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DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

PENAL CODE
Part 2. Of Criminal Procedure
Title 8. Of Judgment and Execution
Chapter 1. The Judgment

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Cal Pen Code § 1210 (2008)

§ 1210. Definitions

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with *Section 11999.4*) of the *Health and Safety Code*, the following definitions apply:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in *Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code*, or the offense of being under the influence of a controlled substance in violation of *Section 11550 of the Health and Safety Code*. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term "drug treatment program" or "drug treatment" means a state licensed or certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. Completion of treatment shall not require cessation of narcotic replacement therapy.

(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in (1).

HISTORY:

Addition approved by the voters at the November 7, 2000, general election (Prop 36 § 4), effective November 8, 2000. Amended Stats 2001 ch 721 § 2 (SB 223), effective October 11, 2001; Stats 2003 ch 155 § 1 (SB 762); Stats 2006 ch 63 § 6 (SB 1137), effective July 12, 2006.

NOTES:**Editor's Notes**

Prior to the 2006 amendment, the section read as follows: "As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with *Section 11999.4*) of the *Health and Safety Code*:

"(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in *Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code*, or the offense of being under the influence of a controlled substance in violation of *Section 11550 of the Health and Safety Code*. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

"(b) The term "drug treatment program" or "drug treatment" means a state licensed and/or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001; such a program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.

"(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

"(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1)."

Amendments:**2001 Amendment:**

(1) Added "and does not include violations of Section 4573.6 or 4573.8" at the end of the last sentence in subd (a); and (2) amended subd (b) by adding (a) "state" after " 'drug treatment' means a" in the first sentence; and (b) the second sentence.

2003 Amendment:

Substituted "unlawful personal use, possession for personal use," for "unlawful possession, use," in subd (a).

2006 Amendment:

(1) Amended subd (b) by (a) substituting "or" for "and/or" after "means a state licensed"; (b) adding "drug education," after "one or more of the following:"; (c) substituting "drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services." for "outpatient treatment, half way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence"; and (d) substituting ". That type of" for "; such a" after "specified in Section 8001"; (2) amended subd (c) by adding (a) "as recommended by the treatment provider and ordered by the court" after "prescribed course of drug treatment"; and (b) adding the last sentence; and (3) deleted "paragraph" at the end of subd (d).

Note

Proposition 36 provides:

SECTION 1. TITLE This act shall be known and may be cited as the "Substance Abuse and Crime Prevention Act of 2000."

SEC. 2. FINDINGS AND DECLARATIONS

The People of the State of California hereby find and declare all of the following:

(a) Substance abuse treatment is a proven public safety and health measure. Nonviolent, drug-dependent criminal offenders who receive drug treatment are much less likely to abuse drugs and commit future crimes, and are likelier to live healthier, more stable and more productive lives.

(b) Community safety and health are promoted, and taxpayer dollars are saved, when nonviolent persons convicted of drug possession or drug use are provided appropriate community-based treatment instead of incarceration.

(c) In 1996, Arizona voters by a 2-1 margin passed the Drug Medicalization, Prevention, and Control Act, which diverted nonviolent drug offenders into drug treatment and education services rather than incarceration. According to a Report Card prepared by the Arizona Supreme Court, the Arizona law: is "resulting in safer communities and more substance abusing probationers in recovery," has already saved state taxpayers millions of dollars, and is helping more than 75 percent of program participants to remain drug free.

SEC. 3. PURPOSE AND INTENT

The People of the State of California hereby declare their purpose and intent in enacting this act to be as follows:

(a) To divert from incarceration into community-based substance abuse treatment programs nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses;

(b) To halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration and reincarceration of nonviolent drug users who would be better served by community-based treatment; and

(c) To enhance public safety by reducing drug-related crime and preserving jails and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies.

SEC. 8. EFFECTIVE DATE

Except as otherwise provided, the provisions of this act shall become effective July 1, 2001, and its provisions shall be applied prospectively.

