

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CRIMINAL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, October 16, 2020.]

People v. Aguayo, S254554. (D073304; 31 Cal.App.5th 758; San Diego County Superior Court; SCS295489.) Petition for review after the Court of Appeal conditionally reversed a judgment of conviction of criminal offenses and remanded for further proceedings. This case presents the following issues: (1) Is assault by means of force likely to produce great bodily injury a lesser included offense of assault with a deadly weapon? (See *People v. Aledamat* (2019) 7 Cal.5th 1, 16, fn. 5.) (2) If so, was defendant's conviction of assault by means of force likely to produce great bodily injury based on the same act or course of conduct as her conviction of assault with a deadly weapon? (3) Are Penal Code section 245, subdivision (a)(1) and section 245, subdivision (a)(4) merely different statements of the same offense for purposes of section 954? (4) If so, must one of defendant's convictions be vacated?

People v. Brown, S257631. (C085998; nonpublished opinion; Shasta County Superior Court; 15F2440.) 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) Did the trial court err in instructing the jury on the elements of first degree murder by poison (see *People v. Steger* (1976) 16 Cal.3d 539, 544–546; *People v. Mattison* (1971) 4 Cal.3d 177, 183–184, 186)? (2) Was any such instructional error prejudicial?

People v. Bryant, S259956. (B271300; 42 Cal.App.5th 839; Los Angeles County Superior Court; GA094777.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Should the validity of a condition of release on mandatory supervision be assessed under the standards applicable to conditions of parole or the standards applicable to conditions of probation?

People v. Carney, S260063. (C077558; nonpublished opinion; Sacramento County Superior Court; 11F00700.) Petition for review after the Court of Appeal remanded for resentencing in part and otherwise affirmed judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Does the “substantial concurrent causation” theory of liability of *People v. Sanchez* (2001) 26 Cal.4th 834 permit a conviction for first degree murder if the defendants did not fire the shot that killed the victim? (2) What impact, if any, do *People v. Chiu* (2014) 59 Cal.4th 155 and Senate Bill No. 1437 (Stats. 2018, ch. 1015, § 1, subd. (f)) have on the rule of *Sanchez*?

In re Erika F., S260839. (B295755, B297079; 45 Cal.App.5th 216; Los Angeles County Superior Court; PJ53161.) Petition for review after the Court of Appeal affirmed orders in a juvenile wardship proceeding. The court limited review to the following issue: When the prosecution moves for a temporary restraining order in a juvenile wardship proceeding without having given advance notice to the minor, must it be shown that: (a) “great or irreparable injury will result” before the matter could be heard with proper notice, and (b) the prosecution notified the minor within a reasonable time prior to the hearing regarding when and where the order would be sought, or attempted the notify the minor, or for specified reasons should not have been required to notify the minor? (See Welf. & Inst. Code, § 213.5, subd. (b); Code of Civ. Proc., § 527, subd. (c).)

People v. Esquivel, S262551. (B294024; nonpublished opinion; Los Angeles County Superior Court; NA102362.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issue: Is the judgment in a criminal case considered final for purposes of applying a later ameliorative change in the law when probation is granted and execution of sentence is suspended, or only upon revocation of probation when the suspended sentence is ordered into effect?

People v. Federico, S263082. (E072620; 50 Cal.App.5th 318; Riverside County Superior Court County Superior Court; SWF017423.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Did defendant’s resentencing pursuant to Penal Code section 1170, subdivision (d)(1) “reopen” the finality of his sentence, such that he was entitled to the retroactive application of Proposition 57 and Senate Bill No. 1391 on an otherwise long-final conviction? (See also *People v. Padilla*, S263375.)

In re Friend, S256914. (A155955; nonpublished order; Alameda County Superior Court; 81254A.) Petition for review after the Court of Appeal denied a request for a certificate of appealability under Penal Code section 1509.1, subdivision (c). The court directed the parties to address the following issues: (1) Is the *dismissal* of a condemned inmate’s habeas corpus petition pursuant to Penal Code section 1509, subdivision (d) an appealable order and subject to the requirement of obtaining a certificate of appealability under Penal Code section 1509.1, subdivision (c), which applies to the “decision of the superior court *denying relief* on a successive petition” (italics added)? (2) What is the meaning of the term “successive petition” in Penal Code section 1509, subdivision (d), and is the habeas corpus petition at issue a successive petition? (3) If the habeas corpus petition at issue is a successive petition within the meaning of the statute, can the statutory provisions governing such petitions be applied to this petition when petitioner’s first habeas corpus petition was filed before the statutes took effect (see, e.g., *Landgraf v. USI Film Products* (1994) 511 U.S. 244, 269-270)?

