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, November 22, 2024.]

People v. Allen, S286520. (B328333; nonpublished opinion; Los Angeles County Superior Court; NA104090.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) If a defendant has invoked his right to remain silent while being interrogated by a law enforcement officer, are incriminating statements obtained through a subsequent *Perkins* operation (i.e., the use of an undercover agent to question a jailed defendant) admissible as substantive proof of the defendant's guilt at trial? (See *Illinois v. Perkins* (1990) 496 U.S. 292; *Miranda v. Arizona* (1966) 384 U.S. 436.) (2) What effect, if any, does the fact that the interrogating officer continued questioning after petitioner invoked his Fifth Amendment right to silence have upon the admissibility of the statements subsequently obtained during the *Perkins* operation?

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. Cannon, S277995. (A163083; 85 Cal.App.5th 786; Mendocino County Superior Court; SCUKCRCR2010148692.) 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. Cofer, S286297. (H050122; 103 Cal.App.5th 333; Monterey County Superior Court; 20CR010763.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses and remanded for further proceedings. This case presents the following issue: When a defendant is sentenced to concurrent terms on multiple cases jointly resolved at a single hearing, does Penal Code section 2900.5, subdivision (b) entitle the defendant to duplicative presentence custody credits for time spent in custody on one or more of the cases, but not others?

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. Dain, S283924. (A168286; 99 Cal.App.5th 399; Sonoma County Superior Court; SCR7090531.) Petition for review after the Court of Appeal reversed an order granting a motion in a criminal matter and remanded for further proceedings. The court limited review to the following issue: Did the Court of Appeal err in remanding the case with directions to reinstate the strike finding and to resentence defendant as a person who has suffered a prior strike conviction under the Three Strikes Law? (See *People v. Williams* (1998) 17 Cal.4th 148, 164, fn. 7; see also *People v. McGlothin* (1998) 67 Cal.App.4th 468, 478; *People v. Humphrey* (1997) 58 Cal.App.4th 809, 814; but see *People v. Mayfield* (2020) 50 Cal.App.5th 1096, 1109; *People v. Strong* (2001) 87 Cal.App.4th 328, 347.)

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. Esquivias, S286371. (B329800; 103 Cal.App.5th 969; Los Angeles County Superior Court; PA077370.) Petition for review after the Court of Appeal affirmed an order granting in part and denying in part a post-judgment motion in a criminal matter. This case presents the following issue: Does the issuance of an order to show cause to review one aspect of a defendant's sentence in habeas corpus proceedings render applicable all ameliorative laws taking effect after the defendant's judgment became final?

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. Superior Court (Guevara), S283305. (B329457; 97 Cal.App.5th 978; Santa Barbara County Superior Court; 1183843.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) Do the revised penalty provisions of the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.12) apply when a defendant is resentenced pursuant to Senate Bill No. 483 (Pen. Code, § 1172.75)? (2) Whether defendants qualify as "presently serving an indeterminate term" under Penal Code section 1170.126 if they were serving such a term on the effective date of the statute, or only if they are currently serving such an indeterminate term?

In re Hernandez, S282186. (F076752; nonpublished opinion; Kern County Superior Court; BF150639A.) 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 the totality of the circumstances establish that defendant meaningfully understood the immigration consequences of her plea?

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. Meno, S286092. (D081878; 102 Cal.App.5th 943; San Diego County Superior Court; SCD288239.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does a trial court have discretion to dismiss either the greater or lesser included offense involving the same conduct of driving under the influence causing death in order to avoid the prohibition against multiple convictions based on necessarily included offenses?

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. This case presents 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? (3) In the absence of further order or other direction, when does a Court of Appeal's temporary stay of superior court criminal proceedings against a defendant expire? (4) If the temporary stay issued by the Court of Appeal had not expired at the time of defendant's guilty plea, what was the effect, if any, of the stay on the resolution of defendant's criminal proceedings?

People v. Montgomery, S284662. (A167813; 100 Cal.App.5th 768; Solano County Superior Court; FCR330516.) Petition for review after the Court of Appeal reversed an order denying a post-judgment motion in a criminal matter and remanded for further proceedings. This case presents the following issue: Is the prosecution entitled to rescind a plea agreement when a defendant receives a full resentencing pursuant to Senate Bill No. 483 (Stats. 2021, ch. 728) and the trial court intends to reduce the sentence beyond eliminating the prior prison term enhancements (Pen. Code, § 667.5, subd. (b))?

People v. Morgan, S286493. (A166435; 103 Cal.App.5th 488; Sonoma County Superior Court; SCR7469261.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses and remanded for resentencing. This case presents the following issue: Is assault (Pen. Code, § 240) a necessarily included lesser offense of resisting an executive officer by force or violence (Pen. Code, § 69, subd. (a))?

People v. Morris, S284751. (G061916; 100 Cal.App.5th 1016; Orange County Superior Court; 08CF1591.) 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 correctly deny defendant's Penal Code section 1172.6 resentencing petition at the prima facie stage on the ground that the actus reus of first degree felony murder requires that a defendant who is not the actual killer need only aid in the underlying felony and not in the killing itself (Pen. Code, § 189, subd. (e)(2))?

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. Rhodius, S283169. (E080064; 97 Cal.App.5th 38; Riverside County Superior Court; RIF1502535.) 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 Senate Bill No. 483 (Stats. 2021, ch. 728) entitle a defendant to a full resentencing hearing under Penal Code section 1172.75 if the defendant's prior prison term enhancements (Pen. Code, § 667.5, subd. (b)) were imposed and stayed, rather than imposed and executed?

People v. Shaw, S286453. (C098821; nonpublished opinion; Placer County Superior Court; 62176716Z.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: May two prior convictions arising out of a single act that harms multiple victims constitute two strikes under the Three Strikes law? (*People v. Vargas* (2014) 59 Cal.4th 635; *People v. Williams* (1998) 17 Cal.4th 148.)

Snap, Inc. v. Superior Court, S286267. (D083475, D083446; 103 Cal.App.5th 1031; San Diego County Superior Court; CN429787.) Petitions for review after the Court of Appeal granted in part and denied in part petitions for peremptory writ of mandate. This case presents the following issues: (1) Does the federal Stored Communications Act (18 U.S.C. § 2701 et seq.) bar a social media company from disclosing an individual's account information in response to a criminal defendant's subpoena? (2) Did the trial court abuse its discretion by finding that good cause supported the subpoena for third-party discovery?

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?

People v. Wiley, S283326. (A165613; 97 Cal.App.5th 676; Humboldt County Superior Court; CR1902147B.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Did the sentencing court's consideration of circumstances in aggravation based on certified records of prior convictions, beyond the bare fact of the convictions, violate Penal Code section 1170, subdivision (b)(3) or defendant's Sixth Amendment right to a jury trial?