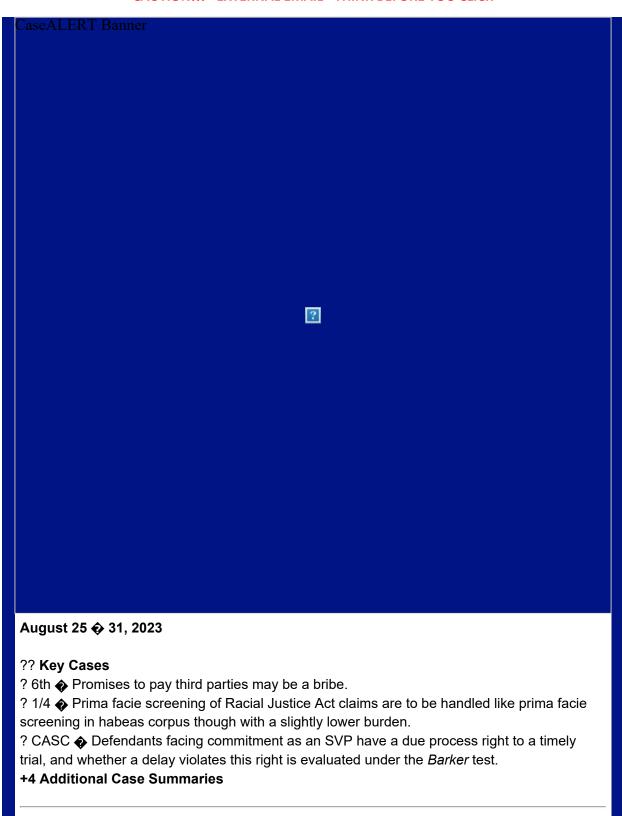
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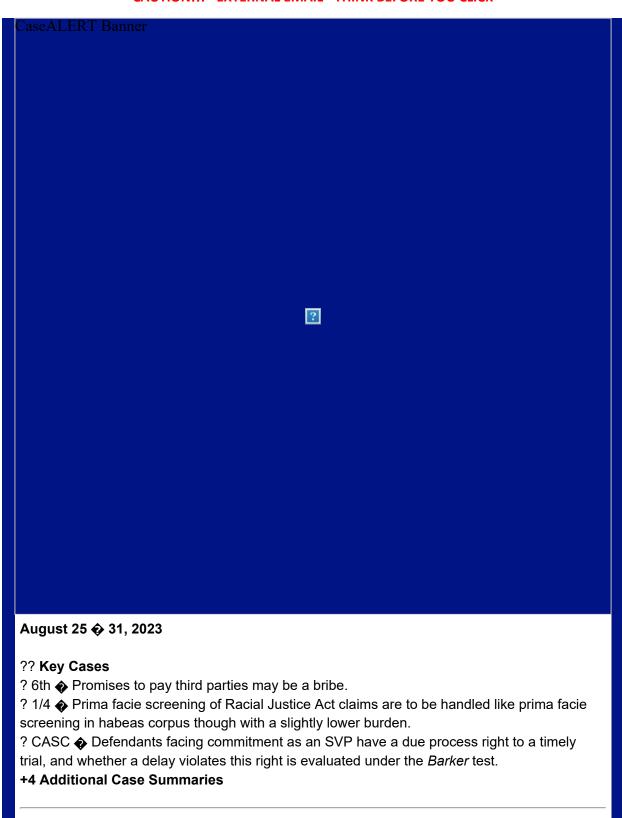
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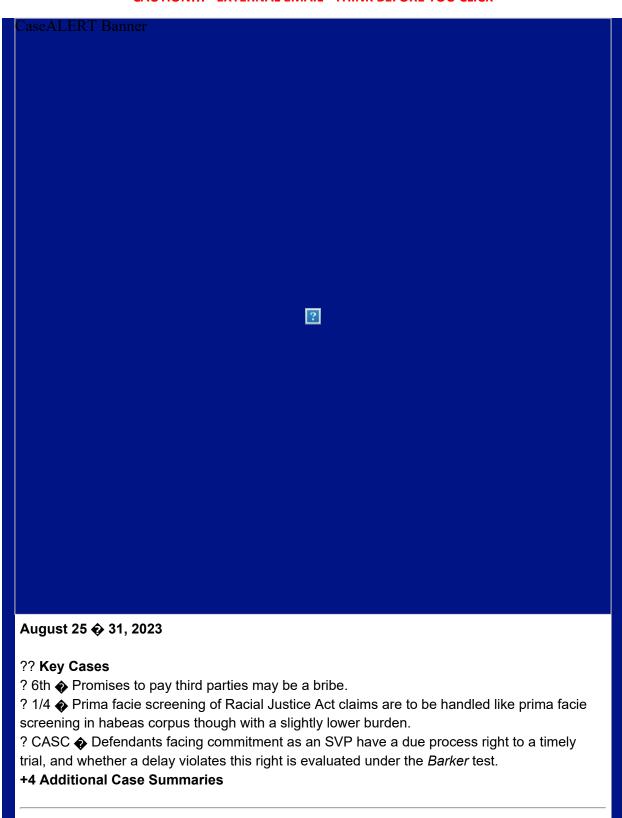
