CRIMINAL COURTS BAR ASSOCIATION
NEWSLETTER
PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION APRIL, 2015

The Criminal Courts Bar Association
cordially invites you to attend the

62nd Annual Awards Dinner

Installation of Incoming President

Christa M. Hohmann

As we install our 62nd President, we pay tribute to the 61 Past Presidents

SATURDAY, APRIL 11, 2015

Millennium Biltmore Hotel
506 South Grand Avenue • Los Angeles, CA 90071

Cocktails - Tiffany Room at 6:00 p.m.
Dinner - Crystal Ballroom at 7:30 p.m.
$170 per person • $1700 per table • Black Tie Optional

For more information contact **Christa M. Hohmann** at
Email: pcac@pcaclaw.org • Phone: 310-207-4014

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2015 Criminal Courts Bar Association Award Winners

The Criminal Courts Bar Association is pleased to announce that the 62nd Annual Awards Dinner will be held on Saturday, April 11, 2015, at the Millennium Biltmore Hotel. For further information about the Millennium Biltmore Hotel go to www.millenniumhotels.com.

The Criminal Courts Bar Association is pleased to announce the award winners for 2015:

JERRY GIESLER MEMORIAL AWARD
Victor Sherman
Michael D. Nasatir
Vicki I. Podberesky

JOSEPH M. ROSEN JUSTICE AWARD
Ezekiel P. Perlo

JOURNALISM EXCELLENCE AWARD
Presiding Justice Arthur Gilbert

ROBERT M. TAKASUGI JUDICIAL EXCELLENCE AWARD
Commissioner Mark Zuckman

MORT HERBERT SERVICE AWARD
Richard G. Hirsch

JOHNNIE COCHRAN AWARD
Honorable Michael A. Tynan

PRESIDENT'S AWARD
Michael S. Romano
Director, Three Strikes Project / Stanford Law School
Mark Faucette
Director of Community Relations / Amity Foundation

CCBA Newsletter Case Digest

By Gary Mandinach

In re D.D. (2015) __ Cal.App.4th __, reported on February 24, 2015, in 2015 Los Angeles Daily Journal 2074, the First Appellate District, Division 5 disagreed with its counterparts from Division 1 and its decision in In re M.G. (2014) 228 Cal.App.4th 1268, and held that a juvenile is not a "person not in lawful possession of the firearm or, within a class of persons prohibited from possessing or acquiring a firearm" within the meaning of section 25400, subdivison (c)(4) simply because he or she is a minor prohibited from possessing a concealable firearm pursuant to section 29610. The Juvenile court erred in holding that the minor committed mandatory felonies, rather than "wobblers," by carrying a loaded firearm in public in violation of section 25850, subdivision (a) and by carrying a concealed firearm in violation of section 25400, subdivision (a)(2).

People v. Soria (2015) _ Cal.App.4th _reported on February 25, 2015, in 2015 Los Angeles Daily Journal 2106, the Third Appellate District held that where the defendant was convicted of rape of an intoxicated person (§ 261, subd. (a)(3)) and rape of an unconscious person (§ 261 subd. (a)(4)), the trial court should have consolidated the two offenses into a single count reflecting rape under both subdivisions (a)(3) and (a)(4) of section 261 rather than vacating one of the convictions.

People v. Johnson (2015) __ Cal.4th __, reported on February 27, 2015, in 2015 Los Angeles Daily Journal 2227, the California Supreme Court held that personal, political, and professional ties between the prosecutor and the judge did not require recusal where the relevant facts were disclosed, and defense counsel stated that neither he nor defendant believed the judge to be biased. Because the decision not to seek recusal is inherently tactical, a defense claim that this constituted ineffective assistance will not generally be cognizable on direct appeal. The majority of the court found that the conviction for carjacking and the special-circumstance finding that the defendant committed the murder during a carjacking were supported by substantial evidence where the defendant crashed his car and then walked five miles to victim's house, could have either seen victim's car or assumed the victim had a car because she had a garage, killed her, and then stole her car. It could be inferred that the defendant formed intent to steal the car before he committed the murder. The dissent clearly indicates that the conviction for carjacking and the special circumstance should be reversed since the car was not within the victim's "immediate presence," given the fact that she was in the house, and the car was in the garage when the defendant killed the victim. The dissent finds that it is unacceptable to blur the line in the phrase "immediate presence," for carjacking and robbery, and it makes every robbery of a car potentially chargeable as a carjacking and subject to the higher penalties. There should be a contemporaneous use of the vehicle for a carjacking.

