



Supreme Court of California  
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**NEWS RELEASE**

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**FOR IMMEDIATE RELEASE**

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## Summary of Cases Accepted and Related Actions During Week of November 7, 2016

*[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.]*

**#16-382 *Ace American Ins. Co. v. Fireman's Fund Ins. Co.*, S237175.** (B264861; 2 Cal.App.5th 159; Los Angeles County Superior Court; BC559203.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: When a primary insurer unreasonably refuses to settle an underlying action against its insured within policy limits and the underlying action later settles for the full amount of the primary policy as well as the full amount of an excess insurer's policy, can the excess insurer maintain an equitable subrogation action against the primary insurer to recover the amount it expended in settlement?

**#16-383 *People v. Adelman*, S237602.** (E064099; 2 Cal.App.5th 1188; Riverside County Superior Court; SWF1208202.) Petition for review after the Court of Appeal affirmed an order granting a petition to recall sentence. This case presents the following issue: If a case is transferred from one county to another for purposes of probation (Pen. Code, § 1203.9), must a Proposition 47 petition to recall sentence be filed in the court that entered the judgment of conviction or in the superior court of the receiving county?

**#16-384 *In re C.B.*, S237801.** (A146277; 2 Cal.App.5th 1112; Contra Costa County Superior Court; J1301073.) Petition for review after the Court of Appeal affirmed an order granting a petition to recall sentence. This case presents the following issue: Did the trial court err by refusing to order the expungement of a juvenile's DNA record after his qualifying felony conviction was reduced to a misdemeanor under Proposition 47 (Pen. Code § 1170.18)?

**#16-385 *Hayward v. Superior Court*, S237174.** (A144823; 2 Cal.App.5th 10; Napa County Superior Court; 2655470.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case includes the following issues:

(1) Does a party waive disqualification of a temporary judge when counsel is aware of a potential conflict and proceeds with the temporary judge presiding? (See *People v. Johnson* (2015) 60 Cal.4th 966.) (2) May an appellate court set aside a settlement agreement on the ground that a disqualified judge's rulings "tainted" the settlement as a matter of law when factual questions exist concerning the extent to which those rulings influenced a party's decision to settle?

**#16-386 *People v. Aguilar*, S237559.** (F070751, F071804; nonpublished opinion; Kern County Superior Court; BF156613A, BF158754A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#16-387 *People v. Hernandez*, S237560.** (B263843; nonpublished opinion; Los Angeles County Superior Court; MA064402.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses.

The court ordered briefing deferred in *Aguilar* and *Hernandez* pending decision in *People v. Valenzuela*, S232900 (#16-97), which presents the following issue: Is a defendant eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court has reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?

**#16-388 *People v. Curry*, S237037.** (A145922; 1 Cal.App.5th 1073; Alameda County Superior Court; C171042.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Adelman*, S237602 (#16-383), which presents the following issue: If a case is transferred from one county to another for purposes of probation (Pen. Code, § 1203.9), must a Proposition 47 petition to recall sentence be filed in the court that entered the judgment of conviction or in the superior court of the receiving county?

**#16-389 *People v. Derritt*, S237538.** (E064152; nonpublished opinion; San Bernardino County Superior Court; FWV1001109). Petition for review after the Court of Appeal denied a post-judgment motion to modify sentence. The court ordered briefing deferred pending decision in *People v. Buycks*, S231765 (#16-19), which presents the following issue: Was defendant eligible for resentencing on the penalty enhancement for committing a new felony while released on bail on a drug offense even though the superior court had reclassified the conviction for the drug offense as a misdemeanor under the provisions of Proposition 47?

**#16-390 *People v. Hubert*, S237587.** (C080123; nonpublished opinion; Yolo County Superior Court; CRF-2012-1622-2.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Page*, S230793 (#16-28), which presents the

following issue: Does Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply to the offense of unlawful taking or driving a vehicle (Veh. Code, § 10851), because it is a lesser included offense of Penal Code section 487, subdivision (d), and that offense is eligible for resentencing to a misdemeanor under Penal Code sections 490.2 and 1170.18?

**#16-391 *People v. Medina*, S237494.** (E064325; nonpublished opinion; San Bernardino County Superior Court; FWV1403928.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Romanowski*, S231405 (#16-24), which present the following issue: Does Proposition 47 (“the Safe Neighborhoods and Schools Act”), which reclassifies as a misdemeanor any grand theft involving property valued at \$950 or less (Pen. Code, § 490.2), apply to theft of access card information in violation of Penal Code section 484e, subdivision (d)?

**#16-392 *People v. Rodriguez*, S237417.** (B265798; nonpublished opinion; Los Angeles County Superior Court; BA143618.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Chaney*, S223676 (#15-13), and *People v. Valencia*, S223825 (#15-14), which present the following issue: Does the definition of “unreasonable risk of danger to public safety” (Pen. Code, § 1170.18, subd. (c)) under Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply on retroactivity or other grounds to resentencing under the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126)?

**#16-393 *In re T.M.*, S237775.** (A146216; nonpublished opinion; Contra Costa County Superior Court; J1400711.) Petition for review after the Court of Appeal affirmed an order granting a petition to recall sentence. The court ordered briefing deferred pending decision in *In re C.B.*, S237801 (#16-384), which presents the following issue: Did the trial court err by refusing to order the expungement of juvenile’s DNA record after his qualifying felony conviction was reduced to a misdemeanor under Proposition 47 (Pen. Code § 1170.18)?

#### **DISPOSITION**

Review in the following case was dismissed at the request of the petitioner in light of the dismissal of the underlying juvenile wardship proceeding:

**#16-319 *In re George F.*, S236397.**

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*The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.*