



Supreme Court of California  
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**NEWS RELEASE**

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**FOR IMMEDIATE RELEASE**

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## Summary of Cases Accepted and Related Actions During Week of February 13, 2017

*[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.]*

**#17-50 *People v. Colbert, S238954.*** (H042499; 5 Cal.App.5th 385; Santa Clara County Superior Court; 206805.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. This case presents the following issue: Did defendant's entry into separate office areas of a commercial establishment that were off-limits to the general public constitute an "exit" from the "commercial" part of the establishment that precluded reducing his conviction for second degree burglary to misdemeanor shoplifting under Penal Code section 459.5?

**#17-51 *People v. Gonzales, S240044.*** (C078960; 6 Cal.App.5th 1067; Sacramento County Superior Court; 03F07705.) Review ordered on the court's own motion after the Court of Appeal reversed an order denying a petition to recall sentence. The court limited review to the following issue: What relationship, if any, must exist between convictions for forgery and identity theft in order to exclude a forgery conviction from sentencing as a misdemeanor under Penal Code section 473, subdivision (b)?

**#17-52 *Goonewardene v. ADP, LLC, S238941.*** (B267010; 5 Cal.App.5th 154; Los Angeles County Superior Court; TC026406.) Petition for review after the Court of Appeal reversed the dismissal of a civil action. This case presents the following issue: Does the aggrieved employee in a lawsuit based on unpaid overtime have viable claims against the outside vendor that performed payroll services under a contract with the employer?

**#17-53 *People v. Avalos, S239269.*** (E065166; nonpublished opinion; San Bernardino County Superior Court; FSB1304213.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing

deferred pending decision in *People v. Valenzuela*, S232900 (#16-97), which presents the following issue: Is a defendant eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court has reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?

**#17-54 *People v. Cabello*, S239485.** (D069958; nonpublished opinion; San Diego County Superior Court; SCS274556.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Page*, S230793 (#16-28), which presents the following issue: Does Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply to the offense of unlawful taking or driving a vehicle (Veh. Code, § 10851), because it is a lesser included offense of Penal Code section 487, subdivision (d), and that offense is eligible for resentencing to a misdemeanor under Penal Code sections 490.2 and 1170.18?

**#17-55 *People v. Doyle*, S238666.** (E064557; 5 Cal.App.4th 440; Riverside County Superior Court; INF1401895.) 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. Sivongxxay*, S078895, an automatic appeal that includes an issue relating to the validity of a waiver of the right to trial by jury.

**#17-56 *People v. Eslava*, S239061.** (A142881; 5 Cal.App.5th 498; San Francisco County Superior Court; SCN216995.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Gallardo*, S231260 (#16-38), which presents the following issue: Was the trial court’s decision that defendant’s prior conviction constituted a strike incompatible with *Descamps v. U.S.* (2013) 570 U.S. \_\_\_ (133 S.Ct. 2276) because the trial court relied on judicial fact-finding beyond the elements of the actual prior conviction?

**#17-57 *People v. Franske*, S239732.** (C081591; 6 Cal.App.5th 1057; Siskiyou County Superior Court; MCYKCRF101386.) Petition for review after the Court of Appeal affirmed an order granting in part and denying in part a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Buycks*, S231765 (#16-19), which presents the following issue: Was defendant eligible for resentencing on the penalty enhancement for committing a new felony while released on bail on a drug offense even though the superior court had reclassified the conviction for the drug offense as a misdemeanor under the provisions of Proposition 47?

**#17-58 *People v. Guerrero*, S238401.** (H041900; nonpublished opinion; Santa Clara County Superior Court; C1476320.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered further action

in this matter deferred pending further order of the court. This case presents issues related to those in *People v. Gonzales*, S240044 (#17-51).

**#17-59 *People v. Jordan*, S239405.** (E063761; nonpublished opinion; Riverside County Superior Court; RIF1303454.) Petition for review after the Court of Appeal reversed an order denying a petition to recall sentence.

**#17-60 *People v. Martin*, S239205.** (F071654; 6 Cal.App.5th 666; Fresno County Superior Court; F09905936.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

The court ordered briefing in *Jordan* and *Martin* deferred pending decision in *People v. Gonzales*, S231171 (#16-39), which presents the following issue: Was defendant entitled to resentencing under Penal Code section 1170.18 on his conviction for second degree burglary either on the ground that it met the definition of misdemeanor shoplifting (Pen. Code, § 459.5) or on the ground that section 1170.18 impliedly includes any second degree burglary involving property valued at \$950 or less?

**#17-61 *People v. Roberts*, S239378.** (B265487; nonpublished opinion; Los Angeles County Superior Court; TA056736.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

**#17-62 *People v. Velasquez*, S239330.** (B262495; nonpublished opinion; Los Angeles County Superior Court; KA024463.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

The court ordered briefing in *Roberts* and *Velasquez* deferred pending decision in *People v. Chaney*, S223676 (#15-13), and *People v. Valencia*, S223825 (#15-14), which present the following issue: Does the definition of “unreasonable risk of danger to public safety” (Pen. Code, § 1170.18, subd. (c)) under Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply on retroactivity or other grounds to resentencing under the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126)?

**#17-63 *People v. Willis*, S239452.** (G051940; nonpublished opinion; Orange County Superior Court; 10NF2940.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Romanowski*, S231405 (#16-24), which present the following issue: Does Proposition 47 (“the Safe Neighborhoods and Schools Act”), which reclassifies as a misdemeanor any grand theft involving property valued at \$950 or less (Pen. Code, § 490.2), apply to theft of access card information in violation of Penal Code section 484e, subdivision (d)?

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*The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.*