SEC. 9. AMENDMENT

This act may be amended only by a roll call vote of two thirds of the membership of both houses of the Legislature. All amendments to this act shall be to further the act and shall be consistent with its purposes.

SEC. 10. SEVERABILITY

If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this initiative that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.

Note

Stats 2006 ch 63 provides:

SECTION 1. The Legislature finds and declares the following:

(a) On November 7, 2000, the people of the State of California enacted the Substance Abuse and Crime Prevention Act of 2000 (hereinafter the act), codified in *Sections 11999.5, 11999.6, 11999.9, 11999.10, and 11999.12 of the Health and Safety Code*, and *Sections 1210, 1210.1, and 3063.1 of the Penal Code* to provide community-based substance abuse treatment programs for nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses.

(b) The act provided an appropriation from the General Fund to the Substance Abuse Treatment Trust Fund in the amount of one hundred and twenty million dollars (\$120,000,000) annually through the 2005-06 fiscal year with any additional appropriation dependent on review and action by the Legislature.

(c) Each year following the implementation of the act the Department of Alcohol and Drug Programs (hereinafter the department) was required and did in fact conduct a study to evaluate the effectiveness and financial impact of the programs which were funded pursuant to the act. The studies have focused on the implementation process, participant demographics and treatment completion rates as well as other impacts and issues the department identified. Reports were submitted to the Legislature by the department.

(d) In addition, the department contracted, as required by the act, with a public university, the University of California at Los Angeles (hereinafter UCLA) to evaluate the effectiveness and financial impact of the programs which were funded pursuant to the requirements of this act and to report findings that were in fact forwarded to the Legislature by the department.

(e) The UCLA evaluations have found that approximately 30 percent of referred SACPA offenders do not enter treatment. Judicial monitoring, through dedicated court calendars, collaboration and coordination between the courts, probation and treatment, as demonstrated by drug courts, would enhance entry, retention, and completion of treatment

by offenders.

(f) The UCLA evaluations have found that 34 percent of those who do in fact enter treatment complete that treatment. This completion rate, as well as retention rates, can be improved through the enhancement of compliance with treatment, as well as tailoring treatment to the needs of offenders following drug-related violations of probation to assure that the level and duration of treatment they are assessed or reassessed to overcome addiction, including detoxification and residential services, are provided, and that treatment be of sufficient duration to meet individual needs of defendants.

(g) SACPA does not specifically address the use of short periods of jail time as a motivational tool to hold SACPA offenders accountable to enter and stay in treatment. Studies have reported that drug court clients were more likely to enter treatment, remained in treatment significantly longer, and engaged in significantly less drug use when they received swift and sure sanctions and rewards, including the possibility of brief periods of jail time during the course of treatment. Therefore, sanctions including short periods of jail time for relapsing, problematic, or recalcitrant offenders, on a showing of need after consideration of important treatment and other factors, should be available, not as a substitute for treatment but as a tool to motivate and hold offenders accountable.

(h) The UCLA evaluations speak to the need to verify self-reported drug use by drug testing. Drug testing is widely accepted by treatment providers as an integral component of treatment. In addition, test results are needed to assist providers in adjusting treatment plans. Therefore, courts shall require drug testing as a condition of probation, commensurate with treatment needs.

(i) The UCLA evaluations also speak to the high cost in terms of arrests and convictions of violent crimes, property crimes, and sex crimes of those presently eligible defendants who have five or more convictions in the 30-month period prior to their SACPA eligible arrests in comparison to the typical SACPA offender, and recommend that the Legislature may wish to consider possible changes as to the eligibility of these offenders who UCLA found comprise 1.6 percent of the total number of offenders eligible for SACPA, yet had postconviction crime costs that were 10 times higher than the costs for the typical or median SACPA offender during the 30-month followup study period.

(j) It is the intent of the Legislature, therefore, to do all of the following to further the purposes of the act:

(1) Maintain the General Fund transfer to the Substance Abuse Treatment Trust Fund, conditioned on modifications to the SACPA program that will improve outcomes and promote accountability consistent with the act and to further the purposes of the act.

