

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, December 1, 2023.]

People v. Antonelli, S281599. (B321947; 93 Cal.App.5th 712; Ventura County Superior Court; CR27515-2.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. This case presents the following issues: (1) Is defendant entitled to resentencing pursuant to Penal Code section 1172.6 on the ground that malice could be imputed to the defendant under the provocative act theory of murder for convictions occurring before 2009 (see Sen. Bill No. 775 (2021-2022 Reg. Sess.); *People v. Concha* (2009) 47 Cal.4th 653)? (2) Did the trial court err by not considering the jury instructions in determining defendant was ineligible for resentencing as a matter of law for a provocative act murder?

People v. Arellano, S277962. (H049413; 86 Cal.App.5th 418; Santa Clara County Superior Court; 159386.) Petition for review after the Court of Appeal reversed a post-judgment motion and remanded for resentencing in a criminal matter. This case presents the following issue: When a defendant obtains resentencing of a conviction under Penal Code section 1172.6, subdivision (e), is the trial court permitted to impose not only the target offense or underlying felony, but also corresponding enhancements?

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?

People v. Cannon, S277995. (A163083; 85 Cal.App.5th 786; Mendocino County Superior Court; SCUKCR2010148692.) Petition for review after the Court of Appeal conditionally affirmed a civil commitment order and remanded with directions. This case presents the following issue: What level of scrutiny applies in determining whether the Sexually Violent Predator Act (Welf. & Inst. Code, § 6600 et seq.) violates equal protection because it does not require an advisement or personal waiver of a jury trial as afforded in other civil commitment statutes?

People v. Carter, S278262. (C094949; 86 Cal.App.5th 739; Yolo County Superior Court; CRF19987081.) Petition for review after the Court of Appeal affirmed a civil commitment order. This case presents the following issue: Did the trial court deprive defendant of effective assistance of counsel by failing to appoint substitute counsel to evaluate and potentially argue defendant’s pro. per. motion to dismiss after appointed counsel refused to consider the motion based on an asserted conflict in arguing her own ineffective assistance of counsel?

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. Collins, S279737. (B322744; nonpublished opinion; Kern County Superior Court; MF013183.) 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 sufficient evidence support defendant’s conviction for second degree murder based on a failure to protect?

People v. Emanuel, S280551. (H049147; nonpublished opinion; Santa Clara County Superior Court; C1246799.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. This case presents the following issue: Does sufficient evidence support the trial court’s finding that defendant acted with reckless indifference to human life and therefore was ineligible for resentencing pursuant to Penal Code section 1172.6?

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?

People v. Fletcher, S281282. (E077553; 92 Cal.App.5th 1374; Riverside County Superior Court; BAF2001566.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Does Assembly Bill No. 333 amend the requirements for a true finding on a prior strike conviction (Pen. Code, §§ 667, subds. (b)–(i) & 1170.12, subds. (a)–(d)) and a prior serious felony conviction (Pen. Code, § 667, subd. (a)), or is that determination made on “the date of that prior conviction”? (See Pen. Code, §§ 667, subd. (d)(1) & 1170.12, subd. (b)(1).) (2) Does Assembly Bill No. 333 (Stats. 2021, ch. 699), which modified the criminal street gang statute (Pen. Code, § 186.22), unconstitutionally amend Proposition 21 and Proposition 36, if applied to strike convictions and serious felony convictions?

People v. Flores, S267522. (B350359; 60 Cal.App.5th 978; Los Angeles County Superior Court; BA477784.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Was defendant’s detention supported by reasonable suspicion that he was engaged in criminal activity?

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 issues: (1) 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? (2) Whether the first step of the two-part inquiry used to evaluate equal protection claims, which asks whether two or more groups are similarly situated for the purposes of the law challenged, should be eliminated in cases concerning disparate treatment of classes or groups of persons, such that the only inquiry is whether the challenged classification is adequately justified under the applicable standard of scrutiny?

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).)

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?

In re Kowalczyk, S277910. (A162977; 85 Cal.App.5th 667; San Mateo County Superior Court; 21SF003700A.) Petition for review after the Court of Appeal dismissed a petition for writ of habeas corpus as moot. The court limited review to the following issues: (1) Which constitutional provision governs the denial of bail in noncapital cases — article I, section 12, subdivisions (b) and (c), or article I, section 28, subdivision (f)(3), of the California Constitution — or, in the alternative, can these provisions be reconciled? (2) May a superior court ever set pretrial bail above an arrestee's ability to pay?

People v. Lopez, S281488. (E080032; 93 Cal.App.5th 1110; San Bernardino County Superior Court; FWV1404692.) 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 defendant entitled to retroactive application of Assembly Bill No. 333 (2021-2022 Reg. Sess.) where he appeals for a second time after his judgment was conditionally reversed and the Court of Appeal issued a limited remand to the trial court to address sentencing issues?

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. 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. 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. Superior Court (Mitchell), S281950. (B326653; 94 Cal.App.5th 595; Ventura County Superior Court; 2018009315.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court limited review to the following issues: (1) Does Penal Code section 1238 authorize an appeal by the People from a superior court’s post-preliminary hearing, prejudgment order reducing a felony “wobbler” offense to a misdemeanor? (2) If not, may the People obtain review of the order by petition for extraordinary writ?

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. Patton, S279670. (B320352; 89 Cal.App.5th 649; Los Angeles County Superior Court; TA144611.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. This case presents the following issue: Did the trial court engage in impermissible judicial factfinding by relying on the preliminary hearing transcript to deny defendant’s Penal Code section 1172.6 petition at the prima facie stage? (See *People v. Lewis* (2021) 11 Cal.5th 952.)

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))?

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?

People v. Walker, S278309. (B319961; 86 Cal.App.5th 386; Los Angeles County Superior Court; BA398731.) Petition for review after the Court of Appeal affirmed in part and reversed in part a post-conviction motion to modify sentence, and remanded with directions. The court limited review to the following issue: Does the amendment to Penal Code section 1385, subdivision (c) that requires trial courts to “afford great weight” to enumerated mitigating circumstances (Stats. 2021, ch. 721) create a rebuttable presumption in favor of dismissing an enhancement unless the trial court finds dismissal would endanger public safety?

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?