

## ***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, January 27, 2023.]*

*People v. Braden*, S268925. (E073204; 63 Cal.App.5th 330; San Bernardino County Superior Court; FVI18001116.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: What is the latest point at which a defendant may request mental health diversion under Penal Code section 1001.36?

*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. Brown*, S271877. (H048462; 69 Cal.App.5th 15, mod. 69 Cal.App.5th 765b, mod. 69 Cal.App.5th 765c; Santa Clara County Superior Court; C1646865, AP002184.) Petition for review after the Court of Appeal reversed an order of a criminal proceeding and remanded with directions. This case presents the following issue: Did the trial court err in granting the People’s motion under Penal Code section 1050 to continue the hearing on a motion to suppress evidence, when it was reasonably foreseeable that denying the continuance would result in a dismissal of the case but the People otherwise failed to show good cause for a continuance?

*People v. Burgos*, S274743. (H045212; 77 Cal.App.5th 550; Santa Clara County Superior Court; C1518795, C1756994.) Petition for review after the Court of Appeal conditionally reversed a judgment of conviction of criminal offenses and remanded for further proceedings. The court limited review to the following issue: Does the provision of Penal Code section 1109 governing the bifurcation at trial of gang enhancements from the substantive offense or offenses apply retroactively to cases that are not yet final?

*In re Cabrera*, S271178. (C091962; nonpublished opinion; Siskiyou County Superior Court; MCYKCRBF20076242, SCCRHCCR20189121.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issue: Did the sentencing court err by finding petitioner’s conviction for battery with serious bodily injury was a serious felony (Pen. Code, §§ 667, subd. (a)(1), 1192.7, subd. (c)(8)), despite the jury’s failure to reach a verdict on the allegation that petitioner personally inflicted great bodily injury in committing that offense? (See *Apprendi v. New Jersey* (2000) 530 U.S. 466; *Blakely v. Washington* (2004) 542 U.S. 296; *Cunningham v. California* (2007) 549 U.S. 270.)

*Camacho v. Superior Court*, S273391. (F082798; nonpublished opinion; Merced County Superior Court; 146207.) Petition for review after the Court of Appeal denied a petition for writ of mandate or prohibition. This case presents the following issue: Does a 15-year delay in bringing a defendant to trial under the Sexually Violent Predator Act (Welf. & Inst. Code, § 6600 et. seq) constitute a due process violation?

*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*? (3) What is the significance, if any, of Senate Bill No. 775 (Stats. 2021, ch. 551) to the issues presented in this case?

*People v. Catarino*, S271828. (D078832; nonpublished opinion; Santa Clara County Superior Court; C1635441.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Does Penal Code section 667.6, subdivision (d), which requires that a “full, separate, and consecutive term” must be imposed for certain offenses if the sentencing court finds that the crimes “involve[d] the same victim on separate occasions,” comply with the Sixth Amendment to the U.S. Constitution?

*People v. Clark*, S275746. (E075532; 81 Cal.App.5th 133; Riverside County Superior Court; RIF1503800.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Can the People meet their burden of establishing a “pattern of criminal gang activity” under Penal Code section 186.22 as amended by Assembly Bill No. 333 (Stats. 2021, ch. 699) by presenting evidence of individual gang members committing separate predicate offenses, or must the People provide evidence of two or more gang members working in concert with each other during each predicate offense?

*People v. Cooper*, S273134. (B304490; nonpublished opinion; Los Angeles County Superior Court; TA140718.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Must any of defendant's sentencing enhancements be vacated due to recent statutory changes requiring that the offenses necessary to establish a " 'pattern of criminal gang activity' . . . commonly benefited a criminal street gang, and the common benefit from the offense is more than reputational" (Pen. Code, § 186.22, subd. (e)(1), as amended by Stats. 2021, ch. 699, § 3)?

