

Recent victories:

People v. Perez -- G053146 -- Sentencing/One Strike Law – M. Marc Kelly, Judge -- Opinion by Fybel, J., with O’Leary, P. J. and Bedworth, J. Appellant was convicted of three separate violations of Penal Code section 288, subdivision (a). Each conviction included a jury finding under the One Strike Law (Pen. Code, § 667.61, subd. (e)(4)) that appellant had committed the offenses against multiple victims. The trial court sentenced appellant to consecutive terms of 25 years to life as to each of the three convictions pursuant to Penal Code section 667.61, subdivision (j)(2). On appeal, appellant argued that the sentence on one count must be reduced to 15 years to life, because the only evidence supporting the conviction indicated the crime took place before the effective date of subdivision (j)(2), and thus violated the federal and state ex post facto clauses. The Court of Appeal ordered the case remanded for resentencing as to that count.

People v. A.F. – B275427 – Restraining orders – Irma J. Brown, Judge – Opinion by Manella, J., with Willhite, Acting P. J. and Collins, J. The juvenile court found appellant committed a lewd act on his 4 year-old niece. At disposition, the juvenile court imposed a 10-year protective order containing a provision prohibiting appellant from accessing the addresses and locations of anyone in his niece’s family or her caretakers. On appeal, appellant argued the 10-year protective order exceeded the maximum period allowed under Welfare and Institutions Code section 213.5, which limits such orders to 3 years. Appellant also argued the protective order was overbroad by barring him from knowing the addresses and location of his own family members who do not reside with his niece. The Court of Appeal agreed and modified the protective order to expire 3 years from its issuing date, and to prohibit appellant from acting to obtain the addresses or locations of his nieces family members or caretakers who reside with her without good cause.

Other victories:

People v. R. A. -- B247044 – Insufficient evidence of sexual intent – Tamara Hall, Judge – Opinion, by Woods, J., with Purluss, P.J. and Zelon, J. A juvenile wardship petition charged appellant, a 13 year-old, with one count of lewd act on a child in violation of Penal Code section 288, subdivision (a). The physical evidence corroborated a 4 year-old’s claim that appellant had inserted his finger into the child’s anus while they were alone in appellant’s room – a door-less room that opened onto the home’s kitchen. Appellant argued on appeal that the juvenile court’s true finding was not supported by sufficient evidence of appellant’s specific sexual intent, because no evidence besides his chronological age supported the juvenile court’s conclusion that appellant had reached puberty. Further, no factors other than the act itself indicated appellant harbored a sexual intent. The Court of Appeal agreed and found the juvenile court’s reliance on appellant’s age alone

People v. Otero (2012) 210 Cal.App.4th 865 – Appellant was charged with four sex offenses against a child. During closing argument, the prosecution explained

reasonable doubt by relying on outlines of California and Nevada which were incomplete, and which contained partly incorrect geographical placement of cities. The prosecutor stated that, even with incomplete and incorrect information, there was no reasonable doubt these were diagrams of California and Nevada. The Court of Appeal held that this argument was an incorrect statement of the prosecution's burden of proof. Unfortunately, it also concluded any error was harmless.