an action arising out of the hospital peer review mandated by Business and Professions Code section 809, subdivision (a)(8), subject to a special motion to strike under the anti-SLAPP statute (Code Civ. Proc., § 425.16, subd. (e))?

#05-96 *O’Meara v. Palomar-Pomerado Health System*, S131874. The court ordered further action deferred pending decision in *Kibler v. Northern Inyo County Local Hospital Dist.*, S131641 (#05-95).

#