



NEWS RELEASE

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Summary of Cases Accepted During the Week of July 28, 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.]

#08-121 *People v. Concha*, S163811. (B195197; 160 Cal.App.4th 1441, mod. 161 Cal.App.4th 988a; Los Angeles County Superior Court; BA287017.) Petition for review after the Court of Appeal modified and affirmed judgments of conviction of criminal offenses. The court limited review to the following issue: Did the trial court err in allowing the jury to return verdicts of first degree murder when the case was tried on a theory of provocative act murder? Compare *People v. Concha* (2008) 160 Cal.App.4th 1441 at pages 1457 through 1461, and pages 1463 through 1465.

#08-122 *In re Gay*, S130263. Original proceeding. In this case, which is related to the automatic appeal in *People v. Gay* (2008) 42 Cal.4th 1195, the court issued an order to show cause limited to claims why petitioner is not entitled to relief (1) on the ground of trial counsel's conflict of interest that prejudicially affected his representation at the guilt phase of petitioner's trial, and (2) on the ground of trial counsel's failure to adequately investigate and present evidence at the guilt phase tending to show that petitioner did not participate in the murder of Officer Verna.

#08-123 *People v. Jacinto*, S164011. (A117076; 162 Cal.App.4th 373; Sonoma County Superior Court; SCR487837.) Petition for review after the Court of Appeal reversed an order dismissing an information. This case presents the following issue: Was defendant denied his constitutional rights to compulsory process and due process when the

sheriff's department released a subpoenaed defense witness to federal immigration authorities for deportation prior to defendant's trial?

#08-124 *Simpson Strong-Tie Co. v. Gore, S164174.* (H030444; 162 Cal.App.4th 737, mod. 162 Cal.App.4th 1542e; Santa Clara County Superior Court; CV0576666.) Petition for review after the Court of Appeal affirmed an order granting a special motion to strike in a civil action. The court limited review to the following issues: (1) Which party bears the burden of persuasion with respect to the applicability of the anti-SLAPP exemptions set forth in Code of Civil Procedure section 425.17, subdivision (c)? (2) Does Code of Civil Procedure section 425.17, subdivision (c), exempt from anti-SLAPP protection an advertisement by a lawyer soliciting clients for a contemplated lawsuit?

#08-125 *County of Contra Costa v. Public Employees Local Union One, S164640.* (A115095, A115118; 163 Cal.App.4th 139; Contra Costa County Superior Court; MSC06-01228, MSC06-01227.) Petition for review after the Court of Appeal affirmed the issuance of temporary restraining orders in two civil actions. The court ordered briefing deferred pending decision in *City of San Jose v. Operating Engineers Local Union No. 3, S162647* (#08-96), which presents the following issue: Does the Public Employment Relations Board have the exclusive initial jurisdiction to determine whether certain "essential" public employees covered by Meyers-Milias-Brown Act (Gov. Code, §§ 3500 3511) have the right to strike, or does that jurisdiction rest with the superior court?

#08-126 *In re Huynh, S163819.* (H031395; nonpublished opinion; Santa Clara County Superior Court; 127919.) Petition for review after the Court of Appeal affirmed an order granting a petition for writ of habeas corpus.

#08-127 *In re Vasquez, S163931.* (D051015; nonpublished opinion; San Diego County Superior Court; CR126443.) Petition for review after the Court of Appeal granted a petition for writ of habeas corpus.

The court ordered briefing in *Huynh* and *Vasquez* deferred pending decision in *In re Lawrence, S154018* (#07-399), *In re Shaputis, S155872* (#07-428), and *In re Jacobson, S156416* (#07-461), which include the following issue: In making parole suitability determinations for life prisoners, to what extent should the Board of Parole Hearings, under Penal Code section 3041, and the Governor, under Article V, section 8(b) of the California Constitution and Penal Code section 3041.2, consider the prisoner's current dangerousness, and at what point, if ever, is the gravity of the commitment offense and prior criminality insufficient to deny parole when the prisoner otherwise appears rehabilitated?

STATUS

#08-107 *People v. McKee*, S162823. The court ordered the issues to be briefed and argued limited to the following issues: Does the amended Sexually Violent Predator Act violate appellant's constitutional rights to due process of law, is it an illegal ex post facto law, and does it violate equal protection?

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