(2) Provide for closer judicial monitoring through dedicated calendars and close collaboration between the court, probation, and treatment to improve offender outcomes.

(3) Provide treatment, including detoxification and residential services that are tailored to the individual needs of offenders, and of sufficient duration to improve completion rates. In addition, permit judicial discretion to provide offenders additional opportunities following a third drug-related violation of probation, and first non-drug-related violation of probation to complete treatment, as well as, after a hearing, to remove offenders from the program who pose a danger to the public and, in addition, will not benefit from treatment.

(4) Provide brief jail sanctions to enhance accountability and as a motivational tool to improve the number of defendants who enter treatment, remain in treatment, and complete treatment and probation consistent with the purposes of the act.

(5) Mandate drug testing as a treatment tool as well as a method to assure accountability.

(6) Provide that offenders who have five or more prior convictions at the time they commit a SACPA eligible offense are presumed to be eligible for SACPA. However, they may be found ineligible by the judge after consideration

and findings at a hearing, if the offender poses a danger to the public or would not benefit from treatment.

(7) It is also the intent of the Legislature to address additional issues that need clarification, or were not adequately addressed by the act, that need to be resolved to further the purposes of the act, consistent with the act.

SEC. 9. The provisions of this bill shall be applied prospectively. If any provision of this bill is found to be invalid, the entire legislative measure shall be submitted to the voters at the next statewide election.

SEC. 10. The Legislature finds and declares that the provisions of this act are consistent with the purposes of the Substance Abuse and Crime Prevention Act of 2000.

Collateral References:

Judicial Council of California Criminal Jury Instructions (LexisNexis MatthewBender), CALCRIM No. 2300, Sale, Transportation, etc., of Controlled Substance

Law Review Articles:

Proposition 36 Eligibility: Are Courts and Prosecutors Following or Frustrating the Will of Voters? 36 McGeorge LR 627.

Comment: People V. Floyd: an Argument Against Intentionalist Interpretation of Voter Initiatives. 45 Santa Clara LR 981.

LexisNexis 50 State Surveys, Legislation & Regulations

Victims Rights & Compensation

NOTES OF DECISIONS

Offender was not eligible for probation under Cal. Proposition 36 (2000), the California Substance Abuse and Crime Prevention Act of 2000, *Cal. Penal Code § 1210* et seq., where the offender had a prior strike and seven months before committing the drug possession offense in this case was convicted of committing another felony, corporal injury upon a spouse. *People v. Superior Court (Henkel)* (2002, *Cal App 1st Dist*) 98 *Cal App 4th* 78, 119 *Cal Rptr 2d* 465, 2002 *Cal App LEXIS* 4055.

For purposes of determining the drug rehabilitation program treatment in *Pen C § 1210* et seq., a juvenile court adjudication is not a disqualifying factor. *People v. Westbrook* (2002, *Cal App 2d Dist*) 100 *Cal App 4th* 378, 122 *Cal Rptr 2d* 514, 2002 *Cal App LEXIS* 4416.

Although a criminal defendant's prior juvenile robbery adjudication did not bar him from participating in a *Pen C § 1210* et seq. drug treatment program, if he were ultimately sentenced to prison, his robbery prior adjudication, unless it was stricken pursuant to *Pen C § 1385(a)*, would subject him to the enhanced penalties in *Pen C §§ 667(e)(1)* and *1170.12(c)(1)*. *People v. Westbrook* (2002, *Cal App 2d Dist*) 100 *Cal App 4th* 378, 122 *Cal Rptr 2d* 514, 2002 *Cal App*

LEXIS 4416.

