



Supreme Court of California
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NEWS RELEASE

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FOR IMMEDIATE RELEASE

July 16, 2021

Summary of Cases Accepted and Related Actions During Week of July 12, 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.]

#21-344 *People v. Arnold*, S269172. (B305073; nonpublished opinion; Los Angeles County Superior Court; GA077104.) 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 err when it declined to accept the recommendation by the California Department of Corrections and Rehabilitation that defendant's sentence be recalled (Pen. Code, § 1170, subd. (d)) in order to address the statutory amendments made by Senate Bill No. 1393 in light of the court's conclusion that those amendments did not apply to final judgments?

#21-345 *People v. Braden*, S268925. (E073204; 63 Cal.App.5th 330; San Bernardino County Superior Court; FV118001116.) 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?

#21-346 *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?

#21-347 *People v. Arcuri, S267273.* (E075123; nonpublished opinion; Riverside County Superior Court; HEF004579.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-348 *People v. Bhushan, S269129.* (A159917; nonpublished opinion; Alameda County Superior Court; C175094A.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-349 *People v. Franco, S269178.* (B305769; nonpublished opinion; Los Angeles County Superior Court; VA142960.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-350 *People v. Hampton, S268926.* (E074416; nonpublished opinion; San Bernardino County Superior Court; FSB17394.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-351 *People v. Lee, S269231.* (G058779; nonpublished opinion; Orange County Superior Court; 00NF1347.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-352 *People v. Lewis, S268818.* (E074796; nonpublished opinion; Riverside County Superior Court; CR25725.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-353 *People v. McCavitt, S269097.* (C089060; nonpublished opinion; El Dorado County Superior Court; P13CRF0303.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-354 *People v. McLaughlin, S269241.* (E075089; nonpublished opinion; Riverside County Superior Court; CR42433.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-355 *People v. Mitchell, S269103.* (C091560; nonpublished opinion; Sacramento County Superior Court; 93F04222.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-356 *People v. Olvera, S269042.* (D077419; nonpublished opinion; San Bernardino County Superior Court; FWV1102225-2.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-357 *People v. Reyes, S269213.* (B305418; nonpublished opinion; Los Angeles County Superior Court; KA058220.) 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 *Arcuri, Bhushan, Franco, Hampton, Lee, Lewis, McCavitt, McLaughlin, Mitchell, Olvera, and Reyes* 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)?

#21-358 *Beier v. Bank of America, S268569.* (G058753; nonpublished opinion; Orange County Superior Court; 30-2017-00907172.) 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?

#21-359 *People v. Castro, S268975.* (B303372; nonpublished opinion; Los Angeles County Superior Court; A375846.) Petition for review after the Court of Appeal reversed an order denying a post-judgment motion in a criminal matter.

#21-360 *People v. Garcia, S269225.* (B307757; nonpublished opinion; Los Angeles County Superior Court; BA357126.) Petition for review after the Court of Appeal reversed an order denying a post-judgment motion in a criminal matter.

The court ordered briefing in *Castro* and *Garcia* 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?

#21-361 *People v. Coley, S268930.* (A159927; nonpublished opinion; Solano County Superior Court; VCR208165.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-362 *People v. Higgs, S269036.* (B305937; nonpublished opinion; Los Angeles County Superior Court; PA071844.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-363 *People v. Mendoza, S269104.* (B307382; nonpublished opinion; Los Angeles County Superior Court; BA396381.) 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 *Coley, Higgs, and Mendoza* 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? and 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)?

#21-364 *People v. Curry, S267394.* (C090409; 62 Cal.App.5th 314; Butte County Superior Court; 17CF03707.) Petition for review after the Court of Appeal conditionally reversed a judgment of conviction of a criminal offense.

#21-365 *People v. Wade, S268936.* (C090655; nonpublished opinion Sacramento County Superior Court; 18FE019068.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Curry* and *Wade* deferred pending decision in *People v. Braden, S268925* (#21-345), which presents the following issue: What is the latest point at which a defendant may request mental health diversion under Penal Code section 1001.36?

#21-366 *People v. Cyrus, S269251.* (E075271; nonpublished opinion; San Bernardino County Superior Court; FWV18004411.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Renteria, S266854* (#21-160), which presents the following issues: When a member of a criminal street gang acts alone in committing a felony, what evidence will suffice to establish the felony was “committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific

intent to promote, further, or assist in any criminal conduct by gang members”? (Pen. Code, § 186.22, subd. (b)(1); see *People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

#21-367 *People v. Lampkin*, S269040. (C089258; nonpublished opinion; Yuba County Superior Court; CRF990000320.) 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. Strong*, S266606 (#21-101), which presents the following issue: Does a felony-murder special circumstance finding (Pen. Code, § 190.2, subd. (a)(17)) made before *People v. Banks* (2015) 61 Cal.4th 788 and *People v. Clark* (2016) 63 Cal.4th 522 preclude a defendant from making a prima facie showing of eligibility for relief under Penal Code section 1170.95? and 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)?

#21-368 *People v. Molina*, S269239. (B295701; nonpublished opinion; Los Angeles County Superior Court; TA143107.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter.

#21-369 *People v. Salamanca*, S269184. (B300962; nonpublished opinion; Los Angeles County Superior Court; TA082067.) 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 *Molina* and *Salamanca* 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?

#21-370 *People v. Reese*, S269236. (B391473; nonpublished opinion; Los Angeles County Superior Court; BA230274.) 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. Strong*, S266606 (#21-101), which presents the following issue: Does a felony-murder special circumstance finding (Pen. Code, § 190.2, subd. (a)(17)) made before *People v. Banks* (2015) 61 Cal.4th 788

and *People v. Clark* (2016) 63 Cal.4th 522 preclude a defendant from making a prima facie showing of eligibility for relief under Penal Code section 1170.95?

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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.