

Casing the Cases

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Below are highlights of the cases published during the past month with hyperlinks to the full case. Please forward this to attorneys and judges who might benefit. To view the whole opinion, click on the link or copy and paste the link into your browser.

WARNING: The below case summaries are not complete and may even be inaccurate.

Those published in May 2017, along with significant actions by California Supreme Court

Often-used abbreviations

3X	three strikes	MDO	mentally-disordered offender
AD	Appellate Division	MSE	motion to suppress evidence
BIA	Board of Immigration Appeals	MX	motion
BPH	Board of Parole Hearings	NGI	not guilty by reason of insanity
BRD	beyond a reasonable doubt	NOA	notice of appeal
CSC	California Supreme Court	P	people/prosecution
D	defendant	PG	pled guilty
DCA	District Court of Appeal	PNC	pled no contest
DJ	double jeopardy	PNJ	pronouncement of judgment
DJF	Division of Juvenile Facilities	PRCS	post-release community supervision
DP	death penalty	PX	preliminary hearing
DV	domestic violence	SDT	subpoena duces tecum
FTA	fail to appear	SOL	statute of limitations
GBI	great bodily injury	SVP	sexually-violent predator
GJ	grand jury	SW	search warrant
HC	habeas corpus	TC	trial court
HTA	held to answer	TX	transcript
IAC	ineffective assistance of counsel	UT	upper term
IOE	insufficiency of evidence	V	victim
J	juvenile	VOP	violation of probation/parole
JT	jury trial	W	witness
LE	law enforcement		
LIO	lesser-included offense		

Federal Cases
(Criminal cases affecting California)

SCOTUS

Ninth Circuit

5/12/17

S.B. v. San Diego County

<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/05/12/15-56848.pdf>

Denial of qualified immunity reversed

Plaintiffs sued county and deputy 42 USC 1983 claiming 4th Am viol in deputy shooting and killing. District court denied deputy's claim of qualified immunity, but 9th Circuit reversed. While the use of force was objectively unreasonable, this was not "clearly established" on date of event.

Appellate Division, DCA, and CSC cases

4/1/17 (pub 5/2)

P. v. International Fidelity (4/1)

<http://www.courts.ca.gov/opinions/documents/D070060.PDF>

PC 1305

No error in denying exoneration of bond where surety claims TC increased risk on bond by adding release condition that D enroll in SCRAM (system for remote monitoring of alcohol use) system.

4/4/17 (pub 5/2)

P. v. Lee (1/5)

<http://www.courts.ca.gov/opinions/documents/A145038.PDF>

PC 368, 186.10, 530.5

Affirms and reverses some counts where D misappropriated approximately \$1 million in investment and business scheme. Certain withdrawals by personal check did not constitute money laundering. PC 530.5 counts reversed for IOE that D used V personal information without consent or for unlawful purpose. Suff evid supports PC 487 convictions. IOE of PC 368 where no evid the Vs were 65+ at time of theft. Restitution and penalty assessments to be modified in light of reversals.

4/7/17 (pub 5/2)

In re Oswald R. (1/2)

<http://www.courts.ca.gov/opinions/documents/A148364.PDF>

gang-related activities

No error in probation condition prohibiting J from gang-related activities, rejecting vagueness challenge.

5/1/17

P. v. Brown (4/2)

<http://www.courts.ca.gov/opinions/documents/E059735A.PDF>

Exception to substantial evidence rule

In forcible gang rape case, sufficient evidence supports force in only one of two scenarios. Ordinarily, a verdict is upheld if substantial evidence supports it on any theory. The exception introduced here is where P argues a particular theory and, because of that choice, a unanimity instruction that would otherwise have been required, is not given.

5/2/17

In re A.N. (2/6)

<http://www.courts.ca.gov/opinions/documents/B275914.PDF>

EC 48260

No error in declaring J a habitual truant.

5/2/17

P. v. Slough (2/6)

<http://www.courts.ca.gov/opinions/documents/B262102.PDF>

PC 12022.7

IOE of PC 12022.7 where buyer to whom D sold heroin in viol of HS 11352 fatally overdosed.

Yegan dissents that seller of street heroin is unaware of nature of product and is well-aware that its use could cause GBI or kill. Also cites the list of excluded offenses in PC 12022.7(g)--which does not include HS 11352.

5/2/17

P. v. Roa (2/2)

<http://www.courts.ca.gov/opinions/documents/B264885.PDF>

SVP expert hypothetical

SVP commitment reversed based on prejudicial error (*Watson* standard) in allowing expert W in SVP case to recite case-specific facts not independently proven.

5/5/17

P. v. Salvador (1/2)

<http://www.courts.ca.gov/opinions/documents/A142488A.PDF>

PC 667.61, 186.22(b), *Lopez*

Where gang members committed several sex crimes on V, error to impose ten ten-year enhancements per PC 186.22(b) where those counts, per PC 667.61, carried life sentences. Instead, the minimum parole eligibility of 15 years applies.