In re Gadlin, S254599. (B289852; 31 Cal.App.5th 784; Los Angeles County Superior Court; BA165439, BH011480.) Petition for review after the Court of Appeal granted relief on a petition for writ of habeas corpus. This case includes the following issue: Under Proposition 57 (Cal. Const., art. I, § 32), may the California Department of Corrections and Rehabilitation categorically exclude from early parole consideration all prisoners who have been previously convicted of a sex offense requiring registration under Penal Code section 290?

People v. Garcia, S250670. (F073515; nonpublished opinion; Kern County Superior Court; LF010246A.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses.

People v. Valencia, S250218. (F072943; nonpublished opinion; Kern County Superior Court; LF010246B.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses.

These consolidated cases present the following issues: Does gang expert testimony regarding uncharged predicate offenses to establish a “pattern of criminal gang activity” under Penal Code section 186.22, subdivision (e) constitute background information or case-specific evidence within the meaning of *People v. Sanchez* (2016) 63 Cal.4th 665? Was any error prejudicial?

People v. Gentile, S256698. (E069088; 25 Cal.App.5th 932; Riverside County Superior Court; INF1401840.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issues: (1) Does the amendment to Penal Code section 188 by recently enacted Senate Bill No. 1437 eliminate second degree murder liability under the natural and probable consequences doctrine? (2) Was it prejudicial error to instruct the jury in this case on natural and probable consequences as a theory of murder? (3) Does Senate Bill No. 1437 apply retroactively to cases not yet final on appeal?

People v. Henson, S252702. (F075101; 28 Cal.App.5th 490; Fresno County Superior Court; F16903119.) Petition for review after the Court of Appeal reversed and remanded a judgment of conviction of criminal offenses. This case presents the following issue: When a defendant is held to answer following separate preliminary hearings on charges brought in separate complaints, can the People file a unitary information covering the charges in both those cases or must they obtain the trial court’s permission to consolidate the pleadings? (See Pen. Code, §§ 949, 954.)

In re Howerton, S261157. (F076546; 44 Cal.App.5th 875; Kern County Superior Court; HC015497A.) Petition for review after the Court of Appeal reversed an order granting relief on a petition for writ of habeas corpus. This case presents issues concerning eligibility for a youthful offender parole hearing under Penal Code section 3051.

In re Humphrey, S247278. (A152056; 19 Cal.App.5th 1006; San Francisco County Superior Court; 17007715.) Petition for review after the Court of Appeal granted relief on a petition for writ of habeas corpus. The court limited review to the following issues: (1) Did the Court of Appeal err in holding that principles of constitutional due process and equal protection require consideration of a criminal defendant's ability to pay in setting or reviewing the amount of monetary bail? (2) In setting the amount of monetary bail, may a trial court consider public and victim safety? Must it do so? (3) Under what circumstances does the California Constitution permit bail to be denied in noncapital cases? Included is the question of what constitutional provision governs the denial of bail in noncapital cases—article I, section 12, subdivisions (b) and (c), or article I, section 28, subdivision (f)(3), of the California Constitution—or, in the alternative, whether these provisions may be reconciled. (4) What effect, if any, does Senate Bill No. 10 (2017-2018 Reg. Sess.) have on the resolution of the issues presented by this case?

People v. Kopp, S257844. (D072464; 38 Cal.App.5th 47; San Diego County Superior Court; SCN327213.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Must a court consider a defendant's ability to pay before imposing or executing fines, fees, and assessments? (2) If so, which party bears the burden of proof regarding the defendant's inability to pay?

People v. Lemcke, S250108. (G054241; nonpublished opinion; Orange County Superior Court; 14CF3596.) Petition for review after the Court of Appeal affirmed judgments of conviction of criminal offenses. This case presents the following issue: Does instructing a jury with CALCRIM No. 315 that an eyewitness's level of certainty can be considered when evaluating the reliability of the identification violate a defendant's due process rights?

People v. Lewis, S260598. (B295998; 43 Cal.App.5th 1128; Los Angeles County Superior Court; TA117431.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. The court limited review to the following issues: (1) May superior courts consider the record of conviction in determining whether a defendant has made a prima facie showing of eligibility for relief under Penal Code section 1170.95? (2) When does the right to appointed counsel arise under Penal Code section 1170.95, subdivision (c)?