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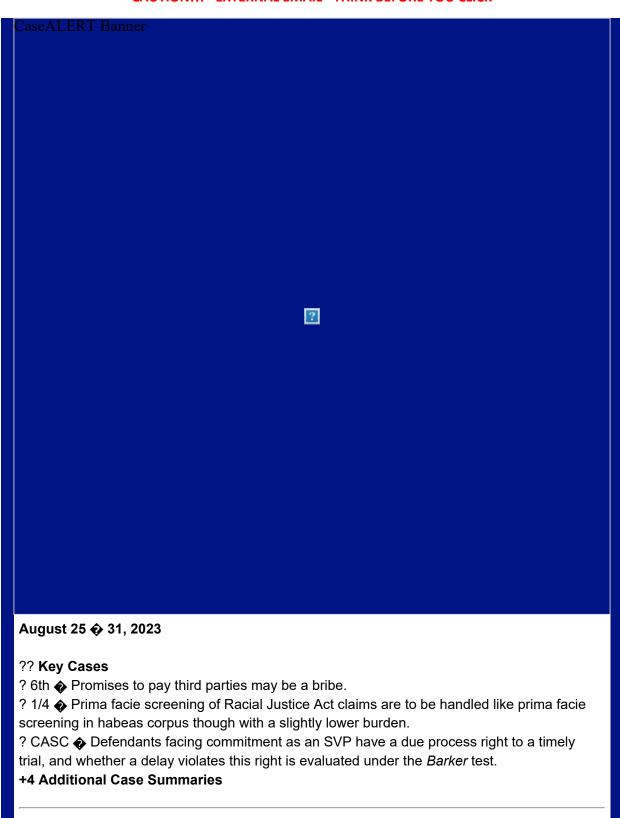
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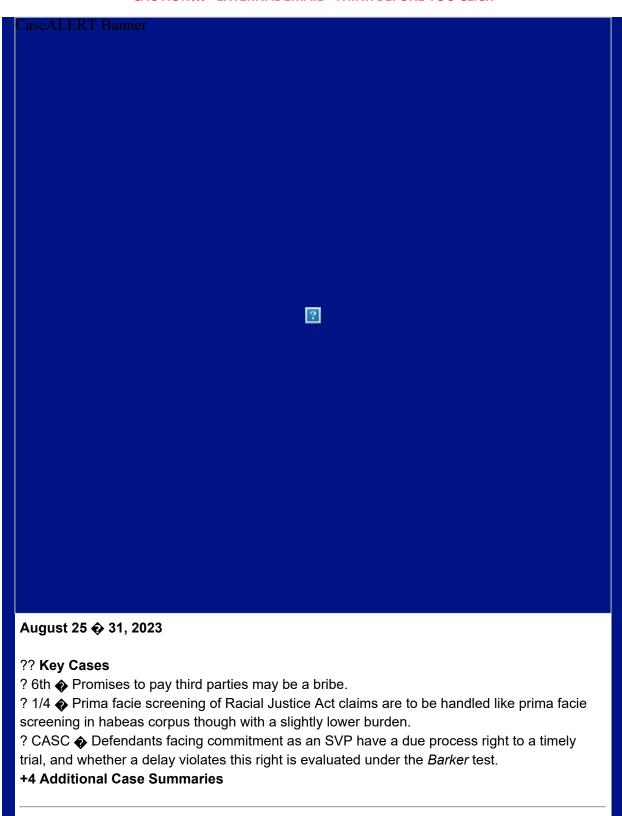
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