Adult defendant, who pleaded no contest to a charge of cocaine possession in violation of *H & S C § 11350(a)*, and who had previously been found in a juvenile court delinquency proceeding to have committed a robbery, a violation of *Pen C § 211*, was eligible for participation in a *Pen C § 1210* et seq. drug treatment program because the robbery finding occurred in the context of a juvenile delinquency proceeding, he was never "convicted" of a serious or violent felony within the meaning of *Pen C § 1210.1(b)*. *People v. Westbrook* (2002, Cal App 2d Dist) 100 Cal App 4th 378, 122 Cal Rptr 2d 514, 2002 Cal App LEXIS 4416.

Defendant, who pled no contest to transporting methamphetamine and driving under the influence of a controlled substance and subsequently violated the terms of his probation, was precluded from having his probation reinstated, pursuant to *Cal. Penal Code § 1210.1(e)(3)(D)*; defendant's act of driving under the influence of a controlled substance was not "related to the use of drugs" within the meaning of *Cal. Penal Code § 1210*. *People v. Goldberg* (2003, Cal App 1st Dist) 105 Cal App 4th 1202, 130 Cal Rptr 2d 192, 2003 Cal App LEXIS 141.

When a probationer commits both qualifying and nonqualifying offenses or probation violations, the California Substance Abuse and Crime Prevention Act of 2000 does not apply. *People v. Campbell* (2003, Cal App 6th Dist) 106 Cal App 4th 808, 131 Cal Rptr 2d 221, 2003 Cal App LEXIS 297, review gr, depublished (2003) 134 Cal Rptr 2d 222, 68 P3d 1190, 2003 Cal LEXIS 3357, review dismissed (2004, Cal) 19 Cal Rptr 3d 827, 99 P3d 5, 2004 Cal LEXIS 9690.

Because driving under the influence (DUI) is conduct that goes beyond mere possession, use, transportation, and being under the influence of a controlled substance and because driving under the influence is not among the crimes expressly listed in *Cal. Penal Code § 1210(a)* DUI is not a nonviolent drug possession offense. *People v. Campbell* (2003, Cal App 6th Dist) 106 Cal App 4th 808, 131 Cal Rptr 2d 221, 2003 Cal App LEXIS 297, review gr, depublished (2003) 134 Cal Rptr 2d 222, 68 P3d 1190, 2003 Cal LEXIS 3357, review dismissed (2004, Cal) 19 Cal Rptr 3d 827, 99 P3d 5, 2004 Cal LEXIS 9690.

Trial court properly revoked defendant's probation based on a finding that defendant was not amenable to further drug treatment; defendant's recent conviction for driving under the influence was not a violation of a "drug-related condition of probation." *People v. Campbell* (2003, Cal App 6th Dist) 106 Cal App 4th 808, 131 Cal Rptr 2d 221, 2003 Cal App LEXIS 297, review gr, depublished (2003) 134 Cal Rptr 2d 222, 68 P3d 1190, 2003 Cal LEXIS 3357, review dismissed (2004, Cal) 19 Cal Rptr 3d 827, 99 P3d 5, 2004 Cal LEXIS 9690.

Defendant was "unamenable" to drug treatment when he was unavailable to participate in programs under Cal. Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, *Cal. Penal Code § 1210* et seq., within the statutory time periods because of his prison sentence. *People v. Esparza* (2003, Cal App 3d Dist) 107 Cal App 4th 691, 132 Cal Rptr 2d 377, 2003 Cal App LEXIS 476, review denied (2003, Cal) 2003 Cal LEXIS 4225.

Defendant was ineligible for treatment under Cal. Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, *Cal. Penal Code § 1210* et seq., on a nondrug related felony, even though defendant's drug possession felony was the cause of his probation revocation; the trial court retained jurisdiction to order execution of defendant's suspended prison sentence for the nondrug related felony. *People v. Esparza* (2003, Cal App 3d Dist) 107 Cal App 4th 691, 132 Cal Rptr 2d 377, 2003 Cal App LEXIS 476, review denied (2003, Cal) 2003 Cal LEXIS 4225.

