



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 8, 2021

[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.]

#21-48 *Hoffman v. Young*, 266003. (B292539; 56 Cal.App.5th 1021; San Luis Obispo County Superior Court; 16CVP0060.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Can an invitation to enter by a non-landowner — here, the landowner’s child — that was made without the landowner’s knowledge or express approval satisfy the requirements of Civil Code section 846, subdivision (d)(3), and abrogate the landowner’s immunity from liability for damages suffered during permissive recreational use of the property?

#21-49 *Lawson v. PPG Architectural Finishes, Inc.*, S266001. (9th Cir No. 19-55802; 982 F.3d 752; Central District of California No. 8:18-cv-00705-AG-JPR.) Request under California Rules of Court rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: Does the evidentiary standard set forth in Labor Code section 1102.6 replace the rest of test of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 as the relevant evidentiary standard for retaliation claims brought pursuant to Labor Code section 1102.5?

#21-50 *Niedermeier v. FCA US LLC*, S266034. (B293960; 56 Cal.App.5th 1052; Los Angeles County Superior Court; BC638010.) Petition for review after the Court of Appeal modified and affirmed the judgment in a civil action. This case presents the following issues: (1) Does the statutory restitution remedy under the Song-Beverly Act (Civ. Code, § 1790 et seq.) necessarily include an offset for a trade-in credit? (2) If the amount that a consumer has received in a trade-in transaction must be subtracted from the consumer’s recovery, should that amount be subtracted from the statutory restitution remedy or from the consumer’s total recovery?

#21-51 *People v. Alcaez, S266295.* (G058729; nonpublished opinion; Orange County Superior Court; 97CF0037.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-52 *People v. Valencia, S266028.* (B299957; nonpublished opinion; Los Angeles; BA402808.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

The court ordered briefing in *Alcaez* and *Valencia* deferred pending decision in *People v. Lopez, S258175* (#19-172), which presents the following issues: (1) Does Senate Bill No. 1437 (Stats. 2018, ch. 1015) apply to attempted murder liability under the natural and probable consequences doctrine? (2) In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a natural and probable consequence of the target offense? In other words, should *People v. Favor* (2012) 54 Cal.4th 868 be reconsidered in light of *Alleyne v. United States* (2013) 570 U.S. 99 and *People v. Chiu* (2014) 59 Cal.4th 155?

#21-53 *People v. Brown, S266296.* (C089260; nonpublished opinion; Shasta County Superior Court; 93F1202.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-54 *People v. Celis, S266503.* (B301850; nonpublished opinion; Los Angeles County Superior Court; PA039478.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-55 *People v. Clemons, S266319.* (B300923; nonpublished opinion; Los Angeles County Superior Court; YA052497.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-56 *People v. Esparza, S266303.* (B301349; nonpublished opinion; Los Angeles County Superior Court; VA048797.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-57 *People v. Madsen, S266460.* (C089665; nonpublished opinion; San Joaquin County Superior Court; STKCRFE19880001246, 44445.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-58 *People v. Mora, S266449.* (B304503; nonpublished opinion; Los Angeles County Superior Court; BA085503.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-59 *People v. Taylor, S265791.* (B306134; nonpublished opinion; Los Angeles County Superior Court; TA115410.) Petition for review after the Court of Appeal dismissed an appeal from an order denying a post-judgment motion in a criminal matter.

#21-60 *People v. Warren, S265848.* (B304544; nonpublished opinion; Los Angeles County Superior Court; PA029565.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-61 *People v. Welch, S266331.* (B300338; nonpublished opinion; Los Angeles County Superior Court; A799639.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

The court ordered briefing in *Brown, Celis, Clemons, Esparza, Madsen, Mora, Taylor, Warren, and Welch* deferred pending decision in *People v. Lewis, S260598* (#20-78), which presents the following issues: (1) May superior courts consider the record of conviction in determining whether a defendant has made a prima facie showing of eligibility for relief under Penal Code section 1170.95? (2) When does the right to appointed counsel arise under Penal Code section 1170.95, subdivision (c)?

#21-62 *People v. Garcia, S265692.* (B300163; 57 Cal.App.5th 100; San Luis Obispo County Superior Court; F000270432002.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. The court ordered briefing deferred pending decision in *People v. Lewis, S260598* (#20-78), which presents issues concerning a defendant's prima facie showing of eligibility for relief under Penal Code section 1170.95 and *People v. Duke, S265309* (#21-01), which presents issues concerning the People's burden of establishing a defendant's ineligibility for resentencing under section 1170.95 if a prima facie case has been made.