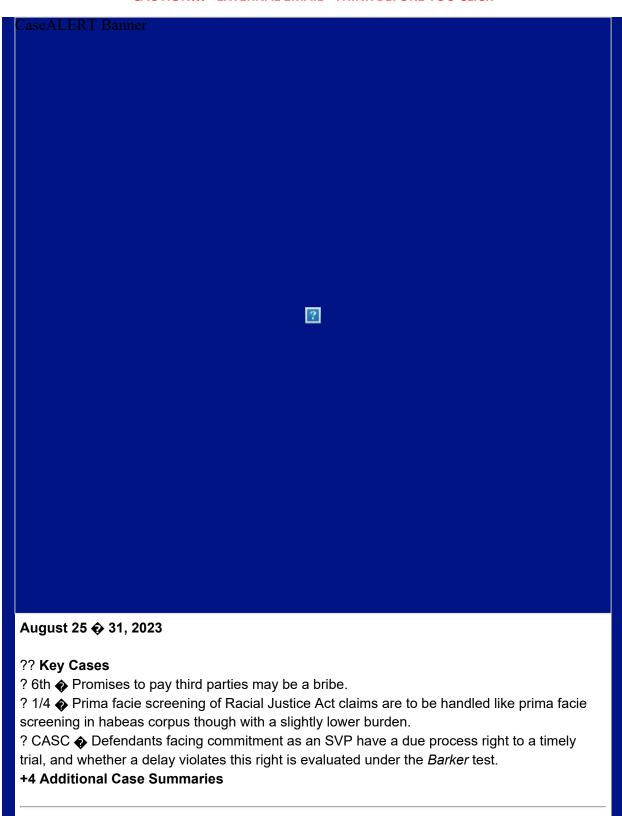
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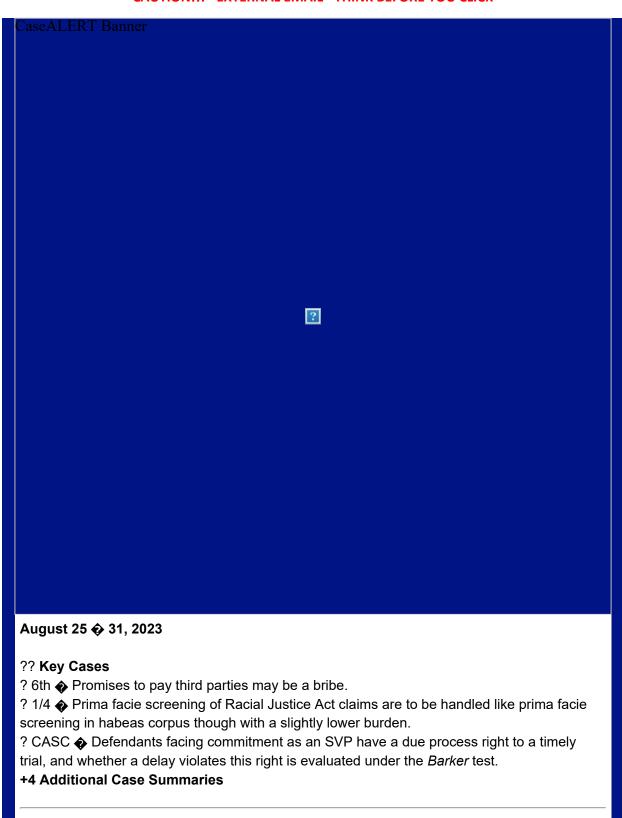
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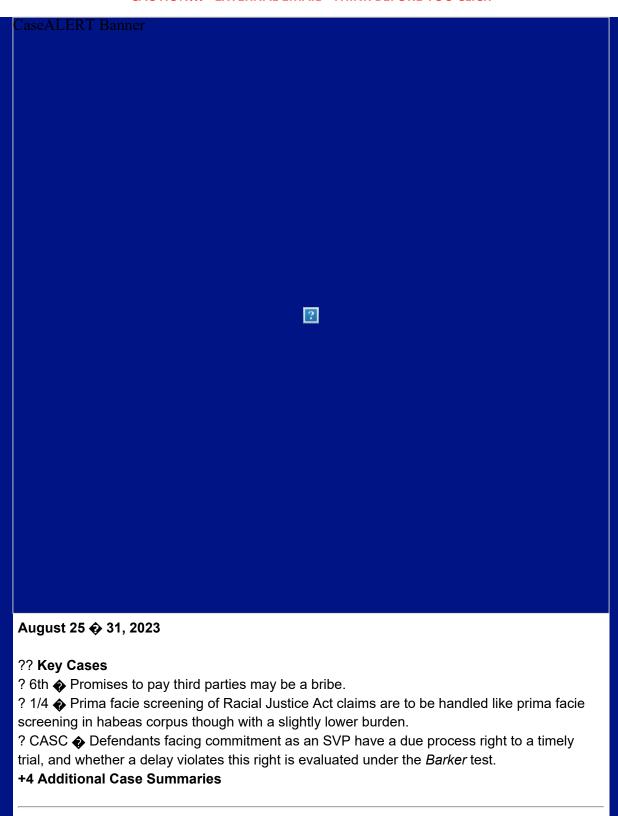