5/8/17

P. v. Arce (4/1)

<http://www.courts.ca.gov/opinions/documents/D069360.PDF>

Split sentences and deportation

Following plea to charges > a kilo of cocaine and > a kilo of heroin for sale, TC rejected split sentence due to deportation proceedings. No error. B/c offenses make D subject to mandatory detention and mandatory deportation, D could not possibly benefit from post-release supervision.

5/9/17

P. v. Figueroa (6)

<http://www.courts.ca.gov/opinions/documents/H043204.PDF>

PC 859b, 1368

D charged with felonies in 7/13. Prior to PNG, proceedings suspended per PC 1368. Reinstated in 3/14 and TC advised D that he had a right to a PX within 60 days of reinstatement. He waived his 60-day right. No plea entered until following month when D entered PNG, 4/10/14. TC advised of 10-day PX right and D waived that right. Was not advised of 60-day right and was not asked to waive time. PX set for 4/30/14, but was vacated and continued 8 times, with D counsel stating time was waived. Continued twice more and D moved for PC 859b dismissal. TC granted dismissal and P appealed. Held, affirmed. The triggering date was not reinstatement, but the entry of PNG. D did not personally waive the 60-day limit.

5/12/17

In re A.V. (1/1)

<http://www.courts.ca.gov/opinions/documents/A148307.PDF>

WI 786

If J court finds ward has satisfactorily completed probation—despite probation violations—court must dismiss petition AND seal ward’s record.

5/12/17

P. v. Zamora (5)

<http://www.courts.ca.gov/opinions/documents/F071737.PDF>

Prop 47 and J priors

J adjudication of PC 243.4 does not bar Prop 47 reduction.

5/15/17

In re Campbell (4/3)

<http://www.courts.ca.gov/opinions/documents/G052575.PDF>

HC without OSC reversed

TC erred in granting HC as to Prop 47 petitions, rejecting D arg that P impliedly waived that requirement in the negotiations as to expeditious resolution of Prop 47 matters.

5/15/17 (pub 5/30)

P. v. Zamudio (2/7)

<http://www.courts.ca.gov/opinions/documents/B271406.PDF>

parole revocation and CRC 4.541

No error in TC revoking D’s parole, rejecting arg that TC must first consider/use lesser sanctions.

5/16/17

P. v. Edwards (6)

<http://www.courts.ca.gov/opinions/documents/H042144.PDF>

Impeachment with suppressed statements

At sanity phase of PC 187 1st trial, no error in allowing P to use D statements, otherwise suppressed, while cross-examining D experts who relied on D statements in forming opinion of insanity.

5/16/17

P. v. Marquez (5)

<http://www.courts.ca.gov/opinions/documents/F070609.PDF>

Prop 57 not retroactive

D sentenced to LWOP for PC 187 1st w/ spec circ just before 18th birthday. Reversed and remanded for TC to more fully consider *Miller* factors. TC again imposed LWOP. On second appeal, D claims Prop 57 applies retroactively to him. Held, agreeing with *Mendoza*, and disagreeing with *Vela*, Prop 57 does not apply retroactively.

5/16/17

P. v. Hudson (1/5)

<http://www.courts.ca.gov/opinions/documents/A147910.PDF>

PC 215

Suff evid of force for PC 215 where, as D unlawfully drove stolen car from car dealer's garage, employee opened driver's door, and tried to drag D from car, but was thwarted by car movement.

5/18/17

P. v. Cervantes (4/1)

<http://www.courts.ca.gov/opinions/documents/D069959.PDF>

Probation search of car

No error in denial of MSE as to male driver. Car search following traffic stop, female passenger on searchable probation. First, drugs found in bag behind passenger seat. Immediately apparent that clear bag contained male toiletries. Drugs then found in car console. Held, regardless whether error to search bag based on probation search, searching the bag was inevitable based on drugs found in console.

5/19/17

P. v. Fernandez (5)

<http://www.courts.ca.gov/opinions/documents/F071338.PDF>

Prop 47 and PC 290

B/c J sex offenses are registerable per PC 290.008, not PC 290, they do not bar Prop 47 reduction.

5/25/17

P. v. Martinez (SC)

<http://www.courts.ca.gov/opinions/documents/S219970.PDF>

VC 20001 and restitution

Where D conv of VC 20001 for fleeing scene after hitting boy on scooter, error ordering restitution re boy's injuries b/c D's crime—fleeing—did not cause the injuries.

5/30/17

In re G.F. (5)

<http://www.courts.ca.gov/opinions/documents/B276109.PDF>

WI 654, 654.2, 786

J entitled to have record sealed per WI 786, even though petition filed and dismissed per WI 654, rather than 654.2.