Although defendant's conviction of possession of methamphetamine qualified as a nonviolent drug possession offense under *Pen C § 1210(a)* of the Substance Abuse and Crime Prevention Act of 2000, *Pen C § 1210* et seq., because defendant was also convicted of driving under the influence in violation of *Veh C § 23152(b)*, defendant was ineligible for sentencing under the Act. *People v. Cantu* (2003, Cal App 6th Dist) 112 Cal App 4th 729, 5 Cal Rptr 3d 389, 2003 Cal App LEXIS 1534, rehearing denied (2003, Cal App 6th Dist) 2003 Cal App LEXIS 1680, review gr, depublished (2004, Cal) 8 Cal Rptr 3d 539, 82 P3d 746, 2004 Cal LEXIS 9, review dismissed (2004, Cal) 19 Cal Rptr

3d 828, 99 P3d 5, 2004 Cal LEXIS 10130.

Defendant who pleaded guilty to cultivation of 37 marijuana plants for personal use was not eligible to be sentenced to a drug treatment program pursuant to *Pen C* § 1210 et seq. because that sentencing scheme specifically excluded cultivation crimes and because cultivation of marijuana, even for personal use, was not possession, use, or transportation for personal use or being under the influence of a controlled substance and, therefore, did not meet the statutory definition of a "nonviolent drug possession offense" as contemplated in *Pen C* § 1210(a). *People v. Sharp* (2003, Cal App 3d Dist) 112 Cal App 4th 1336, 5 Cal Rptr 3d 771, 2003 Cal App LEXIS 1621.

Committing a juvenile to confinement for being under the influence of methamphetamine in violation of *H & S C* § 11550(a) did not violate the juvenile's constitutional right to equal protection, although an adult would have received probation for a nonviolent drug possession offense pursuant to *Pen C* §§ 1210, 1210.1. *In re Jose Z.* (2004, Cal App 5th Dist) 116 Cal App 4th 953, 10 Cal Rptr 3d 842, 2004 Cal App LEXIS 310, review denied (2004, Cal) 2004 Cal LEXIS 5324.

On a "nonviolent drug possession offense," defendant could enter a plea bargain that permitted sentencing under determinate sentencing law. Therefore, defendant's appeal from that agreement was dismissed; his argument was for a defect in the plea proceedings and required a certificate of probable cause, which he failed to obtain. *People v. Kendrick* (2004, Cal App 5th Dist) 122 Cal App 4th 1305, 19 Cal Rptr 3d 436, 2004 Cal App LEXIS 1663, review gr, depublished (2005, Cal) 23 Cal Rptr 3d 692, 105 P3d 113, 2005 Cal LEXIS 563, review dismissed (2006, Cal) 40 Cal Rptr 3d 749, 130 P3d 518, 2006 Cal LEXIS 3785.

Neither Apprendi nor Blakely prohibited a trial court from deciding, based on the preponderance of the evidence, that defendant's possession or transportation of rock cocaine was not for personal use under *Pen C* §§ 1210(a), 1210.1(a) and that defendant was thus ineligible for probation and treatment. Such a prison sentence is not subject to reversal merely because the trial court fails to articulate some additional finding. *People v. Dove* (2004, Cal App 4th Dist) 124 Cal App 4th 1, 21 Cal Rptr 3d 52, 2004 Cal App LEXIS 1906, review denied (2005, Cal) 2005 Cal LEXIS 1461.

Defendant's acquittal on a charge of possession for sale under *H & S C* § 11351.5 did not bind the trial court because the acquittal simply meant the jury was not convinced beyond a reasonable doubt that the possession was for sale. Because Apprendi and Blakely did not apply, the trial court was free to redetermine the personal use issue under *Pen C* §§ 1210(a), 1210.1(a) based on the preponderance of the evidence. *People v. Dove* (2004, Cal App 4th Dist) 124 Cal App 4th 1, 21 Cal Rptr 3d 52, 2004 Cal App LEXIS 1906, review denied (2005, Cal) 2005 Cal LEXIS 1461.