*People v. Curiel*, S272238. (G058604; nonpublished opinion; Orange County Superior Court; 02CF2160.) Petition for review after the Court of Appeal reversed a post-judgment motion in a criminal matter and remanded for further proceedings. This case presents the following issue: Does a jury's true finding on a gang-murder special circumstance (Pen. Code, § 190.2, subd. (a)(22)) preclude a defendant from making a prima facie showing of eligibility for resentencing under Penal Code section 1170.95?

*People v. Delgadillo*, S266305. (B304441; nonpublished opinion; Los Angeles County Superior Court; BA436900.) Petition for review after the Court of Appeal dismissed an appeal from an order denying a post-judgment motion in a criminal matter. The court limited review to the following issues: (1) What procedures must appointed counsel and the Courts of Appeal follow when counsel determines that an appeal from an order denying postconviction relief lacks arguable merit? (2) Are defendants entitled to notice of these procedures?

*In re F.M.*, S270907. (H048693; nonpublished opinion; Santa Cruz County Superior Court; 19JU00191.) Petition for review after the Court of Appeal modified and affirmed an order in a juvenile wardship proceeding. This case presents the following issue: Did the Court of Appeal err in ruling that the trial court adequately exercised its discretion to determine whether the juvenile's offenses were felonies or misdemeanors as required by Welfare and Institutions Code section 702 and *In re Manzy W.* (1997) 14 Cal.4th 1199?

*People v. Faial*, S273840. (A159026; 75 Cal.App.5th 738; San Mateo County Superior Court; SC083808.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does Assembly Bill No. 1950 (Stats. 2020, ch. 328) apply retroactively to a defendant, serving a suspended-execution sentence, whose probation was revoked before the law went into effect?

*In re Ferrell*, S265798. Original proceeding. The court issued an order to show cause why relief should not be granted on the ground that the jury's true finding on the Penal Code section 12022.53, subdivision (d) enhancement did not render the *People v. Chun* (2009) 45 Cal.4th 1172 error harmless beyond a reasonable doubt.

*People v. Gray*, S269237. (B302236; 63 Cal.App.5th 947; Los Angeles County Superior Court; MA065662.) 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 trial court violate the due process right to confrontation applicable at probation and parole revocation hearings by admitting hearsay statements in a bodycam video under the excited utterance exception (Evid. Code, § 1240) without first making a finding of good cause and determining whether a balancing of the relevant factors under *People v. Arreola* (1994) 7 Cal.4th 1144 favored admission?

*People v. Hardin*, S277487. (B315434; 84 Cal.App.5th 273; Los Angeles County Superior Court; A893110.) Petition for review after the Court of Appeal reversed an order denying a post-judgment motion in a criminal matter. This case presents the following issue: Does Penal Code section 3051, subdivision (h), violate the Equal Protection Clause of the Fourteenth Amendment by excluding young adults sentenced to life without the possibility of parole from youth offender parole consideration, while young adults sentenced to parole-eligible terms are entitled to such consideration?

*In re Harris*, S272632. (A162891; 71 Cal.App.5th 1085; San Mateo County Superior Court; 21NF002568A.) Petition for review after the Court of Appeal conditionally vacated an order denying bail and remanded the matter for further proceedings. The court limited review to the following issue: What evidence may a trial court consider at a bail hearing when evaluating whether the facts are evident or the presumption great with respect to a qualifying charged offense, and whether there is a substantial likelihood the person's release would result in great bodily harm to others? (Cal. Const., art. I, § 12, subd. (b).)

*In re Jenkins*, S267391. (B301638; nonpublished opinion; Los Angeles County Superior Court; BA467828.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. The court limited review to the following issue: When a habeas petitioner claims not to have received a fair trial because the district attorney failed to disclose material evidence in violation of *Brady v. Maryland* (1963) 373 U.S. 83 — and when the Attorney General has knowledge of, or is in actual or constructive possession of, such evidence — what duty, if any, does the Attorney General have to acknowledge or disclose that evidence to the petitioner? Would any such duty be triggered only upon issuance of an order to show cause?