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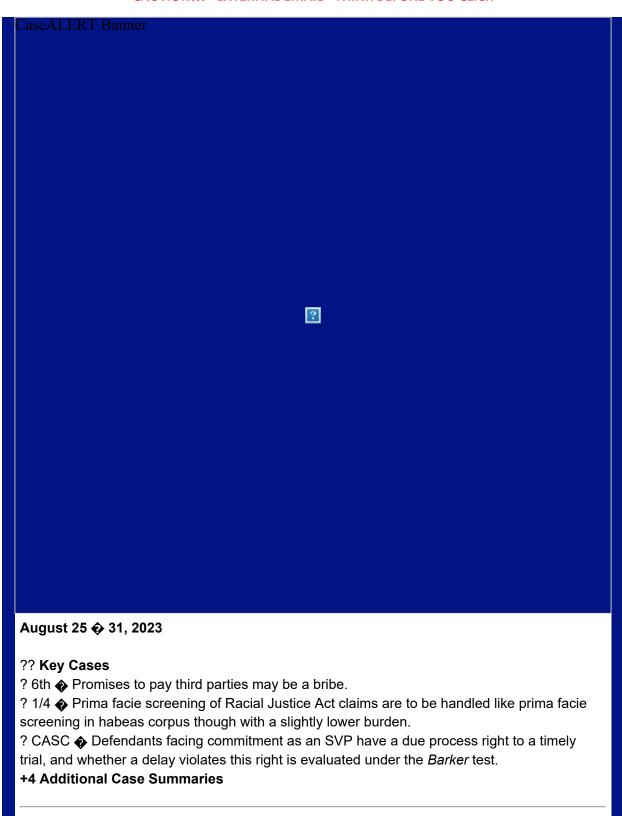
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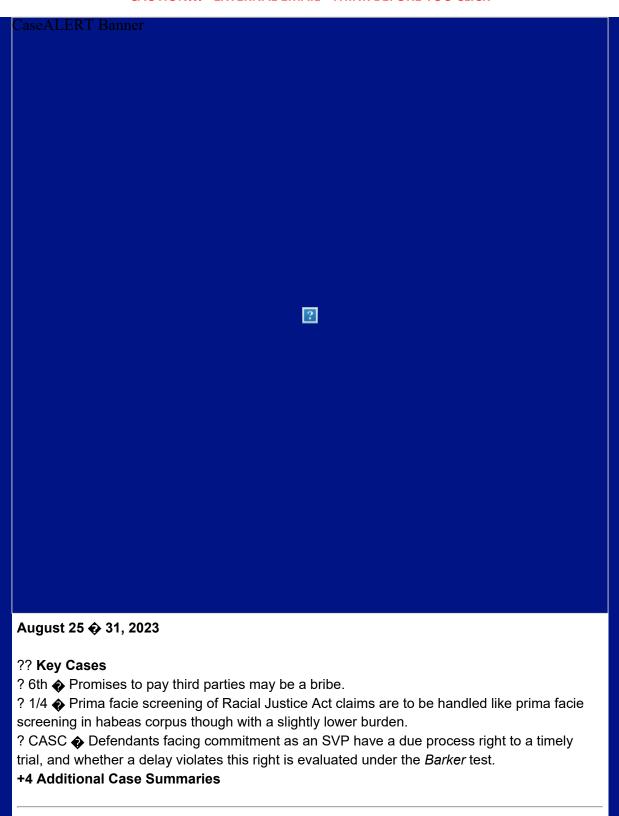
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