



NEWS RELEASE

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Summary of Cases Accepted During the Week of July 18, 2011

[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.]

#11-86 *In re Vicks, S194129.* (D056998; 195 Cal.App.4th 475; San Diego County Superior Court; CR63419.) Petition for review after the Court of Appeal granted relief on a petition for writ of habeas corpus. This case presents the following issue: Can Penal Code section 3041.5, as amended by the “Victims’ Bill of Rights Act of 2008: Marsy’s Law,” which decreased the frequency of parole consideration hearings, be applied to life inmates convicted before the effective date of the amendments without violating the ex post facto clauses of the state and federal Constitutions?

#11-87 *People v. Villatoro, S192531.* (B222214; 194 Cal.App.4th 241; Los Angeles County Superior Court; BA339453.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Was the modification of CALJIC No. 1191, which told the jurors they could consider evidence of a *charged* offense in determining defendant’s propensity to commit the other charged offenses (see Evid Code, § 1108), reversible error when the court also informed the jurors that all charged offenses must be proved beyond a reasonable doubt?

#11-88 *People v. Kelly, S193395.* (B218204; nonpublished opinion; Santa Barbara County Superior Court; 1284355.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#11-89 *People v. Shockman, S193189.* (D056138, D058287; 193 Cal.App.4th 1607; San Diego County Superior Court; SCD220290.) Review on the court’s own motion after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses and denied a petition for writ of habeas corpus.

The court ordered briefing in *Kelly* and *Shockman* deferred pending decision in *People v. Dungo*, S176886 (#09-77), *People v. Gutierrez*, S176620 (#09-78), *People v. Lopez*, S177046 (#09-79), and *People v. Rutterschmidt*, S176213 (#09-80), which present issues concerning the right of confrontation under the Sixth Amendment when the results of forensic tests performed by a criminalist who does not testify at trial are admitted into evidence and how the decisions of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314, and *Bullcoming v. New Mexico* (June 23, 2011, No. 09-10876) 564 U.S. ___, 2011 WL 2472799, affect this court’s decision in *People v. Geier* (2007) 41 Cal.4th 555.

#11-90 *Lamps Plus Overtime Cases, S194064.* (B220954; 195 Cal.App.4th 389; Los Angeles County Superior Court; JCCP4510.) Petition for review after the Court of Appeal affirmed an order denying class certification in a civil action. The court ordered briefing deferred pending decision in *Brinker Restaurant Corp. v. Superior Court*, S166350 (#08-157), which presents issues concerning the proper interpretation of California’s statutes and regulations governing an employer’s duty to provide meal and rest breaks to hourly workers.

#11-91 *People v. Nunez, S194643.* (G042873; 195 Cal.App.4th 414; Orange County Superior Court; 01ZF0021.) Review on the court’s own motion after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Caballero*, S190647 (#11-36), which presents the following issue: Does a sentence of 110 years to life for a juvenile convicted of committing non-homicide offenses constitute cruel and unusual punishment under the Eighth Amendment on the ground it is the functional equivalent of a life sentence without the possibility of parole? (See *Graham v. Florida* (2010) 560 U.S. ___, 130 S.Ct. 2011, 176 L.Ed.2d 825.)

#11-92 *In re Russo, S193197.* (D057405; 194 Cal.App.4th 144; San Diego County Superior Court; HC18275.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. The court ordered briefing deferred pending decision in *In re Shaputis*, S188655 (#11-15), which concerns whether the Court of Appeal erred in setting aside a denial of parole by the Board of Parole Hearings, and *In re Vicks*, S194129 (#11-86), which concerns whether Penal Code section 3041.5, as amended by the “Victims’ Bill of Rights Act of 2008: Marsy’s Law,” which decreased the frequency of parole consideration hearings, can be applied to life inmates convicted before the effective date of the

amendments without violating the ex post facto clauses of the state and federal Constitutions.

#11-93 *People v. Sanchez, S193084.* (H035075; 193 Cal.App.4th 928; Santa Cruz County Superior Court; F17818.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Brown, S181963* (#10-64), which presents the following issue: Does Penal Code section 4019, as amended to increase presentence custody credits for certain offenders, apply retroactively?

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