People v. Davis (2015) __ Cal.App.4th __, reported on March 2, 2015, in 2015 Los Angeles Daily Journal 2291, the First Appellate District, Division 2 held that when a trial court declines to grant an inmate's petition for resentencing under the Three Strikes Reform Act on the ground that this would pose an unreasonable risk of danger to public safety, (§ 1170.126, subdivision (f)), that decision should be upheld on appeal unless the reviewing court is able to conclude that the decision qualifies as an abuse of the considerable discretion granted by the act. The trial court did not abuse its discretion in making an "unreasonable risk" finding based on the defendant's continued denial that he committed the third-strike offense, his hostile attitude toward authority and society, and his lack of post-release plans. Additionally the more restrictive definition of "unreasonable risk" in Proposition 47 under section 1170.18, subdivision (c), did not narrow the definition of the term for purposes of the Three Strikes Reform Act.

CCBA Newsletter Case Digest

By Gary Mandinach

People v. Rebulloza (2015) _ Cal.App.4th _, reported on March 2, 2015, in 2015 Los Angeles Daily Journal 2355, the Sixth Appellate District held that a probation condition requiring the defendant, who was convicted of indecent exposure and ordered to complete a sex offender management program, pursuant to section 1202.067, subdivision (b)(3) and (b)(4), "waive any privilege against self-incrimination and participate in polygraph examinations which shall be part of the sex offender management program" was invalid under the Fifth Amendment, which generally bars a compelled waiver of the right to refuse to incriminate oneself. (See Minnesota v. Murphy (1984) 465 U.S. 420.) Lefkowitz v. Cunningham (1977) 431 U.S. 801 prohibits a compelled waiver of the Fifth Amendment. On the other hand, a probation requirement that defendant "waive any psychotherapist/patient privilege to enable communication between the sex offender management professional and the probation officer," construed as requiring waiver only insofar as necessary to enable such communication, was not so overbroad as to violate the constitutional right to privacy.

In re Taylor (2015) __ Cal.4th __, reported on March 3, 2015, in 2015 Los Angeles Daily Journal 2451, the California Supreme Court held that sex offender residency restrictions set forth in Proposition 83, also known as Jessica's Law, are unconstitutional as applied across the board to registered sex offenders on parole in San Diego County. Parolees made a sufficient showing that blanket enforcement of the residency restrictions severely restricted their ability to find housing in compliance with the statute, greatly increased the incidence of homelessness among them, and hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. California Department of Corrections and Rehabilitation has statutory authority, independent of Proposition 83, to impose residency restrictions on parolees who are sex offenders as long as they are based on, and supported by, the particularized circumstances of each individual parolee.

People v. Mosely (2015) _ Cal.4th _, reported on March 3, 2015, in 2015 Los Angeles Daily Journal 2432, the California Supreme Court held that a discretionary order, based on findings made by a judge and not by a jury, that a convicted criminal defendant register as a sex offender, thus subjecting the defendant to registered sex offender residency restrictions imposed by Proposition 83, under section 3003.5, subdivision (b), does not violate the constitutional right to trial by jury as set forth in Apprendi v. New Jersey (2000) 530 U.S. 466. Over the dissent by Justice Lui, who indicated that the majority answered a constitutional question, when it could have been avoided by answering a statutory issue, which is highly irregular. (See People v. Williams (1976) 16 Cal.3d 663, 667 [this court will not reach constitutional questions unless absolutely required to do so].) When there is a statutory basis for resolving a cawse, we will not render a decision on constitutional grounds. (NBC Subsidiary (KNBC-TV, Inc) v. Superior Court (1999) 20 Cal.4th 1178, 1190.) Justice Liu, joined by Justice Werdeger find that in the context of an Apprendi claim, does not mean the residency restriction cannot validly be imposed on persons who are required to register under section 290.006, but it does mean the facts authorizing imposition of the restriction must be proven to a jury beyond a reasonable doubt. Here, the residency restriction is a penalty exceeding the maximum Mosely would receive if punished according to the facts reflected in the jury verdict alone, which was guilty of simple assault under section 240, but not guilty of a violation of section 288, subdivision (a) [lewd act on a minor under 14].)