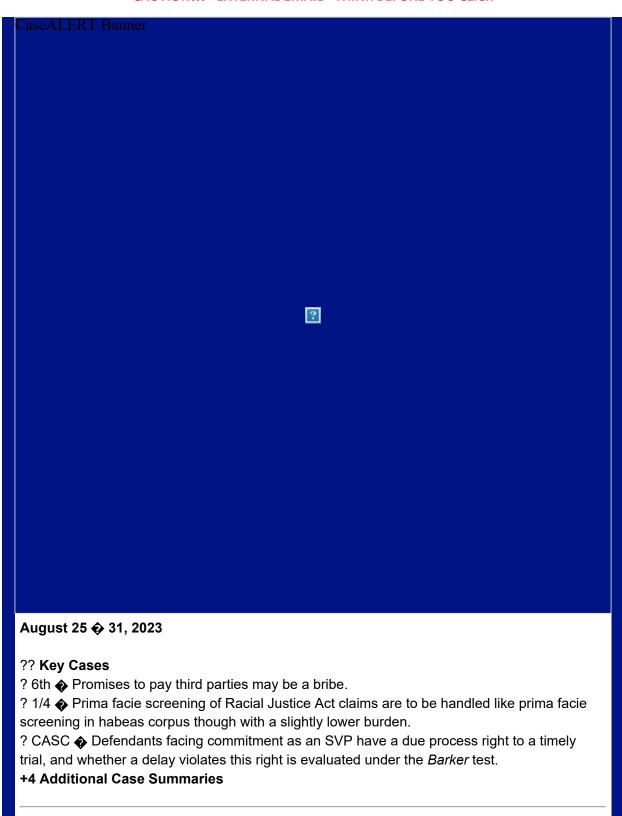
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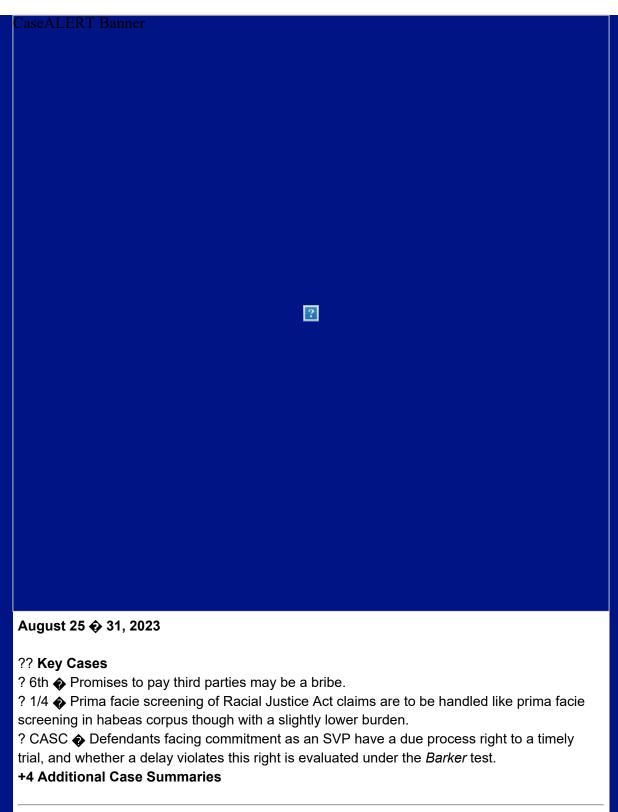
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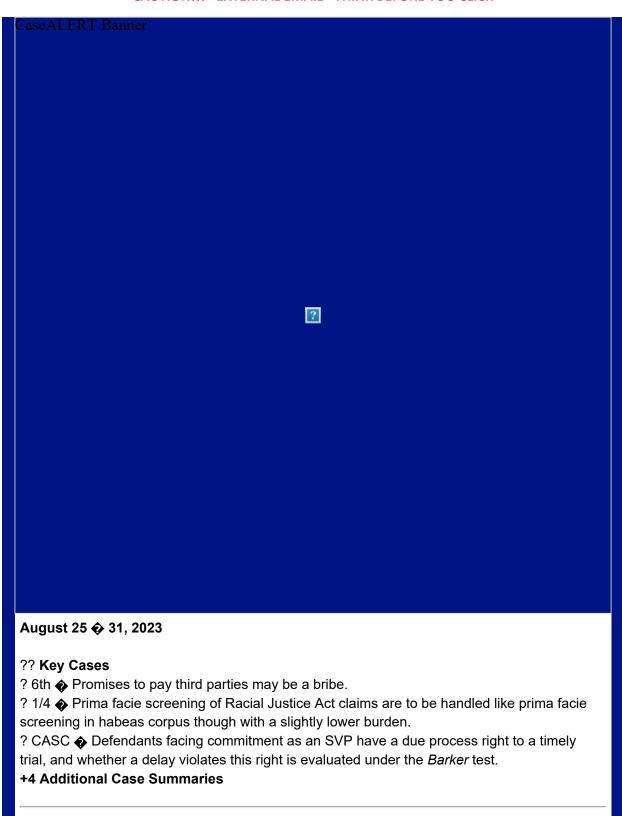