5/30/15

P. v. Nguyen (4/3)

<http://www.courts.ca.gov/opinions/documents/G052484.PDF>

PC 245(c), *Pitchess*

Suff evid for PC 245(c) where D wielded knife at officers 10-15 feet away before being shot, rejecting D arg that “present ability” element was missing.

Bedsworth concurs, expressing disagreement with legal precedent that allows only appellate review of the procedures followed in a *Pitchess* motion. He argues that sealed copies of the personnel records reviewed could and should be provided to the appellate court for review of the merits of the ruling.

CSC actions in criminal cases

Conference of 5/10/17

#17-142 In re J.G., S240397. (C077056; 7 Cal.App.5th 955; Shasta County Superior Court; JDSQ122933901.) Petition for review after the Court of Appeal affirmed orders in a juvenile wardship proceeding. This case includes the following issues: (1) Did the juvenile court have the authority to convert a restitution order to a civil judgment at the completion of deferred entry of judgment? (2) Did the juvenile court err by ruling that restitution could be paid from federally-protected Social Security benefits?

#17-143 Mathews v. Harris, S240156. (B265990; 7 Cal.App.5th 334; Los Angeles County Superior Court; BC573135.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issues: (1) Does a psychotherapy patient have a constitutional right of privacy in seeking psychotherapeutic treatment, even if the treatment entails a communication with a psychotherapist that refers to conduct constituting a crime? (2) Does the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.) violate a patient’s rights under the California Constitution by compelling disclosure of communications demonstrating “sexual exploitation,” which includes, among other things, downloading, streaming, and accessing through any electronic

or digital media a depiction of a child engaged in an act of obscene sexual conduct?

#17-144 *People v. Berry*, S241107

GH for *People v. Estrada*, S232114 (#16-104) (Prop 36 denial based on dismissed charges)

#17-145 *People v. Stefflre*, S241017

GH for *People v. Estrada*, S232114 (#16-104) (Prop 36 denial based on dismissed charges)

#17-146 *In re Carlos H.*, S241067

GH for *In re Ricardo P.*, S230923 (#16-41) (electronics search condition)

#17-148 *In re Daniel T.*, S240884

GH for *In re C.B.*, S237801 (#16-384), and *In re C.H.*, S237762 (#16-395) (Prop 47 and DNA)

#17-149 *In re Diaz*, S240888

GH for *People v. Valenzuela*, S232900 (#16-97) (Prop 47 and prison priors), *People v. DeHoyos*, S228230 (#15-171) (Prop 47 retroactivity)

#17-150 *People v. Gardea*, S240958

GH for *People v. Valenzuela*, S232900 (#16-97) (Prop 47 and prison priors)

#17-151 *People v. Perez*, S240499

GH for *People v. Valenzuela*, S232900 (#16-97) (Prop 47 and prison priors)

#17-152 *People v. Pham*, S240522

GH for *People v. Valenzuela*, S232900 (#16-97) (Prop 47 and prison priors)

#17-153 *People v. Robison*, S240898

GH for *People v. Valenzuela*, S232900 (#16-97) (Prop 47 and prison priors)

#17-154 *People v. Salazar*, S241034

GH for *People v. Valenzuela*, S232900 (#16-97) (Prop 47 and prison priors)

#17-155 *People v. Velasquez*, S240811

GH for *People v. Valenzuela*, S232900 (#16-97) (Prop 47 and prison priors)

#17-156 *People v. Mahoney*, S241154

GH for *People v. Page*, S230793 (#16-28) (Prop 47 and car theft)

#17-157 *In re R.K.*, S240974

GH for *People v. Page*, S230793 (#16-28) (Prop 47 and car theft)

#17-158 *People v. Richards*, S241116

GH for *People v. Page*, S230793 (#16-28) (Prop 47 and car theft)

#17-160 *People v. Stearman*, S240209

GH for *People v. Gutierrez and Ramos*, S224724 (15-73), and *People v. Enriquez*, S240249 (#17-84) (*Batson/Wheeler*)

#17-161 *People v. Watson*, S240584

GH for *People v. Arzate*, S238032 (#17-32) and *People v. Padilla*, S239454 (#17-34) (LWOP for Js)

Conference of 5/17/17

S.C. (LARA), PEOPLE v. S241231 E067296 Petition for Review & Stay Granted
SAMARA v. MATAR S240918 B265752 Petition for Review Granted
BAUGHMAN, PEOPLE v. S241275 F071518 Petition for Review GRANTED and Held
COTTON, PEOPLE v. S241253 C081289 Petition for Review GRANTED and Held
CRUDER, PEOPLE v. S241262 F072625 Petition for Review GRANTED and Held
FLORES, PEOPLE v. S241173 D070125 Petition for Review GRANTED and Held
GERAY, PEOPLE v. S241248 H043338 Petition for Review GRANTED and Held
HARO, PEOPLE v. S241204 B268143 Petition for Review GRANTED and Held
CASTRO, PEOPLE v. S237117 B262307 Grant - dismissal/lead case 2/4 Transferred after hold