In re G.Y. (2015) _ Cal.App.4th _, reported on March 5, 2015, in 2015 Los Angeles Daily Journal 2550, the Sixth Appellate District held that Proposition 21, passed in 2000, in part amended Welfare and Institutions Code section 781, and it does not permit the trial court to seal juvenile records of a person adjudicated to have committed an offense listed in Welfare and Institutions Code section 707, subdivision (b). Prior to making the motion to seal his record, the juvenile court had reduced his offenses to misdemeanors under section 17, subdivision (b). However, when a court reduces a matter to a misdemeanor, the offense became a misdemeanor from that point on, but not retroactively. (People v. Kennedy (2011) 194 Cal.App.4th 1484, 1492.) The petitioner had led an exemplary life, including serving in the military, receiving numerous commendations for his service, and obtaining his BS degree in criminal justice. The Court of Appeal found that in interpreting Welfare and Institutions Code section 781, it had no authority to grant the motion to seal petitioner's record. The Court of Appeal called out to the legislature to correct this unjust result.

People v. Loper (2015) __ Cal.4th __, reported on March 6, 2015, in 2015 Los Angeles Daily Journal 2604, the California Supreme Court held that when a "compassionate release" proceeding is initiated by prison authorities as required by section 1170, subdivision (e), and the release is denied by the court, the inmate may appeal that decision. The denial effected the substantial rights of the defendant. As in People v. Carmony (2004) 33 Cal.4th 367, 376, the defendant's ability to move to dismiss a strike conviction under section 1385 should not preclude him or her from raising the erroneous failure to do so on appeal. To the extent that People v. Druschel (1982) 132 Cal.App.3d 667, and People v. Niren (1978) 76 Cal.App.3d 850, are inconsistent with this opinion, they are disapproved.

People v. Pierce (2015) _ Cal.App.4th _, reported on March 9, 2015, in 2015 Los Angeles Daily Journal 2676, the Third Appellate District held that the trial court, in modifying the restitution order under section 1202.4, was not required to vacate the prior order to avoid duplication of the restitution award; the modification merely superseded the prior order. The prosecution's decision not to seek restitution based on the codefendant's conduct in the initial restitution hearing did not waive the victims' right to seek restitution later. The modification was for the victim who was awarded partial restitution in the initial hearing, and for two other victims that had not been previously awarded restitution.

People v. Rivera (2015) _ Cal.App.4th _, reported on March 10, 2015, in 2015 Los Angeles Daily Journal 2773, the Third Appellate District held that the trial court erred when it instructed the jury to allow them to find the defendant guilty of first-degree murder if it found that the defendant engaged in an uncharged conspiracy to discharge a firearm at an occupied vehicle and that first-degree murder was a natural and probable consequence of that target crime. The greatest crime for which a defendant may be convicted under the natural-and-probable-consequence doctrine is second-degree murder. (See People v. Chiu (2014) 59 Cal.4th 155, 158-159, 166.) The instructional error was not rendered harmless beyond a reasonable doubt by the defendant's conviction on attempted premeditated murder charge arising from the same shooting, because that verdict could have been based on a finding of premeditation by the codefendant rather than the defendant. Where the trial court's sole prejudicial error was in instructing the jury on the degree of murder, the prosecution was entitled to elect whether to retry defendant for first-degree murder or have the conviction reduced to second-degree murder. (People v. Woods (1992) 8 Cal.App.4th 1570, 1596.)

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Save The Date

- *APRIL: No Dinner Meeting.*
- *MAY: Dinner meeting will be held on Tuesday, May 12, 2015, at Taix French Restaurant. Guest speaker TBA.*