From: Riverside County CaseALERT
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Subject: California CaseALERT - November 22, 2023

Date: Wednesday, November 22, 2023 7:21:02 AM

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(1) Prima facie standard for Racial Justice Act claims may be evaluated like prima facie claims in habeas claims, but with the slightly lesser standard that an RJA claim only has to show a substantial likelihood of a violation without establishing a violation by preponderance of the evidence. That level of evidence is needed to establish an actual violation. To summarize, a defendant seeking relief under the Racial Justice Act must state fully and with particularity the facts on which relief is sought, and include copies of reasonably available documentary evidence supporting the claim. The court should accept the truth of the defendant allegations, including expert evidence and statistics, unless the allegations are conclusory, unsupported by the evidence presented in support of the claim, or demonstrably contradicted by the court so own records. (2) Here, the trial court strayed from this standard by weighing the defendant so proffered facts against an officer so testimony at a preliminary hearing and contrary statistics about the location of a stop being a high crime neighborhood rather than accepting an expert so opinion that use of that phrase demonstrates bias, unless the opinion was conclusory, speculative, or unsupported.

? Camacho v. Superior Court (CASC, 5th, August 31, 2023, S273391, Merced)

(1) Defendants facing commitment as a Sexually Violent Predator have a due process right to a timely trial. (2) Whether a pretrial delay violates this right is evaluated under the test of Barker v. Wingo (1972) 407 U.S. 514. (3) Here, while the decade-plus delay in holding Camacho s recommitment trial is extraordinarily lengthy, the available record shows that responsibility for the delay lies primarily with the defense, which either sought or agreed to the continuances that led to the delay. While many of the continuance requests were made by Camacho s counsel when Camacho was not personally present in court, the ordinary rule is that delays sought by counsel are attributable to their clients (Vermont v. Brillon (2009) 556 U.S. 81, 85), and the record reveals no basis to depart from that rule in this case. (4) Trial courts play a vital role in safeguarding timely trial rights and must take due account of the individual interests in prompt adjudication and take decisive steps to guard against unjustified delay.

? Additional Case Summaries

Dept. of Corrections & Rehabilitation v. Superior Court (1st Dist., Div. 3, August 25, 2023, A166559, Alameda) Superior Courts lack authority to release a person who is on lifetime parole on probation after finding the person committed a new crime. Once a court finds a lifetime parolee has committed a crime it must remand the parolee to the custody of the CDCR under Penal Code section 3000.08, subdivision (h). Here, this means the trial court erred in placing a defendant on probation as part of a negotiated disposition of a new case even though there were two pending petitions for revocation of parole, one filed by the district attorney so office and the other filed by CDCR. Additionally, while the district attorney may have had authority to withdraw her revocation petition, she did not have authority to withdraw the

revocation petition filed by CDCR. This opinion also discusses CDCR standing and the appropriateness of relief by way of writ of mandate.