*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. Lewis*, S272627. (G060049; 72 Cal.App.5th 1; Santa Clara County Superior Court; B1366626.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case includes the following issue: Can a defendant be convicted of kidnapping to commit rape (Pen. Code, § 209, subd. (b)(1)) based on the use of deception, as an alternative to force or fear, to take and carry away an intoxicated adult victim?

*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.) (3) What is the significance, if any, of Assembly Bill No. 333 (Stats. 2021, Ch. 699) to the issues presented in this case?

*People v. Lynch*, S274942. (C094174; nonpublished opinion; Sacramento County Superior Court; 20FE009532.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: What prejudice standard applies on appeal when determining whether a case should be remanded for resentencing in light of newly-enacted Senate Bill No. 567 (Stats. 2021, ch. 731)?

*People v. Martinez*, S267138. (H046164; 59 Cal.App.5th 280; Santa Clara County Superior Court; C1518585.) Review ordered on the court's own motion after the Court of Appeal reversed a judgment of conviction of a criminal offense. The court limited review to the following issue: Did the Court of Appeal correctly declare California Code of Regulations, title 10, section 2076, unconstitutional on its face?

*People v. McCune*, S276303. (A163579; 81 Cal.App.5th 648; Napa County Superior Court; CR183930.) Petition for review after the Court of Appeal affirmed an order for restitution in a criminal action. This case presents the following issue: Did the trial court exceed its jurisdiction by setting the amount of victim restitution after terminating defendant's probation pursuant to Assembly Bill No. 1950 (Stats. 2020, ch. 328)?

*People v. McDavid*, S275940. (D078919; nonpublished; San Diego County Superior Court; SCN363925.) Petition for review after the Court of Appeal modified in part, remanded for resentencing in part, and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does the trial court have discretion to strike a firearm enhancement imposed pursuant to Penal Code section 12022.53 and instead impose a lesser uncharged firearm enhancement pursuant to a different statute (Pen. Code, § 12022.5)?

*People v. McWilliams*, S268320. (H045525; nonpublished opinion; Santa Clara County Superior Court; C1754407.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issues: Is the discovery of a parole or probation search condition an intervening circumstance that removes the taint of an illegal detention under the attenuation doctrine? What constitutes purposeful and flagrant police misconduct under the attenuation doctrine analysis?

*People v. Mitchell*, S277314. (A163476; 83 Cal.App.5th 1051; Mendocino County Superior Court; SCUKCRCR2021373081.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does Senate Bill No. 567 (Stats. 2021, ch. 731), which limits a trial court's discretion to impose upper term sentences, apply retroactively to defendants sentenced pursuant to stipulated plea agreements?

*People v. Mumin*, S271049. (D076916; 68 Cal.App.5th 36; San Diego County Superior Court; SCD261780.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: Did the trial court err by providing a kill zone instruction? Did the Court of Appeal apply the proper standard of review under *People v. Canizales* (2019) 7 Cal.5th 591 in holding the trial court did not err in providing the kill zone instruction?

*Needham v. Superior Court*, S276395. (G060670; 82 Cal.App.5th 114; Orange County Superior Court; M-16870.) Petition for review after the Court of Appeal granted a petition for writ of mandate. This case presents the following issue: Does the Sexually Violent Predator Act (Welf. & Inst. Code, § 6600 et seq.) allow the People to retain a private expert to testify at trial as to whether a defendant is a sexually violent predator, or are the expert witnesses limited to those designated by the State Department of State Hospitals (Welf. & Inst. Code, §§ 6601 & 6603)?

*People v. Prudholme*, S271057. (E076007; nonpublished opinion; San Bernardino County Superior Court; FWV18004340.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Does Assembly Bill No. 1950 (Stats. 2020, ch. 328) apply retroactively under *In re Estrada* (1965) 63 Cal.2d 740? (2) If so, does the remand procedure of *People v. Stamps* (2020) 9 Cal.5th 685 apply?

