



# NEWS RELEASE

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## Summary Of Cases Accepted During the Week Of March 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 description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

**#05-53 *In re Marriage of Brown & Yana, S131030.*** (B170252; 125 Cal.App.4th 54, mod. 125 Cal.App.4th 1126c; San Luis Obispo County Superior Court; DR21998.) Petition for review after the Court of Appeal reversed an order in a marital dissolution action. This case includes the following issue: When a trial court evaluates a custodial parent's relocation request, is the non-custodial parent entitled to an evidentiary hearing without making any threshold showing that the proposed move is likely to be detrimental to the interests of the child?

**#05-54 *Lonicki v. Sutter Health Central, S130839.*** (C039617; 124 Cal.App.4th 1139; Sacramento County Superior Court; 00AS02199.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Under the provisions of the Moore-Brown-Roberti Family Rights Act (Gov. Code, § 12945.2) that grant an employee the right to a leave of absence when the employee has a serious health condition that makes the employee "unable to perform the functions of the position of that employee," is an employee entitled to a leave of absence where the employee's serious health condition prevents him or her from working for a specific employer, but the employee is able to perform a similar job for a different employer? (2) Did defendant's failure to invoke the statutory procedure for contesting the medical certificate presented by plaintiff preclude it from later contesting the validity of that certificate?

**#05-55 *In re Olivia J., S130457.*** (D044209; San Diego County Superior Court; 124 Cal.App.4th 698, mod. 124 Cal.App.4th 1462f; J515074.) Petition for review after the Court of Appeal affirmed an order in a dependency proceeding. This case includes the following issue: When a child has been declared a dependent ward of the court and the court has approved a plan for reunification of the child and a parent, can the parent

be held in contempt of court and incarcerated for failure to comply with a component of the reunification plan?

**#05-56 *Richardson v. Superior Court, S127275.*** Original proceeding. In this case, which is related to the automatic appeal in *People v. Richardson*, S029588, the Court issued an alternative writ limited to the following claim: Should petitioner's motion for DNA testing pursuant to Penal Code section 1405 be granted? The court ordered the matter consolidated with the automatic appeal.

**#05-57 *People v. Shabazz, S131048.*** (B160417; 125 Cal.App.4th 130; Los Angeles County Superior Court; BA 203410.) Petition for review after the Court of Appeal modified and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Does the special circumstance set forth in Penal Code section 190.2(a)(22), which authorizes a punishment of death or life imprisonment without the possibility of parole for a gang member who "intentionally killed the victim" to further the activities of a criminal street gang, apply to a defendant who fired a gun with the intent to kill one person but missed and killed another? (2) When a defendant is convicted of an offense that is punishable by a sentence of imprisonment for life without the possibility of parole, is the defendant 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 does Penal Code section 12022.53, subdivision (j), preclude the imposition of that enhancement when the punishment for the defendant's underlying felony is imprisonment for life without the possibility of parole?

**#05-58 *People v. Baca, S130496.*** (E032929; unpublished opinion; Riverside County Superior Court; INF35028.) Petition for review after the Court of Appeal modified and otherwise affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Giles*, S129852 (#04-159), which presents the following issues: (1) Did defendant forfeit his Confrontation Clause claim regarding admission of the victim's prior statements concerning an incident of domestic violence (see Evid. Code, § 1370) under the doctrine of "forfeiture by wrongdoing" because defendant killed the victim, thus rendering her unavailable to testify at trial? (2) Does the "forfeiture by wrongdoing" doctrine apply where the alleged "wrongdoing" is the same as the offense for which defendant is on trial?

**#05-59 *People v. Campa, S130468.*** (D042811; unpublished opinion; San Diego County Superior Court; SCN155737.) Petition for review

after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses.

**#05-60 *People v. Esquibel, S131042.*** (B165767; unpublished opinion; Los Angeles County Superior Court; TA065805.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses.

**#05-61 *People v. Frausto, S131166.*** (B171848; unpublished opinion; Los Angeles County Superior Court; VA075613.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of a criminal offense.

**#05-62 *People v. Gomez, S129855.*** (D041699; unpublished opinion; Imperial County Superior Court; CF-7199.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses.

**#05-63 *People v. Huggins, S130424.*** (D042150; unpublished opinion; San Diego County Superior Court; SCN128327.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed judgments of conviction of criminal offenses.

**#05-64 *People v. Joy, S130795.*** (E034071; 125 Cal.App.4th 318; San Bernardino County Superior Court; FMB004474.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

**#05-65 *People v. Matamoros, S131146.*** (B171776; unpublished opinion; Los Angeles County Superior Court; PA040537.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses.

**#05-66 *People v. Williams, S131325.*** (D043512; unpublished opinion; San Diego County Superior Court; SCD177453.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of a criminal offense.

The court ordered briefing in *Campa, Esquibel, Frausto, Gomez, Huggins, Joy, Matamoros, and Williams* 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?

**#05-67 *People v. Lee*, S130570.** (B166204; 124 Cal.App.4th 483; Ventura County Superior Court; 2002010272.) Petition for review after the Court of Appeal reversed in part and affirmed in part a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Cage*, S127344 (#04-111), which includes the following issue: Are *all* statements made by an ostensible crime victim to a police officer in response to general investigative questioning “testimonial hearsay” within the meaning of *Crawford v. Washington* (2004) 541 U.S. \_\_\_, 124 S.Ct. 1354 and inadmissible in the absence of an opportunity to cross-examine the declarant, or does “testimonial hearsay” include only statements made in response to a formal interview at a police station?

## **DISPOSITIONS**

**#03-81 *Review in Enschede v. Zou*, S115274,** was dismissed in light of *Elsner v Uveges* (2004) 34 Cal.4th 915.

**#04-48 *Gradle v. Doppelmayr USA, Inc.*, S123905,** was transferred for reconsideration in light of *Elsner v Uveges* (2004) 34 Cal.4th 915.

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