In re Long, S249274. (E066388; nonpublished opinion; Riverside County Superior Court; RIF113354.) Petition for review after the Court of Appeal reversed an order granting relief on a petition for writ of habeas corpus. This case presents the following issues: (1) Did defense counsel render ineffective assistance by failing to consult a qualified expert on determining time of death and failing to present evidence regarding defendant's clothing around the time of the crime? (2) Did the decision of the Court of Appeal adhere to the controlling standards of appellate review?

In re Lopez, S258912. (A152748; nonpublished opinion; Sonoma County Superior Court; SCR32760.) Petition for review after the Court of Appeal reversed an order granting relief on a petition for writ of habeas corpus. This case presents the following issues: (1) Does a true finding on a gang-killing special circumstance (Pen. Code, § 190.2, subd. (a)(22)) render *Chiu* error (*People v. Chiu* (2014) 59 Cal.4th 155) harmless? (2) To what extent or in what manner, if any, may a reviewing court consider the evidence in favor of a legally valid theory in assessing whether it is clear beyond a reasonable doubt that the jury based its verdict on the valid theory, when the record contains indications that the jury considered the invalid theory? (See *People v. Aledamat* (2019) 8 Cal.5th 1.)

People v. Lopez, S258175. (B271516; 38 Cal.App.5th 1087; Los Angeles County Superior Court; BA404685.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Does Senate Bill No. 1437 (Stats. 2018, ch. 1015) apply to attempted murder liability under the natural and probable consequences doctrine? (2) In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a natural and probable consequence of the target offense? In other words, should *People v. Favor* (2012) 54 Cal.4th 868 be reconsidered in light of *Alleyne v. United States* (2013) 570 U.S. 99 and *People v. Chiu* (2014) 59 Cal.4th 155?

People v. Lopez, S261747. (F076295; 46 Cal.App.5th 505; Tulare County Superior Court; VCF325028TT.) 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 review to the following issue: Did the trial court err by sentencing defendant to 15 years to life under the alternate penalty provision of the criminal street gang penalty statute (Pen. Code, § 186.22, subd. (b)(4)(B)) for his conviction of conspiracy to commit home invasion robbery, even though conspiracy is not an offense listed in the penalty provision?

In re Milton, S259954. (B297354; 42 Cal.App.5th 977; Los Angeles County Superior Court; TA039953.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issue: Do the limitations of *People v. Gallardo* (2017) 4 Cal.5th 120 on judicial fact-finding concerning the basis for a prior conviction apply retroactively to final judgments? (Compare *In re Milton* (2019) 42 Cal.App.5th 977 with *In re Brown* (2020) 45 Cal.App.5th 699.)

In re Mohammad, S259999. (B295152; 42 Cal.App.5th 719; Los Angeles County Superior Court; BA361122, BH011959.) Petition for review after the Court of Appeal granted relief on a petition for writ of habeas corpus. This case presents the following issue: Is a prisoner serving a sentence for a combination of violent and nonviolent felonies eligible for early parole consideration under the provisions of Proposition 57 following completion of the term for his or her primary offense?

Molina v. Superior Court, S256394. (G056530; 35 Cal.App.5th 531; Orange County Superior Court; 02CF0701.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Did the Court of Appeal err in ruling that petitioner could not seek relief by petition for writ of mandate from a concededly invalid conviction (see *People v. Rodriguez* (2012) 55 Cal.4th 1125) under Penal Code section 186.22, subdivision (a)?

People v. Moses, S258143. (G055621; 38 Cal.App.5th 757; Orange County Superior Court; 16NF1413.) Review on the court's own motion after the Court of Appeal reversed in part and affirmed in part a judgment of conviction of criminal offenses. The court limited review to the following issue: Did the Court of Appeal err in reversing defendant's conviction for human trafficking of a minor (Pen. Code, § 236.1, subd. (c)(1)) on the ground that defendant was communicating with an adult police officer posing as a minor rather than an actual minor?

O.G. v. Superior Court, S259011. (B295555; 40 Cal.App.5th 626, mod. 41 Cal.App.5th 213a; Ventura County Superior Court; 2018017144.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Did Senate Bill No. 1391 (Stats. 2018, ch. 1012), which eliminated the possibility of transfer to adult criminal court for crimes committed when a minor was 14 or 15 years old, unconstitutionally amend Proposition 57?

People v. Ollo, S260130. (B290948; 42 Cal.App.5th 1152; Los Angeles County Superior Court; KA115677.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Did the deceased victim's voluntary ingestion of fentanyl furnished by the defendant in the belief that it was cocaine support imposition of an enhancement for the personal infliction of great bodily injury (Pen. Code, § 12022.7, subd. (a))?

