



# NEWS RELEASE

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## Summary of Cases Accepted During the Week of June 6, 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.]*

**#05-117 *People v. Izaguirre*, S132980.** (B169352; unpublished opinion; Los Angeles County Superior Court; BA232697.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited briefing to the following issues: (1) Should enhancements be considered in applying the multiple conviction rule of *People v. Pearson* (1986) 42 Cal.3d 35? (2) If so, was an enhancement under Penal Code section 12022.53, subdivision (d), necessarily included within the conviction for first degree murder (Pen. Code, § 187) with a drive-by shooting special circumstance (Pen. Code, § 190.2(a)(21))? (See also *People v. Sloan*, S132605 [#05-125].)

**#05-118 *People v. Kelly*, S133114.** (H027483; unpublished opinion; Santa Clara County Superior Court; CC320855.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Does article VI, section 14, of the California Constitution, which provides that “[d]ecisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated,” set the same standard for a criminal appeal in which defense counsel files a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 raising no issue and defendant submits written argument on his own behalf as the standard that applies to a criminal appeal in which one or more specific claims of error is raised by defense counsel? (2) Did the Court of Appeal opinion in this case satisfy the requirements of article VI, section 14?

(over)

**#05-119 *People v. Lowe, S131879.*** (H026889; 126 Cal.App.4th 1365; Santa Clara County Superior Court; CC303969.) Petition for review after the Court of Appeal affirmed an order setting aside an information. This case presents the following issue: Can a delay of five months in serving an arrest warrant on a defendant already serving another sentence constitute sufficient prejudice to support the defendant's claim that he was denied his state constitutional right to a speedy trial by being deprived of the possibility of concurrent sentences in the two cases?

**#05-120 *Microsoft Corp. v. Franchise Tax Bd., S133343.*** (A105312; unpublished opinion; San Francisco County Superior Court; 400444.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) In calculating the proportion of a unitary business group's income that is subject to California income tax under the Uniform Division of Income for Tax Purposes Act (Rev. & Tax. Code, § 25101 et seq.), are the "gross receipts" of sales of securities measured by the total sales price (including return of principal) or the net proceeds (not including return of principal)? (2) If "gross receipts" includes the return of principal, can the Franchise Tax Board exclude that amount in order to effect an equitable apportionment that fairly represents the taxpayer's business activity in California?

**#05-121 *Michaelis, Montanari & Johnson v. Superior Court, S133464.*** (B178884; 127 Cal.App.4th 1298; Los Angeles County Superior Court; BC090033.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does the California Public Records Act (Gov. Code, § 6250 et seq.) permit an agency to delay disclosure of bids submitted in response to a Request for Proposals on a public project, until it has concluded its negotiations with the successful bidder?

**#05-122 *People v. Navarro, S132666.*** (F044291; 127 Cal.App.4th 159; Tulare County Superior Court; 88051, 98496.) Petition for review after the Court of Appeal modified and remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: After concluding that the evidence was insufficient to support defendant's conviction for attempted kidnapping during the commission of carjacking, could the Court of Appeal properly modify the judgment to reflect conviction of *two* lesser included offenses—attempted kidnapping and attempted carjacking—or only one such offense?

**#05-123 *Oakland Raiders v. National Football League, S132814.*** (B163115; 126 Cal.App.4th 1497; Los Angeles County Superior Court; BC206388.) Petition for review after the Court of Appeal reversed an order granting a new trial and otherwise affirmed the judgment in a civil action. This case presents the following issue: If the trial court fails to specify its reasons for granting a new trial (see Code Civ. Proc., § 657), is the trial court's

order granting a new trial reviewed on appeal under the abuse of discretion standard or is the order subject to independent review?

**#05-124 *People v. Saphao, S132399*.** (A103716; 126 Cal.App.4th 935; Solano County Superior Court; 201751.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited briefing to the following issue: Did the evidence support the trial court's findings that defendant's crimes did not occur on a "single occasion," within the meaning of Penal Code section 667.61, subdivision (g), and that they occurred on "separate occasions" within the meaning of Penal Code section 667.6, subdivision (d)?

**#05-125 *People v. Sloan, S132605*.** (C042448; 126 Cal.App.4th 1148; Placer County Superior Court; 6221501.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court limited briefing to the following issue: For purposes of the ban on conviction of necessarily included offenses (see *People v. Pearson* (1986) 42 Cal.3d 351), should enhancement allegations be considering in determining whether a lesser offense is necessarily included in a charged offense as pled in the information or indictment? (See also *People v. Izaguirre, S132980* [#05-117].)

**#05-126 *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, S132972*.** (C044653; 127 Cal.App.4th 490; Sacramento County Superior Court; 02CS01214.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case includes the following issues: (1) Did the Court of Appeal employ an incorrect standard of review by focusing on petitioner's failure to demonstrate error in the trial court's ruling rather than determining whether the record supported respondent's approval of the environmental impact report? (2) Did the environmental impact report adequately address the water supply required for a proposed development project by identifying potential water sources for the project when those sources had not yet been dedicated for use to meet the project's needs?

**#05-127 *People v. Bizzell, S132843*.** (A104615; unpublished opinion; Alameda County Superior Court; H33800.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

**#05-128 *People v. Espinal, S133416*.** (D044029; unpublished opinion; San Diego County Superior Court; SCS175068.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

**#05-129 *People v. Sandoval, S133218*.** (D043748; unpublished opinion; San Diego County Superior Court; SCN132990.) Petition for review after the Court of Appeal

remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

**#05-130 *People v. Sova*, S133375.** (H027006; unpublished opinion; Santa Clara County Superior Court; CC070251.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

**#05-131 *People v. Tewolde*, S133325.** (A106273; unpublished opinion; Sonoma County Superior Court; MCR-426478.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

**#05-132 *People v. Velasquez*, S132402.** (B171476; unpublished opinion; Los Angeles County Superior Court; BA241537.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

**#05-133 *People v. Wilson*, S132570.** (B169748; unpublished opinion; Los Angeles County Superior Court; BA194735.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

**#05-134 *People v. Yang*, S133419.** (G033659; unpublished opinion; Orange County Superior Court; 03NF0701.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Bizzell*, *Espinal*, *Sandoval*, *Sova*, *Tewolde*, *Velasquez*, *Wilson*, and *Yang* 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?

**#05-135 *May v. Bd. of Trustees of the California State Univ.*, S132946.** (H024624; unpublished opinion; Monterey County Superior Court; M51073.) Petition for review after the Court of Appeal affirmed an order granting a new trial in a civil action. The court ordered briefing deferred pending decision in *Oakland Raiders Football Club v. National Football League*, S132814 (#05-123), which presents the following issue: If the trial court fails to specify its reasons for granting a new trial (see Code Civ. Proc., § 657), is the trial court's order granting a new trial reviewed on appeal under the abuse of discretion standard or is the order subject to independent review?

## DISPOSITIONS

**#04-89 *Davis v. Oppenheimer*, S125644**, was dismissed in light of the settlement of the action.

The following cases were transferred to the Court of Appeal for reconsideration in light of *People v. Howard* (2005) 34 Cal.4th 1129:

#03-155 *People v. Villegas*, S119828.

#04-63 *People v. Williams*, S123910.

#04-104 *People v. Williams*, S126806.

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