



NEWS RELEASE

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Summary of Cases Accepted During the Week of July 11, 2005

[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.]

#05-148 *Cacho v. Boudreau, S133378.* (D043396; 127 Cal.App.4th 707; San Diego County Superior Court; GIS007670.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Did the Mobilehome Residency Law (Civ. Code, § 798 et seq.) preempt a city ordinance that permitted the owner of a mobilehome park to pass through an increase in property taxes to tenants of the park? (2) If so, were statutory penalties for a willful violation of the Mobilehome Residency Law properly imposed where the city housing director had offered the opinion that such a pass-through of property taxes was lawful?

#05-149 *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd., S133331.* (B177986; 127 Cal.App.4th 615, mod. 127 Cal.App.4th 1704a.) Petition for review after the Court of Appeal affirmed decisions of the Board. This case presents the following issue: Does due process require that the prosecutorial and adjudicative functions of the Department of Alcoholic Beverage Control in liquor license disciplinary proceedings be entirely separate and shielded from one another?

#05-150 *People v. Neidenger, S133798.* (C042839; 127 Cal.App.4th 1120; Yolo County Superior Court; 02-1556.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case includes the following issue: For purposes of the offense of maliciously depriving another of lawful custody of a child (Pen. Code, § 278.5), is the defendant's "good faith and reasonable belief that

(over)

the child, if left with the other person, will suffer immediate bodily injury or emotional harm” (Pen. Code, § 278.7) an affirmative defense or does it negate the element of malice, or, in an appropriate case, can it act in both capacities, obligating the trial court to instruct separately as to each?

#05-151 *Pilimai v. Farmers Ins. Exchange Co.*, S133850. (C047483; 127 Cal.App.4th 1093; Sacramento County Superior Court; 03CS00611.) Petition for review after the Court of Appeal reversed a judgment confirming an arbitration award. This case presents the following issues: (1) Do the statutes providing for an award of costs and prejudgment interest to a prevailing party who obtains a judgment in excess of a statutory offer to compromise (Civ. Code, § 3291; Code Civ. Proc., § 998) apply to arbitration proceedings on claims for uninsured or underinsured motorist benefits? (2) If so, can the costs and prejudgment interest, together with the compensatory damages awarded, exceed the insured’s policy limits?

#05-152 *People v. Ghanem*, S134080. (B171636; unpublished opinion; Los Angeles County Superior Court; KA062341.) Petition for review after the Court of Appeal reversed in part, remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses.

#05-153 *People v. Hamilton*, S134448. (B173224; unpublished opinion; Los Angeles County Superior Court; PA044497.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

#05-154 *People v. Hinkle*, S134444. (A103315; unpublished opinion; San Mateo County Superior Court; SC051602A.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#05-155 *People v. Ivey*, S134612. (A105165; unpublished opinion; Lake County Superior Court; CR032957.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#05-156 *People v. Mendez*, S133470. (B171826; unpublished opinion; Los Angeles County Superior Court; VA 064699.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#05-157 *People v. Morris*, S133194. (A103410, A108912; unpublished opinion; Lake County Superior Court; CR3255, CR5489.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#05-158 *People v. Rosas*, S134557. (B170749; unpublished opinion; Los Angeles County Superior Court; VA066423.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

#05-159 *People v. Salinas*, S133602. (B167804; unpublished opinion; Los Angeles County Superior Court; BA213459.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

#05-160 *People v. Withers*, S134609. (B172130; unpublished opinion; Los Angeles County Superior Court; BA218706.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

The court ordered briefing in *Ghanem*, *Hamilton*, *Hinkle*, *Ivey*, *Mendez*, *Morris*, *Rosas*, *Salinas*, and *Withers* deferred pending finality of *People v. Black* (2005) 35 Cal.4th 1238 regarding the effect of *Blakely v. Washington* (2004) 542 U.S. ___, 124 S.Ct. 2531, and *United States v. Booker* (2005) 543 U.S. ___, 125 S.Ct. 738, on California law.

#05-161 *People v. Smith*, S133593. (B175297; 127 Cal.App.4th 896; Los Angeles County Superior Court; ZM005810.) Petition for review after the Court of Appeal dismissed an appeal from an order of commitment as a mentally disordered offender. The court ordered briefing deferred pending decision in *Conservatorship of Ben C.*, S126664 (#04-97), which presents the following issue: Is the Court of Appeal required to conduct an independent review of the record in an appeal from a conservatorship order if appointed counsel for the conservatee files a brief stating that counsel has found no reasonably meritorious issues? (See *Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436; *In re Sade C.* (1996) 13 Cal.4th 952.)

DISPOSITIONS

Review in the following cases was dismissed in light of *Jevne v. Superior Court* (2005) 35 Cal.4th 935:

#04-53 *Winberg v. Salmon Smith Barney*, S123583.

#04-164 *Marcus v. Trautman, Wasserman & Co.*, S128934.
Review in the following case was dismissed:

#04-116 *In re Marriage of Rosendale*, S126908

STATUS

People v. Huggins, S037006. The court requested the parties to file supplemental briefs in this automatic appeal addressing the effect, if any, of *Miller-El v. Dretke* (2005) 545 U.S. ___, 125 S.Ct. 2317, on the issues in the case.

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