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# NEWS RELEASE

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## Summary of Cases Accepted During the Week of October 27, 2008

*[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.]*

**#08-158 *In re Carter*, S096438.** Original proceeding. In this case, which is related to the automatic appeal in *People v. Carter* (2003) 30 Cal.4th 1166, the court issued an order to show cause limited to claims why petitioner is not entitled to relief on the grounds that trial counsel was ineffective (1) in failing to investigate and present evidence of petitioner's alleged brain damage and life and family history, and (2) in hiring, preparing, and examining mental health experts.

**#08-159 *People v. Diaz*, S166600.** (B203034; 165 Cal.App.4th 732; Ventura County Superior Court; 2007015733.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Was defendant's cell phone an item "immediately associated with the person of the arrestee" within the meaning of *United States v. Edwards* (1974) 415 U.S. 800, and thus subject to search incident to his arrest? (2) Was the warrantless search of the cell phone an hour and a half after the arrest, while defendant was being interrogated, invalid under *United States v. Chadwick* (1977) 433 U.S. 1? The court ordered briefing deferred pending the decision of the United States Supreme Court in *Arizona v. Gant*, No. 07-542, cert. granted Feb. 25, 2008, \_\_\_ U.S. \_\_\_ [128 S.Ct. 1443, 170 L.Ed.2d 274], or further order of this court.

**#08-160 *People v. Sutton*, S166402.** (B195337; 165 Cal.App.4th 646; Los Angeles County Superior Court; BA304502.) Petition for review after the Court of Appeal remanded for resentencing in part, and otherwise affirmed judgments of conviction of criminal offenses. The

court limited review to the following issue: Were defendants' statutory speedy trial rights violated when defense counsel announced ready but that he might be in another trial, and the court continued trial for six days over defendants' personal objection, and if so, was the error prejudicial?

**#08-161 *Gonzalez v. Superior Court*, S167197.** (G039755; 166 Cal.App.4th 922; Orange County Superior Court; 05CM05466.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court ordered briefing deferred pending decision in *People v. Wagner*, S156537 (#07-447), which includes the following issue: Does Penal Code section 1381, which provides that a state prisoner may demand a trial or sentencing within 90 days of a written demand when "any other indictment, information, complaint, or any criminal proceeding wherein the defendant remains to be sentenced" is currently pending, apply to a pending probation revocation proceeding, or is Penal Code section 1203.2a, which provides for sentencing in absentia for probationers incarcerated on an unrelated offense, the exclusive means for an incarcerated probationer to receive concurrent sentencing?

**#08-162 *People v. Phomphakdy*, S166565.** (C056881; 165 Cal.App.4th 857; Sacramento County Superior Court; 06F09344.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Kelly*, S164830 (#08-129), which presents the following issues: (1) Does Health & Safety Code section 11362.77 violate the California Constitution by amending the Compassionate Use Act without voter approval? (2) Were there alternative remedies to striking section 11362.77 in its entirety?

## **DISPOSITIONS**

The following cases were transferred for reconsideration in light of *In re Lawrence* (2008) 44 Cal.4th 1181 and *In re Shaputis* (2008) 44 Cal.4th 1241:

**#07-431 *In re Cooper*, S155130**  
**#07-461 *In re Jacobson*, S156416**  
**#08-38 *In re Dannenberg*, S158880**  
**#08-42 *In re Montgomery*, S159141**  
**#08-47 *In re Staben*, S159042**  
**#08-86 *In re Rozzo*, S161469**  
**#08-93 *In re Avalos*, S162509**  
**#08-94 *In re Parker*, S162423**

***#08-110 In re Burdan, S163311***  
***#08-111 In re Singler, 163264***  
***#08-120 In re Viray, S163774***  
***#08-126 In re Huynh, S163819***  
***#08-127 In re Vasquez, S163931***  
***#08-131 In re Armstrong, S164269***  
***#08-147 In re Smith, S165264***

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