



NEWS RELEASE

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Summary of Cases Accepted During the Week of September 19, 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.]

#05-191 *Bernard v. Foley, S136070.* (B168665; 130 Cal.App.4th 1109; Los Angeles County Superior Court; BP072862.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Under Probate Code sections 21350 and 21351 and Welfare and Institutions Code section 15610.17, is *any* person who provides care or services to a dependent adult a “care custodian” of the dependent adult who is required to show the absence of fraud or undue influence (or other exempting circumstances) in order to be the beneficiary of a donative transfer by the dependent adult under a testamentary will or trust, or is the term “care custodian” as used in these statutes inapplicable to a person who provides such care or services because of a preexisting close personal relationship with the dependent adult?

#05-192 *People v. Reed, S136345.* (A107999; unpublished opinion; San Francisco County Superior Court; 12303.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Does the accusatory pleading test for determining whether one offense is necessarily included in another apply in deciding whether conviction of two charged offenses is proper?

#05-193 *People v. Baylor, S135631.* (B172506; 130 Cal.App.4th 355; Los Angeles County Superior Court; TA067081.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal

(over)

offenses. The court ordered briefing deferred pending decision in *People v. Partida*, S127505 (#04-123), which presents the following issues: (1) Did defendant forfeit his federal due process claim on appeal by failing to object on that ground in the trial court? (2) Does the forfeiture exception articulated in *People v. Yeoman* (2003) 31 Cal.4th 93, 117, apply when the appellate claim is otherwise governed by Evidence Code section 353, subdivision (a)? (3) Did the admission of testimony from a gang expert violate either Evidence Code section 352 or federal due process?

#05-194 *People v. Miller*, S135231. (G033762; 130 Cal.App.4th 241; Orange County Superior Court; 03SF0758.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Moore*, S125314 (#04-74), which presents the following issue: When the trial court hearing on a defendant's motion to suppress evidence preceded this court's decision in *People v. Sanders* (2003) 31 Cal.4th 418 and the record does not reveal whether or not the police were aware of defendant's parole condition at the time of the search, should an appellate court simply reverse defendant's conviction or should it remand the matter to the trial court for a new suppression hearing?

#05-195 *People v. Mitchell*, S135508. (B172940; unpublished opinion; Los Angeles County Superior Court; NA053043.) Petition for review after the Court of Appeal modified sentence and otherwise affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in these cases.

(1) *People v. Shabazz*, S131048 (#05-57), which concerns whether a defendant convicted of an offense that is punishable by a sentence of imprisonment for life without the possibility of parole is also subject to a sentence enhancement of 25 years to life under Penal Code section 12022.53, subdivision (d), for personally discharging a firearm and causing death, or whether Penal Code section 12022.53, subdivision (j), precludes the imposition of that enhancement when the punishment for the defendant's underlying felony is imprisonment for life without the possibility of parole;

(2) *People v. Palacios*, S132144 (#05-104), which concerns whether the multiple punishment bar of Penal Code section 654 applies to sentence enhancements generally and, in particular, to the enhancement under Penal Code section 12022.53, subdivision (d), for the personal and intentional discharge of a firearm resulting in death or great bodily injury; and

(3) *People v. Izaguirre*, S132980 (#05-117), and *People v. Sloan*, S132605 (#05-125), which concern whether enhancement allegations should be considered in determining whether a lesser offense is necessarily included in a charged offense as pled in the information or indictment.

STATUS

#05-190 *O’Connell v. City of Stockton, S135160*. The court directed the parties to brief the following three issues: (1) Does California state law preempt provisions of the City of Stockton Municipal Code pertaining to “Seizure and Forfeiture of Nuisance Vehicles”? (2) Do the Stockton municipal code provisions allowing the commencement of vehicle forfeiture proceedings “as soon as practicable but in any case within one year” satisfy the state and federal constitutional requirements of procedural due process? (3) Do the municipal code provisions allocating proceeds of vehicle forfeitures to the offices of the San Joaquin County District Attorney and the Stockton City Attorney violate state or federal constitutional guarantees of substantive or procedural due process?