#21-63 *People v. Hernandez, S266284.* (D076941; nonpublished opinion; Imperial County Superior Court; JCF36035.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-64 *People v. Jones, S266170.* (A158367; nonpublished opinion; Solano County Superior Court; FCR273455.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-65 *People v. Lynch, S266288.* (D076181; nonpublished opinion; Imperial County Superior Court; JCF38345.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-66 *People v. Mallory, S266347.* (D077334; nonpublished opinion; Imperial County Superior Court; JCF26358.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

The court ordered briefing in *Hernandez, Jones, Lynch, and Mallory* deferred pending decision in *People v. Raybon, S256798* (#19-121), which presents the following issue: Did Proposition 64 [the “Adult Use of Marijuana Act”] decriminalize the possession of up to 28.5 grams of marijuana by adults 21 years of age or older who are in state prison [as well as those not in prison]?

#21-67 *People v. Lopez, S265974.* (H047254; 56 Cal.App.5th 936; Monterey County Superior Court; SS121859.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. The court ordered briefing deferred pending decision in *People v. Duke, S265309* (#21-01), which presents the following issue: Can the People meet their burden of establishing a petitioner’s ineligibility for resentencing under Penal Code section 1170.95, subdivision (d)(3) by presenting substantial evidence of the petitioner’s liability for murder under Penal Code sections 188 and 189 as amended by Senate Bill No. 1437 (Stats. 2018, ch. 1015), or must the People prove every element of liability for murder under the amended statutes beyond a reasonable doubt?

#21-68 *People v. Lucero, S266018.* (F079788; nonpublished opinion; Tuolumne County Superior Court; CRF44425.) 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. Tirado, S257658* (#19-174), which presents the following issue: Can the trial court impose an enhancement under Penal Code section 12022.53, subdivision (b), for personal use of a firearm, or under section 12022.53, subdivision (c), for personal and intentional discharge of a firearm, as part of its authority under section 1385 and subdivision (h) of section 12022.53 to strike an enhancement under subdivision (d) for personal and intentional discharge of a firearm resulting in death or great bodily injury, even if the lesser enhancements were not charged in the information or indictment and were not submitted to the jury?

#21-69 *People v. Schafer, S266096.* (C083560; nonpublished opinion; Sacramento County Superior Court; 15F04925.) Petition for review 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. Henderson, S265172* (#20-387), which presents the following issue: Does the Three Strikes law (Pen. Code, §§ 667, subd. (c)(6) & (7), 1170.12, subd. (a)(6) & (7)) require consecutive terms on multiple current violent or serious felony convictions, regardless of whether the offenses occurred on the same occasion or arose from the same set of operative facts?

#21-70 *Sheen v. FCI Lender Services, Inc., S266017.* (B297640; nonpublished opinion; Los Angeles County Superior Court; BC631510.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court ordered briefing deferred pending decision in *Sheen v. Wells Fargo Bank, N.A., S258019* (#19-173), which presents the following issue: Does a mortgage servicer owe a borrower a duty of care to refrain from making material misrepresentations about the status of a foreclosure sale following the borrower's submission of, and the servicer's agreement to review, an application to modify a mortgage loan?

DISPOSITIONS

Review in the following cases, which had been granted and held for *In re Gadlin* (2020) 10 Cal.5th 915, was dismissed:

#19-64 <i>In re Bowell, S255066.</i>	(B285434; nonpublished opinion; Los Angeles County Superior Court; BA191442)
#19-135 <i>In re Adams, S257081.</i>	(B292106; nonpublished opinion; Los Angeles County Superior Court; BH011798, TA100955)
#19-136 <i>In re Bertram, S257104.</i>	(B293475; nonpublished opinion; Los Angeles County Superior Court; BH011750, SA091126)
#20-19 <i>In re Jones, S259606.</i>	(E072147; nonpublished opinion; Riverside County Superior Court; HEF001922)
#20-56 <i>In re Schuster, S260024.</i>	(C087276; 42 Cal.App.5th 943; Sacramento County Superior Court; 17HC00283)
#20-132 <i>Alliance for Constitutional Sex Offense Laws v. Department of Corrections & Rehabilitation, S261362.</i>	(C087294; 45 Cal.App.5th 225; Sacramento County Superior Court; 34201780002581CUWMGDS)
#20-204 <i>People v. Velez, S263004.</i>	(B296452; nonpublished opinion; Los Angeles County Superior Court; KA072076)
#20-222 <i>In re O'Keefe, S263086.</i>	(D075462; nonpublished opinion; San Diego County Superior Court; HC16835, SCD157233)
#20-258 <i>In re Chavez, S263584.</i>	(H046921; 51 Cal.App.5th 748; Santa Clara County Superior Court; C9804583)
#20-325 <i>In re Johnson, S264574.</i>	(C089242; nonpublished opinion; San Joaquin County Superior Court; STKCRFMISC20180004591)
#20-344 <i>In re Febbo, S264287.</i>	(G057667; 52 Cal.App.5th 1088; Orange County Superior Court; M17593)

#20-345 <i>People v. Payne</i>, S264871.	(A158497; nonpublished opinion; Marin County Superior Court; SC206090)
#20-376 <i>In re King</i>, S265247.	(E074401; 54 Cal.App.5th 814; San Bernardino County Superior Court; FBA05576, WHCJS1900438)

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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.