



# NEWS

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(415) 865-7740

Lynn Holton, Public Information Officer

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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF DECEMBER 20, 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.]

#04-159 *People v. Giles*, S129852. (B166937; 123 Cal.App.4th 475, mod. 123 Cal.App.4th 1501c; Los Angeles County Superior Court; TA066706.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issues: (1) Did defendant forfeit his Confrontation Clause claim regarding admission of the victim's prior statements concerning an incident of domestic violence (see Evid. Code, § 1370) under the doctrine of "forfeiture by wrongdoing" because defendant killed the victim, thus rendering her unavailable to testify at trial? (2) Does the "forfeiture by wrongdoing" doctrine apply where the alleged "wrongdoing" is the same as the offense for which defendant is on trial?

#04-160 *City of Goleta v. Superior Court*, S129125. (B175054; 122 Cal.App.4th 1182; Santa Barbara County Superior Court; SBSC 1111147.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) Must a newly incorporated city approve a final subdivision map if the county previously approved a tentative map? (2) Is a newly incorporated city estopped from disapproving a tentative map previously approved by the county if the city adopted the county ordinance requiring approval of the final map, exempted the project from a development moratorium, and worked with the developer to clear conditions?

(over)

#04-161 *Adams v. Lewis*, S129187. (G031197; unpublished opinion; Orange County Superior Court; 01CC05561.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court ordered briefing deferred pending decision in *Priebe v. Nelson*, S126412 (#04-99), which 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?

#04-162 *People v. Butler*, S129060. (D041819; unpublished opinion; San Diego County Superior Court; SCN128327.) Petition for review after the Court of Appeal reversed in part, remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Black*, S126182 (#04-83) and *People v. Towne*, S125677 (#04-75), which include the following issues: (1) Does *Blakely v. Washington* (2004) 542 U.S. \_\_\_, 124 S.Ct. 2531, preclude a trial court from making findings on aggravating factors in support of an upper term sentence? (2) What effect does *Blakely* have on a trial court’s imposition of consecutive sentences?

#04-163 *People v. Jiles*, S128638. (E034087; 122 Cal.App.4th 504; San Bernardino County Superior Court; RCR 15955.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Giles*, S129852 (#04-159), which presents the following issues: (1) Did defendant forfeit his Confrontation Clause claim regarding admission of the victim’s prior statements concerning an incident of domestic violence (see Evid. Code, § 1370) under the doctrine of “forfeiture by wrongdoing” because defendant killed the victim, thus rendering her unavailable to testify at trial? (2) Does the “forfeiture by wrongdoing” doctrine apply where the alleged “wrongdoing” is the same as the offense for which defendant is on trial?

#04-164 *Marcus v. Trautman, Wasserman & Co.*, S128934. (A104817, A106306; unpublished opinion; San Francisco County Superior Court; CGC-03-421042, CGC-03-424541.) Petition for review after the Court of Appeal reversed an order denying a motion to compel arbitration. The court ordered briefing deferred pending

decision in *Jevne v. Superior Court*, S121532 (#04-23), which includes the following issue: Are the California Ethical Standards for Neutral Arbitrators (Code Civ. Proc., § 1281.85; Cal. Rules of Court, appen. Div. VI [Ethics Standards for Neutral Arbitrators in Contractual Arbitration]) preempted by the federal Securities Exchange Act of 1934 and rules promulgated under that Act by the National Association of Securities Dealers?

## **STATUS**

#02-203 *In re Reeves*, S110887. The court requested the parties to file supplemental letter briefs expressing their views on the following possible interpretation of Penal Code section 2933.1, subdivision (a): The statute limits to 15 percent the rate at which a prisoner convicted of and actually serving a term for a violent offense may earn worktime credit, even though such a prisoner is also serving a concurrent term for a nonviolent offense; however, once such a prisoner has completed the term for the violent offense and remains in custody only to serve the remainder of the concurrent term for the nonviolent offense, such a prisoner becomes prospectively eligible to earn worktime credit at a rate not limited by the statute.

#03-46 *Marine Forests Society v. California Coastal Com.*, S113466. The court requested the parties to file supplemental briefs addressing the following issue: What effect, if any, does the doctrine that “[b]ecause relief by injunction operates in the future, appeals of injunctions are governed by the law in effect at the time the appellate court gives its decision” (6 Witkin, Cal. Procedure (4th ed. 1997) Provisional Remedies, § 399, pp. 324-325 & cases cited; see also 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 332, p. 373 & cases cited) have on the resolution of the issues in this case?

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