Trial court did not err in refusing to sentence defendant under Proposition 36 on the ground that defendant did not deserve probation. The trial court simply felt that defendant deserved the sentence that it found to be legally appropriate under *Pen C* §§ 1210(a), 1210.1(a). *People v. Dove* (2004, Cal App 4th Dist) 124 Cal App 4th 1, 21 Cal Rptr 3d 52, 2004 Cal App LEXIS 1906, review denied (2005, Cal) 2005 Cal LEXIS 1461.

Sufficient evidence supported a trial court's finding that defendant's possession and transportation of rock cocaine were not for personal use under *Pen C* §§ 1210(a), 1210.1(a) where expert witnesses testified that rock cocaine dealers did not necessarily have or need scales, ledgers, baggies, cell phones, or pagers and that it was virtually unheard of for a person to possess as much as an ounce of rock cocaine for personal use. *People v. Dove* (2004, Cal App 4th Dist) 124 Cal App 4th 1, 21 Cal Rptr 3d 52, 2004 Cal App LEXIS 1906, review denied (2005, Cal) 2005 Cal LEXIS 1461.

Trial court erred in prematurely revoking an offender's probation under Cal. Proposition 36 (2000), the Substance Abuse Crime Prevention Act of 2000, solely for three violations of drug-related conditions of his probation after only two motions by the State and two hearings for revocation. *People v. Tanner* (2005, Cal App 4th Dist) 129 Cal App 4th 223, 28 Cal Rptr 3d 201, 2005 Cal App LEXIS 751.

Conviction for possession of a controlled substance while armed with a loaded, operable firearm was not a

"nonviolent drug possession offense" under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 *Pen C* §§ 1210, 1210.1, 3063.1; therefore, treatment and probation were properly denied. *In re Ogea* (2004, Cal App 4th Dist) 121 Cal App 4th 974, 17 Cal Rptr 3d 698, 2004 Cal App LEXIS 1377, modified (Cal App 4th Dist) 2004 Cal App LEXIS 1418.

Defendant who pled guilty to two counts of possession of cocaine was rendered ineligible for probation under Cal. Proposition 36 after he refused drug treatment by fleeing the county. *People v. Guzman* (2003, Cal App 2d Dist) 109 Cal App 4th 341, 134 Cal Rptr 2d 727, 2003 Cal App LEXIS 799.

Finding that the California Substance Abuse and Crime Prevention Act, *Cal. Penal Code* § 1210 et seq., violated equal protection and was unconstitutional insofar as it excluded from the Act probationers who committed a nonviolent drug possession offense (NVDPO) while on probation for a nonserious, nonviolent offense, yet included within the Act parolees who committed an NVDPO while on parole for a nonviolent, nonserious offense, the reviewing court construed the Act to include probationers who committed an NVDPO while on probation for a nonserious, nonviolent offense, to comply with equal protection requirements. *People v. Guzman* (2003, Cal App 6th Dist) 111 Cal App 4th 57, 3 Cal Rptr 3d 339, 2003 Cal App LEXIS 1212, review gr, unpublished (2003, Cal) 6 Cal Rptr 3d 421, 79 P3d 539, 2003 Cal LEXIS 8668, rev'd, superseded (2005) 35 Cal 4th 577, 25 Cal Rptr 3d 761, 107 P3d 860, 2005 Cal LEXIS 2828.

Defendant who was convicted under *H & S C* § 11366 of opening or maintaining a place for the use or sale of methamphetamine was not entitled to receive probation under *Pen C* § 1210.1(a) as a nonviolent drug possession offender; his offense was more like a commercial offense and was therefore excluded by *Pen C* § 1210(a). *People v. Ferrando* (2004, Cal App 3d Dist) 115 Cal App 4th 917, 9 Cal Rptr 3d 670, 2004 Cal App LEXIS 174, review denied (2004, Cal) 2004 Cal LEXIS 3881.