Pv. Castaneda-Prado (1st Dist., Div. 4, August 30, 2023, A164897, Sonoma) Evidence that a child victim believed that accusing the defendant of molestation would help her mother obtain a &U visa was improperly excluded. This exclusion violated the right of confrontation and in this case, a two-victim molestation case, the exclusion was not harmless. The opinion discusses the difference between a limitation on an impeachment confrontation, generally evaluated for abuse of discretion, and a denial of the opportunity for cross-examination, and decides this issue should be evaluated de novo, with any error evaluated for harmlessness under Chapman. The trial court excluded the evidence under Evidence Code section 352. But impeachment is relevant, the defendant had little other impeachment evidence, and the convictions oturned almost entirely on the credibility of Does 1 and 2. There was no physical evidence of the alleged sexual offenses, and investigators in this case had no ability to seek to obtain physical corroboration of the historical disclosure[s] by the two victims. The absence of proof of any application for a U visa, was not a prerequisite for admissibility, given that the victim testified at the preliminary hearing that she thought that testifying would help her mother get a U visa. The opinion distinguishes People v. Villa (2020) 55 Cal.App.5th 1042 on the grounds that case had extensive corroboration, an inquiry would have devolved into that victimes understanding of U visas since she initially did not know about them, and the victim in Villa s testimony was consistent while the victim s testimony here grew more detailed and incriminating over time. The opinion concludes there wasnot a risk of substantial prejudice to mentioning the U visa program since it wasnot the victim who was undocumented but her mother.

P. v. Njoku (3rd Dist., August 31, 2023, C093672, Sacramento) (1) The standard of review of the denial of a petition under Penal Code section 1172.6 is substantial evidence, even when the trial court sinquiry was limited to a cold record. (2) The prosecution is not required to rely on live testimony to meet its burden at a section 1172.6 evidentiary hearing.

Pv. Doron (4th Dist., Div. 1, August 31, 2023, D079799, San Diego) The amendment of Penal Code section 1001.36 operative January 1, 2023, by Senate Bill 1223, applies retroactively to nonfinal cases. The amendment changed the eligibility criteria to broaden the availability of mental health diversion. Remand is required so the trial court may reconsider diversion under the new standard.

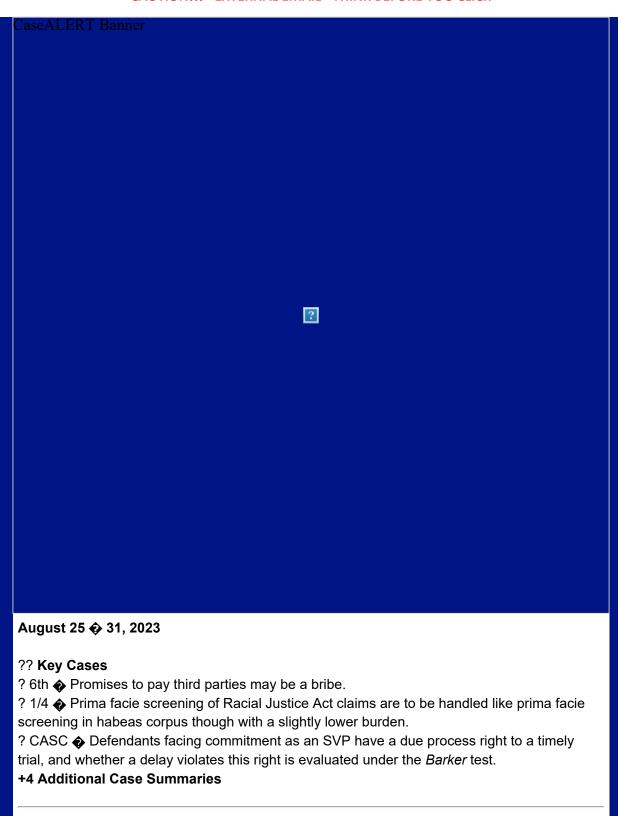
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? Pv. Moyer (6th Dist., August 25, 2023, H049408, Santa Clara)

(1) A promise to make a payment to a third party or entity may be a bribe. (2) The evidence of corrupt intent was circumstantial but sufficient for the strong suspicion required for an indictment based on the chain of events in which Apple so global security head offered to an undersheriff and a captain that Apple would donate iPads while approved but not released concealed carry weapon licenses were being held by the sheriff so department. Thus, the trial court erred in dismissing a bribery count under Penal Code section 995.

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Fresno County District Attorney's Office Senior Paralegal 3333 E. American Ave Fresno, CA 93725

