



NEWS RELEASE

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Summary of Cases Accepted During the Week of December 10, 2007

[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.]

#07-455 *Brown, Winfield & Canzoneri, Inc. v. Superior Court*, S156598. (B201396; nonpublished order; Los Angeles County Superior Court; BC331601.) Petition for review after the Court of Appeal issued an order regarding a petition for peremptory writ of mandate. The court limited review to the following issues: (1) May a Court of Appeal issue a “suggestive *Palma* notice” (see *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171) — that is, a notice that discusses the merits of a writ petition with citation to authority, determines that the trial court ruling was “erroneous,” and gives the trial court the “power and jurisdiction” to change its order? (2) If such an order is proper, absent exceptional circumstances, may it be issued without giving the real party in interest an opportunity to file opposition?

#07-456 *Conservatorship of John L.*, S157151. (D048654; 154 Cal.App.4th 1090; San Diego County Superior Court; MH99550.) Petition for review after the Court of Appeal affirmed the judgment in a conservatorship proceeding. This case presents the following issue: May a proposed conservatee’s attorney, by making an unsworn statement to the court that the person did not wish to be present and did not object to the appointment of a conservator, waive the person’s right to be present at the hearing on a conservatorship under the Lanterman-Petris-Short Act, although the report of the “officer providing conservatorship investigation” appointed by the county states that the person did not want a conservator?

(more)

#07-457 *In re E.J.*, S156933. Original proceeding.

#07-458 *In re S.P.*, S157631. Original proceeding.

#07-459 *In re J.S.*, S157633. Original proceeding.

#07-460 *In re K.T.*, S157634. Original proceeding.

In each of these four matters, the court issued an order to show cause why the petitioner is not entitled to relief from the residency restrictions imposed by Penal Code section 3003.5 on persons required to register as sex offenders, on the ground the statute violates the ex post facto clauses of the state and federal Constitutions, has been impermissibly retroactively applied, constitutes an unreasonable parole condition, impinges on the petitioner's substantive due process rights, and is unconstitutionally vague.

#07-461 *In re Jacobson*, S156416. (B195521; 154 Cal.App.4th 849; Los Angeles County Superior Court; BH003835.) Petition for review after the Court of Appeal reversed an order granting a petition for writ of habeas corpus. The court limited review to the following issue: In making parole suitability determinations for life prisoners, to what extent should the Board of Parole Hearings, under Penal Code section 3041, and the Governor, under Article V, section 8(b) of the California Constitution and Penal Code section 3041.2, consider the prisoner's current dangerousness, and at what point, if ever, is the gravity of the commitment offense and prior criminality insufficient to deny parole when the prisoner otherwise appears rehabilitated?

#07-462 *Mileikowsky v. West Hills Hospital & Medical Center*, S156986. (B186238; 154 Cal.App.4th 752; Los Angeles County Superior Court; BS091943.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Does the presiding hearing officer in a medical peer review proceeding have the authority to terminate the hearing as a sanction for a party's failure to cooperate in discovery, or must that decision be made by the hearing committee empowered to decide the case on the merits?

#07-463 *People v. Ramirez*, S156775. (F050212; 154 Cal.App.4th 1290; Madera County Superior Court; MCR021366.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Is grossly negligent discharge of a firearm (Pen. Code, § 246.3) a lesser included offense of malicious and willful discharge of a firearm at an inhabited dwelling (Pen. Code, § 246)?

#07-464 *Steinhart v. County of Los Angeles*, S158007. (B190957; 155 Cal.App.4th 1082; Los Angeles County Superior Court; LC073339.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Is the vesting of a life estate a “change in ownership” under Revenue and Taxation Code section 60 that triggers reassessment? (2) Was the taxpayer, under these circumstances, required to exhaust her administrative remedies by pursuing her claim with the Assessment Appeals Board before filing suit? (3) Was the taxpayer’s declaratory relief action barred by the prohibition in Revenue and Taxation Code section 4807 on actions to “prevent or enjoin the collection of property taxes”?

#07-465 *Jafari v. EMC Ins. Companies*, S157924. (B192640; 155 Cal.App.4th 885; Los Angeles County Superior Court; BC334704.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court ordered briefing deferred pending decision in *Delgado v. Interinsurance Exchange of the Automobile Club*, S155129 (#07-409), which presents the following issue: When a liability policy covers injury arising from an “occurrence,” which is defined as an “accident,” does the insurer have a duty to defend an action for assault if the complaint alleges the insured was acting under an unreasonable and negligent belief that he was acting in self-defense?

#07-466 *People v. MacManus*, S157369. (G035944; nonpublished opinion; Orange County Superior Court; 04SF1121.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Towne*, S125677 (#04-75), which presents issues concerning the use as aggravating sentencing factors of such factors as being on probation or parole when a crime was committed and prior unsatisfactory performance on probation or parole.

#07-467 *People v. Tu*, S156995. (A105905; 154 Cal.App.4th 735, mod. 154 Cal.App.4th 1559a; San Francisco County Superior Court; 182774.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Nguyen*, S154847 (#07-416), which presents the following issue: Can a prior juvenile adjudication of a criminal offense in California constitutionally subject a defendant to the provisions of the three strikes law (Pen. Code, §§ 667, subs. (b)-(i), 1170.12) although there is no right to a jury trial in juvenile wardship proceedings in this state?

#07-468 *People v. Yates*, S157935. (A111310; nonpublished opinion; Del Norte County Superior Court; CRF059049) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Towne*, S125677 (#04-75), and *People v. French*, S148845 (#07-10), which present issues concerning the use as aggravating sentencing factors of such factors as being on probation or parole when a crime was committed and prior unsatisfactory performance on probation or parole, and whether the trial court violated defendant’s Sixth

Amendment right to a jury trial, as interpreted in *Cunningham v. California* (2007) 549 U.S. ___, 127 S.Ct. 856, by imposing an upper term sentence based on aggravating factors not found true by the jury, where the defendant entered a no contest plea and was sentenced in accordance with his plea agreement.

DISPOSITIONS

The following case was transferred for reconsideration in light of *People v. Shabazz* (2006) 38 Cal.4th 55:

#05-195 *People v. Mitchell*, S135508.

STATUS

#06-99 *Manta Management Corp. v. City of San Bernardino*, S144492. The court requested the parties to file supplemental letter briefs addressing the following question: Did the actions of the superior court and the Court of Appeal in issuing a preliminary injunction and a stay, respectively, break the chain of causation, thus making the City of San Bernardino not liable for lost profits? (See, e.g., *Townes v. City of New York* (2d Cir. 1999) 176 F.2d 138, cert. denied, 528 U.S. 964; *Egervary v. Young* (3rd Cir. 2004) 366 F.3d 238; *Murray v. Earle* (5th Cir. 2005) 405 F.3d 278; *Mayor of Lansing v. Knights of the Ku Klux Klan* (Mich.App. 1997) 564 N.W.2d 177, 180-183, cert. denied, 524 U.S. 904 (1998); Rest.2d Torts, §§ 440-441.)