*People v. Reyes*, S270723. (G059251; nonpublished opinion; Orange County Superior Court; 04CF2780.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. This case includes the following issue: Does substantial evidence support the superior court's finding that petitioner is ineligible for relief under Penal Code section 1170.95?

*People v. Reynoza*, S273797. (H047594; 75 Cal.App.5th 181; Santa Clara County Superior Court; C1775222.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issue: Does Penal Code section 136.1, subdivision (b)(2), which prohibits dissuading or attempting to dissuade a victim or witness from causing a charging document "to be sought and prosecuted, and assisting in the prosecution thereof," encompass attempts to dissuade a victim or witness after a charging document has been filed?

*Rodriguez v. Superior Court*, S272129. (H049016; 70 Cal.App.5th 628; C1650275, C1647395). Petition for review after the Court of Appeal denied a petition for writ of prohibition. This case presents the following issue: Does an incompetency commitment end when a state hospital files a certificate of restoration to competency or when the trial court finds that defendant has been restored to competency?

*People v. Rojas*, S275835. (F080361; 80 Cal.App.5th 542; Kern County Superior Court; BF171239B.) Petition for review after the Court of Appeal affirmed in part and conditionally reversed in part a judgment of conviction of criminal offenses and remanded for further proceedings. The court limited review to the following issue: Does Assembly Bill No. 333 (Stats. 2021, ch. 699) unconstitutionally amend Proposition 21, if applied to the gang-murder special circumstance (Pen. Code, § 190.2, subd. (a)(22))?

*People v. Salazar*, S275788. (B309803; 80 Cal.App.5th 453; Ventura County Superior Court; 2018027995.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Did the Court of Appeal err by finding the record clearly indicates the trial court would not have imposed a low term sentence if it had been fully aware of its discretion under newly-added subdivision (b)(6) of Penal Code section 1170? (See *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1391.)

*People v. Schuller*, S272237. (C087191; 72 Cal.App.5th 221; Nevada County Superior Court; F16000111.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Was the trial court's error in refusing to instruct the jury on voluntary manslaughter based on imperfect self-defense harmless? (2) What standard of prejudice applies to such an error?

*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?

*In re Tellez*, S277072. (D079716; 84 Cal.App.5th 292; San Diego County Superior Court; SCE369196.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issues: (1) Does trial counsel render ineffective assistance by failing to advise a defendant that pleading guilty to a qualifying offense could potentially render the defendant subject to involuntary commitment under the Sexually Violent Predator Act (SVPA)? (2) If so, did defendant demonstrate prejudice?

*The Association of Deputy District Attorneys v. Gascón*, S275478. (B310845; 79 Cal.App.5th 503; Los Angeles County Superior Court; 20STCP04250.) Petition for review after the Court of Appeal affirmed in part and reversed in part a petition for writ of mandate or prohibition. This case presents the following issues: (1) Does the Three Strikes law (Pen. Code, §§ 667, subds. (b)–(i), 1170.12) violate the separation of powers doctrine by requiring prosecutors to plead and prove prior qualifying felony convictions? (2) If there is a duty to plead prior qualifying convictions, is mandamus the proper remedy to compel a prosecutor to act?

*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?

*Wheeler v. Appellate Division of Superior Court*, S272850. (B310024; 72 Cal.App.5th 824; Los Angeles County Superior Court; 9CJ00315-02, 9CJ00315, BR054851.) Petition for review after the Court of Appeal denied a petition for writ of mandate and remanded for further proceedings. This case presents the following issues: (1) Can a trial court dismiss a strict liability offense pursuant to Penal Code section 1385 based in part on a defendant's lack of knowledge concerning the offense? (2) Does state law preempt a local ordinance when both prohibit the same conduct and the state law has a mens rea component that the local ordinance does not?



*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?