People v. Padilla, S263375. (B297213; 50 Cal.App.5th 244; Los Angeles County Superior Court; TA051184.) Petition for review after the Court of Appeal conditionally reversed and remanded a judgment of conviction of criminal offenses. This case presents the following issue: When a judgment becomes final, but is later vacated, altered, or amended and a new sentence imposed, is the case no longer final for the purpose of applying an intervening ameliorative change in the law? (See also *People v. Federico*, S263082.)

In re Palmer, S256149. (A154269; 33 Cal.App.5th 1199.) Review on the court's own motion after the Court of Appeal granted relief on a petition for writ of habeas corpus. The court limited review to the following issues: (1) Did this life prisoner's continued confinement become constitutionally disproportionate under article I, section 17 of the California Constitution and/or the Eighth Amendment of the United States Constitution? (2) If this life prisoner's continued confinement became constitutionally disproportionate, what is the proper remedy?

People v. Ramirez, S262010. (F076126; nonpublished opinion; Tuolumne County Superior Court; CRF50964.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Did the trial court err in ruling that defendant's overdose on heroin during his jury trial was an implicit waiver of his right to be present and made him voluntarily absent within the meaning of Penal Code section 1043, subdivision (b)(2)? (2) Did the trial court err in denying the defense motion for a one-day continuance to permit defendant to testify?

People v. Raybon, S256978. (C084853, C084911, C084960, C084964, C085101; 36 Cal.App.5th 111; Sacramento County Superior Court; 09F08248, 13F03230, 08F07402, 12F00411, 06F11185.) Petition for review after the Court of Appeal reversed orders denying petitions to recall sentence. This case presents the following issue: Did Proposition 64 [the "Adult Use of Marijuana Act"] decriminalize the possession of up to 28.5 grams of marijuana by adults 21 years of age or older who are in state prison as well as those not in prison?

People v. Superior Court (Jones), S255826. (D074028; 34 Cal.App.5th 75; San Diego County Superior Court; CR136371.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Does Penal Code section 1054.9 entitle an eligible defendant to discovery of a trial prosecutor's notes about jury selection with respect to a claim of *Batson/Wheeler* (*Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258) error at trial?

People v. Tacardon, S264219. (C087681; 53 Cal.App.5th 89; San Joaquin County Superior Court; STKCRFER20180003729.) Petition for review after the Court of Appeal reversed an order granting a motion to suppress evidence. This case presents the following issue: Was defendant unlawfully detained when the arresting officer used his spotlight to illuminate defendant's parked car and then directed a passenger who exited the car to remain outside and stay on the sidewalk near the car?

People v. Tirado, S257658. (F076836; 38 Cal.App.5th 637; Kern County Superior Court; BF163811A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Can the trial court impose an enhancement under Penal Code section 12022.53, subdivision (b), for personal use of a firearm, or under section 12022.53, subdivision (c), for personal and intentional discharge of a firearm, as part of its authority under section 1385 and subdivision (h) of section 12022.53 to strike an enhancement under subdivision (d) for personal and intentional discharge of a firearm resulting in death or great bodily injury, even if the lesser enhancements were not charged in the information or indictment and were not submitted to the jury?

In re Vaquera, S258376. (G056786; 39 Cal.App.5th 233; Orange County Superior Court; 12NF0653.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issues: (1) Did the Court of Appeal err by disagreeing with *People v. Jimenez* (2019) 35 Cal.App.5th 373 and endorsing as mandatory the sentencing practice prohibited in that case? (2) Is the Court of Appeal's decision incorrect under *People v. Mancebo* (2002) 27 Cal.4th 735? (3) Did the Court of Appeal err by failing to address petitioner's claims as to the issues of waiver and estoppel?

People v. Vivar, S260270. (E070926; 43 Cal.App.5th 216; Riverside County Superior Court; RIF101988.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. This case presents the following issue: Did the Court of Appeal err in ruling that defendant failed to demonstrate prejudice within the meaning of Penal Code section 1473.7 from trial counsel's failure to properly advise him of the immigration consequences of his plea?

Walker v. Superior Court, S263588. (A159563; 51 Cal.App.5th 682; San Francisco County Superior Court; 2219428.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Did the superior court violate the rule of *People v. Sanchez* (2016) 63 Cal.4th 665 — that an expert cannot relate case-specific hearsay unless the facts are independently proved or covered by a hearsay exception — by relying on case-specific hearsay contained in psychological evaluations in finding probable cause to commit petitioner under the Sexually Violent Predator Act?

People v. Williams, S262229. (D074098; 47 Cal.App.5th 475; San Diego County Superior Court; SCD268493.) 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 Penal Code section 3051, subdivision (h), violate the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration, while young adults convicted of first degree murder are entitled to such consideration?