



Supreme Court of California
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NEWS RELEASE

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FOR IMMEDIATE RELEASE

November 15, 2019

Summary of Cases Accepted and Related Actions During Week of November 11, 2019

[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.]

#19-170 *People v. Brown*, S257631. (C085998; nonpublished opinion; Shasta County Superior Court; 15F2440.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Did the trial court err in instructing the jury on the elements of first degree murder by poison (see *People v. Steger* (1976) 16 Cal.3d 539, 544–546; *People v. Mattison* (1971) 4 Cal.3d 177, 183–184, 186)? (2) Was any such instructional error prejudicial?

#19-171 *People v. Kopp*, S257844. (D072464; 38 Cal.App.5th 47; San Diego County Superior Court; SCN327213.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Must a court consider a defendant’s ability to pay before imposing or executing fines, fees, and assessments? (2) If so, which party bears the burden of proof regarding the defendant’s inability to pay?

#19-172 *People v. Lopez*, S258175. (B271516; 38 Cal.App.5th 1087; Los Angeles County Superior Court; BA404685.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Does Senate Bill No. 1437 (Stats. 2018, ch. 1015) apply to attempted murder liability under the natural and probable consequences doctrine? (2) In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a natural and probable consequence of the target offense? In other words, should *People v. Favor* (2012) 54

Cal.4th 868 be reconsidered in light of *Alleyne v. United States* (2013) 50 U.S. 99 and *People v. Chiu* (2014) 59 Cal.4th 155?

#19-173 *Sheen v. Wells Fargo Bank, N.A., S258019.* (B289003; 38 Cal.App.5th 346; Los Angeles County Superior Court; BC631510.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does a mortgage servicer owe a borrower a duty of care to refrain from making material misrepresentations about the status of a foreclosure sale following the borrower's submission of, and the servicer's agreement to review, an application to modify a mortgage loan?

#19-174 *People v. Tirado, S257658.* (F076836; 38 Cal.App.5th 637; Kern County Superior Court; BF163811A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Can the trial court impose an enhancement under Penal Code section 12022.53, subdivision (b), for personal use of a firearm, or under section 12022.53, subdivision (c), for personal and intentional discharge of a firearm, as part of its authority under section 1385 and subdivision (h) of section 12022.53 to strike an enhancement under subdivision (d) for personal and intentional discharge of a firearm resulting in death or great bodily injury, even if the lesser enhancements were not charged in the information or indictment and were not submitted to the jury?

#19-175 *People v. Johnson, S257996.* (F075561; nonpublished opinion; Fresno County Superior Court; F12901158.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

#19-176 *People v. Morehouse, S257908.* (F076241; nonpublished opinion; Kern County Superior Court; BF163986A.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses.

#19-177 *People v. Munoz, S257678.* (G054141; nonpublished opinion; Orange County Superior Court; 14WF0136.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

#19-178 *People v. Murillo, S258250.* (A153536; nonpublished opinion; San Francisco County Superior Court; SCN227380.) Petition for review after the Court of Appeal conditionally reversed a judgment of conviction of criminal offenses.

#19-179 *People v. Ruth, S258366.* (B289124; nonpublished opinion; Los Angeles County Superior Court; NA105943.) Petition for review after the Court of Appeal conditionally reversed a judgment of conviction of criminal offenses.

#19-180 *People v. Thompson, S257843.* (A151625; nonpublished opinion; Contra Costa County Superior Court; 51612092.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Johnson, Morehouse, Munoz, Murillo, Ruth, and Thompson* deferred pending decision in *People v. Frahs, S252220* (#18-175), which presents the following issues: (1) Does Penal Code section 1001.36 apply retroactively to all cases in which the judgment is not yet final? (2) Did the Court of Appeal err by remanding for a determination of defendant's eligibility under Penal Code section 1001.36?

#19-181 *People v. Kozee-Stoltz, S257558.* (D069073; nonpublished opinion; Riverside County Superior Court; SWF1201090.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Lopez, S258175* (#19-172), which presents the following issues: (1) Does Senate Bill No. 1437 (Stats. 2018, ch. 1015) apply to attempted murder liability under the natural and probable consequences doctrine? (2) In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a natural and probable consequence of the target offense? In other words, should *People v. Favor* (2012) 54 Cal.4th 868 be reconsidered in light of *Alleyne v. United States* (2013) 50 U.S. 99 and *People v. Chiu* (2014) 59 Cal.4th 155?

#19-182 *Quidel Corp. v. Superior Court, S258283.* (D075217; 39 Cal.App.5th 530; San Diego County Superior Court; 37-2017-00044865-CU-AT-CTL.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court ordered briefing deferred pending decision in *Ixchel Pharma v. Biogen, S256927* (#19-142), which presents the following issues: (1) Does section 16600 of the California Business and Professions Code void a contract by which a business is restrained from engaging in a lawful trade or business with another business? (2) Is a plaintiff required to plead an independently wrongful act in order to state a claim for intentional interference with a contract that can be terminated by a party at any time, or does that requirement apply only to at-will employment contracts?

DISPOSITION

Review in the following case, which was granted and held for *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, was dismissed:

#19-89 <i>Zakaryan v. The Men's Warehouse, Inc., S255610.</i>	(B289192; 33 Cal.App.5th 659; Los Angeles County Superior Court; BC647541)
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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.