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NEWS RELEASE

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Summary of Cases Accepted During the Week of November 14, 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.]

#05-211 *Green v. State of California, S137770.* (E034568; 132 Cal.App.4th 97; San Bernardino County Superior Court; RCV 60816.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: In order to establish a prima facie case under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) for discrimination in employment based on disability, does the plaintiff bear the burden of proving that he or she is capable of performing the essential duties of the job or does the employer have the burden of proving that the plaintiff was *not* capable of performing those duties?

#05-212 *People v. Johnson, S127602.* (A085450; unpublished opinion; Contra Costa County Superior Court; 96-0691-4.) On remand from the United States Supreme Court in *Johnson v. California*, No. 04-6964. This case presents the following issue: What is the appropriate remedy for *Wheeler/Batson* error (*People v. Wheeler* (1978) 22 Cal.3d 258; *Batson v. Kentucky* (1986) 476 U.S. 79) in this case—outright reversal of defendant's conviction or a limited remand to permit the trial court to inquire into the prosecutor's reasons for removing minority jurors?

#05-213 *People v. Leon, S137137.* (B173851; 131 Cal.App.4th 966; Los Angeles County Superior Court; BA207150.) Petition for review after the Court of Appeal affirmed judgments of conviction of criminal offenses. This case includes the following issues: (1) For purposes of

(over)

moving to suppress recordings of telephone conversations under a court-approved wiretap, can a defendant have a legitimate expectation of privacy in telephone conversations made and received on a telephone that was procured under a false name and was used for criminal purposes? (2) Does Penal Code section 629.72 create a broader right to challenge the admission of communications intercepted by such a wiretap than that afforded by the Fourth Amendment to the federal Constitution? (3) What showing of necessity is required for issuance of a wiretap in conspiracy cases?

#05-214 *Perez-Torres v. State of California*, S137346. (B179327; 132 Cal.App.4th 49; Los Angeles County Superior Court; BC267143.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Does Government Code section 845.8 immunize the State of California and individual parole agents from potential liability for the mistaken arrest and detention of an individual who was not on parole but, because he was mistaken for another person, was incarcerated for 25 days for having violated parole?

#05-215 *People v. Scott*, S136498. (C044964; unpublished opinion; Sacramento County Superior Court; 01F03583.) Petition for review after the Court of Appeal affirmed and modified and affirmed judgments of conviction of criminal offenses. The court limited review to the following issue: Did the trial court err in instructing the jury that all employees have constructive possession of their employer's property during a robbery, and, if so, what is the proper standard for determining whether an employee has constructive possession of the employer's property during a robbery?

#05-216 *Welch on Habeas Corpus*, S107782. Original proceeding. In this case, which is related to the automatic appeal in *People v. Welch* (1999) 20 Cal.4th 701, the court issued an order to show cause limited to the following claims: Is petitioner entitled to relief on the ground of jury misconduct (ex parte communications from the trial court bailiff) as alleged in claim 6 or the ground of ineffective assistance of counsel (failure to investigate and present evidence of petitioner's social history) as alleged in claim 18 of the petition for writ of habeas corpus filed May 24, 2002?

DISPOSITIONS

Review in the following case was dismissed in light of the 2005 amendment to Code of Civil Procedure, section 170.1, subdivision (a)(8) (Stats. 2005, ch. 232, § 1):

#05-68 *Hartford Casualty Ins. Co. v. Superior Court*, S131554.

STATUS

#05-106 State of California ex rel. Harris v. PricewaterhouseCoopers LLP, S131807.

Upon stipulation of the parties, the consolidated appeals numbered A095918 and A097793 in the Court of Appeal were severed. The appeal in A097793 was transferred to the Court of Appeal with directions to issue its remittitur forthwith. The appeal in A095918 remains a cause in this court.

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