



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF SEPTEMBER 13, 2004

[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.]

#04-97 *Conservatorship of Ben C.*, S126664. (D042702; 119 Cal.App.4th 710; San Diego County Superior Court; MH93262.) Petition for review after the Court of Appeal affirmed the judgment in a conservatorship proceeding. This case 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.)

#04-98 *Le Francois v. Goel*, S126630. (H025213; 119 Cal.App.4th 425; Santa Clara County Superior Court; CV787632.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does a trial court have the inherent power to rule on a second motion for summary judgment or, in the alternative, for summary adjudication, even though the second motion did not meet the requirements of Code of Civil Procedure section 1008, subdivision (a), relating to applications for reconsideration, or the requirements of Code of Civil Procedure section 437c, subdivision (f)(2), relating to motions for summary judgment following an unsuccessful motion for summary adjudication?

(over)

#04-99 *Priebe v. Nelson*, S126412. (A101630; 119 Cal.App.4th 235; Humboldt County Superior Court; DR010121.) Petition for review after the Court of Appeal affirmed an order granting a new trial in a civil action. This case includes the following issue: Does the doctrine of primary assumption of the risk, as embodied in the so-called “veterinarian’s rule,” preclude a kennel worker who is bitten by a dog from suing the dog’s owner under Civil Code section 3342?

#04-100 *People v. Warner*, S126233. (C038245; 119 Cal.App.4th 331; Sacramento County Superior Court; 99F08985.) 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 defendant’s prior conviction of sexual assault of a child under Nebraska Revised Statutes, section 28-320.01 qualify as a serious felony for sentencing purposes in California although the Nebraska statute does not include all of the elements of any felony under California law amounting to a “lewd and lascivious act on a child under the age of 14 years” within the meaning of Penal Code section 1192.7, subdivision (c)(6)?

#04-101 *People v. Martinez*, S126653. (G032245; 120 Cal.App.4th 64; Orange County Superior Court; 02CF0914.) 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. Briceno*, S117641 (#03-121), which presents the following issue: Does a felony, which is not otherwise identified in Penal Code section 1192.7, subdivision (c), as a serious felony, nonetheless come within that section (and thus qualify as a strike under the three strikes law) whenever there is a finding that the felony was committed for the benefit of criminal street gang (see § 186.22, subd. (b)), because the offense is then “any felony offense, which would also constitute a felony violation of Section 186.22” within the meaning of section 1192.7, subdivision (c)(28), or does the quoted language of section 1192.7, subdivision (c)(28), refer only to a gang-related offense that is defined as a substantive felony offense by section 186.22, subdivision (a)?

#04-102 *People v. Poslof*, S126183. (E033503; 119 Cal.App.4th 215; San Bernardino County Superior Court; FMB 5416.) Petition for review after the Court of

Appeal affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending finality of the decision in *People v. Barker* (Aug. 30, 2004, S115438) __ Cal.4th __ [http://www.courtinfo.ca.gov/opinions/documents/S115438.PDF], which concerns whether a defendant charged with the felony offense of “willfully” failing to register as a sex offender (Pen. Code, § 290) can raise as a defense the claim that he or she unintentionally forgot the obligation to register.

#04-103 *People v. Santana*, S126119. (B167415; unpublished opinion; Los Angeles County Superior Court; TA063973.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Lopez*, S119294 (#03-136), which presents the following issue: Is a defendant who is convicted of first degree murder with a finding that the crime was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22 subject to an enhancement of 10 years under section 186.22, subdivision (b)(1)(C) or instead to a minimum parole eligibility term of 15 years under section 186.22, subdivision (b)(5), which applies where the defendant is convicted of “a felony punishable by imprisonment in the state prison for life”?

#04-104 *People v. Williams*, S126806. (E033166; 120 Cal.App.4th 209; San Bernardino County Superior Court; FSB30957.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Howard*, S108353 (#02-151), which presents the following issues: (1) Is the offense of driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2) a felony inherently dangerous to human life for purposes of the second degree felony-murder rule? (2) Is the offense of proximately causing death or serious bodily injury by willful flight from a pursuing police officer (Veh. Code, § 2800.3) a more specific offense precluding application of the second degree felony-murder rule where death occurs during the offense of driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2)?

DISPOSITIONS

#03-97 *People v. Burroughs*, S116659, was transferred to the Court of Appeal for reconsideration in light of *People v. Arnold* (2004) 33 Cal.4th 294 and *People v. Jeffrey* (2004) 33 Cal.4th 312.

#04-39 *Henley v. Philip Morris, Inc.*, S123023, was dismissed.
People v. Johns, S044834, an automatic appeal, was abated upon the death of the appellant.

STATUS

#03-103 *People ex rel. Department of Conservation v. El Dorado County*, S116870. The court directed the parties to file supplemental briefs addressing the following question: What standard of review should a reviewing court apply in determining whether an action resulted in the enforcement of an important right affecting the public interest so as to justify an award of attorneys' fees under Code of Civil Procedure section 1021.5?

#04-95 *Seibel v. Mittlesteadt*, S125590. The court limited review to the following issue: Where a post-judgment settlement agreement (1) revises a damages award, (2) provides for the parties to withdraw their appeals but does not provide for an amended judgment, and (3) expressly preserves the defendant's right to bring a malicious prosecution action, does the settlement agreement preclude a finding that the initial action was "favorably terminated" (in defendant's favor) for purposes of the defendant's subsequent malicious prosecution action?

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