NEWS

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Lynn Holton, Public Information Officer

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF JANUARY 20, 2003

[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 description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#03-11 People v. Billa, S111341. (C037717; 102 Cal.App.4th 822; Placer County Superior Court; R47469.) 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: Does the felony-murder rule apply where an accomplice accidentally kills himself while jointly engaged with the defendant in the perpetration of the underlying felony of arson?

#03-12 Casa Herrera, Inc. v. Beydoun, S111998. (D038326; 103 Cal.App.4th 83; San Diego County Superior Court; GIC760127.) Petition for review after the Court of Appeal reversed a judgment dismissing a civil action. This case presents the following issue: When an initial lawsuit is dismissed because the parole evidence rule precluded the plaintiff from introducing evidence to support its claim, is the termination of that lawsuit a "favorable termination on the merits" permitting the defendant to bring a malicious prosecution action, or is the termination a "procedural or technical" termination that does not support a malicious prosecution action?

#03-13 People v. Edmonton, S112168. (C036988; 103 Cal.App.4th 557; Sacramento County Superior Court; CR94463.) Petition for review after the Court of Appeal affirmed an order of commitment as a sexually violent predator. The court

(over)

limited review to the following issue: Does the element of "duress" for purposes of forcible sexual offenses other than rape and spousal rape include within its definition the concept of "hardship" that was deleted from the definition of "duress" for forcible rape and spousal rape (Stats. 1993, ch. 595, § 1), or does the deletion of "hardship" from the definition of "duress" in those statutes apply to the meaning of "duress" for all forcible sexual offenses?

#03-14 In re S.B., S112260. (B154825; 103 Cal.App.4th 739; Los Angeles County Superior Court; CK39821.) Petition for review after the Court of Appeal reversed an order in a dependency proceeding. This case presents the following issues: (1) Must the juvenile court make a specific order regarding parental visitation after a legal guardian is appointed for a child under Welfare and Institutions Code section 366.26, subdivision (c)(4), or may the court delegate visitation decisions to the guardian? (2) May the validity of the trial court's visitation order be challenged on appeal in the absence of an objection to that order in the trial court?

#03-15 People v. Perez, S111985. (G028325; 103 Cal.App.4th 203, mod. 103 Cal.App.4th 941b; Orange County Superior Court; SA00CF2039.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Can a defendant be held liable for aiding and abetting the offense of possessing specified substances with the intent to manufacture methamphetamine without evidence that a principal other than the defendant committed that crime?

#03-16 Saint Agnes Medical Center v. PacifiCare of California, S111323. (F039699; 102 Cal.App.4th 647; Fresno County Superior Court; 01CECG01243.) Petition for review after the Court of Appeal reversed an order denying a motion to compel arbitration. This case presents the following issue: Does a party that attempts to repudiate a contract thereby waive, as a matter of law, its right to compel arbitration under the arbitration clause of that contract?

#03-17 Salazar v. Diversified Paratransit, Inc., S111876. (B142840, B144243; 103 Cal.App.4th 131; Los Angeles County Superior Court; YC033143.) Petition for review after the Court of Appeal affirmed a judgment of nonsuit in a civil action. This

case includes the following principal issue: Does the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) impose a duty on an employer to take reasonable steps to prevent hostile environment sexual harassment of an employee by a client with whom the employee is required to interact?

#03-18 In re Adrian R., S111812. (H022999; 103 Cal.App.4th 1046; Santa Cruz County Superior Court; JU-18829.) Petition for review after the Court of Appeal affirmed orders in a wardship proceeding. The Court ordered briefing deferred pending decision in Robert L. v. Superior Court, S100359 (#01-144), and In re Walter S., S099120 (#01-119). Robert L. presents the following issue: Does Penal Code section 186.22, subdivision (d), as amended by the Gang Violence and Juvenile Crime Prevention Initiative (Prop. 21, Primary Elec. (Mar. 7, 2000)), apply to any misdemeanor and any felony committed for the benefit of a criminal street gang, or only to those crimes expressly punishable either as a felony or as a misdemeanor? Walter S. includes the following issue: Does a requirement of registration as a gang offender (Pen. Code, § 186.30) constitute "punishment" for purposes of the cruel or unusual punishment provision of the state Constitution (Cal. Const., art. I, § 7)?

#03-19 People v. Walters, S112291. (B158090; 103 Cal.App.4th 936; Los Angeles County Superior Court; PA039922.) 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. Canty, S109537 (#02-167), which presents the following issue: Was defendant entitled to have the disposition of her conviction for transportation of a controlled substance set in accordance with the provisions of the Substance Abuse and Crime Prevention Act of 2000 (Prop. 36, General Elec. (Nov. 7, 2000)), or was that enactment inapplicable because defendant was also convicted of misdemeanor driving under the influence of a controlled substance? (See Pen. Code, § 1210.1, subd. (b)(2).)

DISPOSITIONS

#99-201 West Coast General Corp. v. City of Carlsbad, S083838, was transferred to the Court of Appeal for reconsideration in light of Haas v. County of San Bernardino (2002) 24 Cal.4th 1017.

The following cases were transferred to the Court of Appeal for reconsideration in light of People v. Garcia (2002) 28 Cal.4th 1166:

#02-50 People v. Lopez, S103607.

#02-59 People v. Ramirez, S104424.

#02-105 In re David S., S106284.

STATUS

#02-124 Huskinson & Brown v. Wolf, S107616. In this case, in which briefing was previously deferred pending decision in Chambers v. Kay, S098007 (#01-76), the court ordered briefing, limited to the following issue: In the absence of written client consent to an agreement between law firms to divide attorney fees (see Rules Prof. Conduct, rule 2-200), may a law firm that is not otherwise entitled to share in such fees nonetheless recover from the other law firm in quantum meruit for the reasonable value of services it rendered on behalf of the client?

#02-138 White v. Davis, S108099. The court ordered supplemental briefing on the following issue: Assuming, solely for purposes of this question, that the various provisions of state law relied upon by the public employee organizations do not provide a basis upon which the Controller may pay a state employee his or her full and regular salary during a budget impasse, and assuming further, again solely for purposes of this question, that the state could satisfy the requirements imposed by the federal Fair Labor Standards Act (FLSA) simply by timely paying an employee covered by that act who does not work overtime a sum based on the minimum wage rate for hours worked, does the Controller nonetheless have the authority to pay such a covered employee his or her full and regular salary during a budget impasse if the Controller determines (1) that in light of the logistics entailed in obtaining the data and making the adjustments that would be required to pay such employees only the minimum sum required by the FLSA, it would be administratively infeasible for the state to make such adjustments within the time necessary to ensure the prompt payment of wages required by the FLSA, or, alternatively, (2) that in view of the additional administrative expense that would be entailed in making the necessary adjustments in a timely fashion, it would be less costly for the state to comply with the requirements of the FLSA simply by paying the full and regular salaries of state employees covered by that legislation?