Conviction of misdemeanor driving while under the influence of drugs constitutes a misdemeanor not related to the use of drugs that, pursuant to *Pen C* § 1210.1(b)(2), disqualifies a defendant from receiving the alternative disposition provided in *Pen C* § 1210.1(a). *People v. Canty* (2004) 32 Cal 4th 1266, 14 Cal Rptr 3d 1, 90 P3d 1168, 2004 Cal LEXIS 4668.

Officer noticed that defendant straddled the road's center line as she drove; defendant was convicted of driving under the influence of drugs, and she was convicted of possession of methamphetamine. Defendant's conviction for driving under the influence of drugs made her ineligible to receive probation and to participate in a diversion program with drug treatment. *People v. Canty* (2004) 32 Cal 4th 1266, 14 Cal Rptr 3d 1, 90 P3d 1168, 2004 Cal LEXIS 4668.

Trial court improperly abdicated its authority under Proposition 36, the Substance Abuse and Crime Prevention Act, by allowing defendant to choose outpatient rather than inpatient drug treatment in exchange for a particular sentence. *People v. Campbell* (2004, Cal App 1st Dist) 119 Cal App 4th 1279, 15 Cal Rptr 3d 188, 2004 Cal App LEXIS 1032, review denied (2004) 2004 Cal. LEXIS 9469.

The court, in order to find that a defendant has successfully completed treatment, must find that a defendant has completed a drug treatment program and that, as a result of that program, there is reasonable cause to believe the defendant will not abuse controlled substances in the future. Under *Pen C* §§ 1210(c) and 1210.1(d), mere completion of the program is not enough. *People v. Hinkel* (2005, Cal App 3d Dist) 125 Cal App 4th 845, 22 Cal Rptr 3d 895, 2005 Cal App LEXIS 20, review denied (2005, Cal) 2005 Cal LEXIS 3942.

Given the dearth of information concerning defendant's drug treatment program and his history of substance abuse, defendant failed to make a showing of a clear abuse of discretion under *Pen C* §§ 1210(c) and 1210.1(d) when the trial court decided that mere completion of the program was not sufficient to allow it to conclude that there was reasonable cause to believe defendant would not again abuse drugs. *People v. Hinkel* (2005, Cal App 3d Dist) 125 Cal App 4th 845, 22 Cal Rptr 3d 895, 2005 Cal App LEXIS 20, review denied (2005, Cal) 2005 Cal LEXIS 3942.

Forging or presenting a forged prescription to obtain drugs, in violation of *H & S C* § 11368, does not fall under

Cal. Proposition 36. *People v. Foreman* (2005, Cal App 1st Dist) 126 Cal App 4th 338, 23 Cal Rptr 3d 714, 2005 Cal App LEXIS 132.

Forgery of a prescription in violation of *H & S C § 11368*, even when intended to obtain drugs thereby entirely for personal use, does not come within the term "nonviolent drug possession offense" as defined by *Pen C § 1210(a)*. *People v. Wheeler* (2005, Cal App 3d Dist) 127 Cal App 4th 873, 26 Cal Rptr 3d 138, 2005 Cal App LEXIS 391, review denied (2005, Cal) 2005 Cal LEXIS 6990.

Defendant's conviction for concealing or destroying evidence in violation of *Pen C § 135* was not a misdemeanor related to drugs. Therefore, defendant was ineligible for treatment under Cal. Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, *Pen C §§ 1210 and 1210.1*. *People v. Moniz* (2006, Cal App 3d Dist) 140 Cal App 4th 86, 43 Cal Rptr 3d 904, 2006 Cal App LEXIS 842, review denied (2006, Cal) 2006 Cal LEXIS 11579.

Where defendant refused drug treatment as a condition of his deferred entry of judgment, which was the equivalent of probation, defendant refused drug treatment as a condition of probation. Therefore, defendant was ineligible for drug treatment probation under Cal. Proposition 36. *People v. Strong* (2006, Cal Super Ct) 138 Cal App 4th Supp 1, 41 Cal Rptr 3d 867, 2006 Cal App LEXIS 565.

In a proceeding on two petitions to revoke defendant's probation, conducting a single hearing was proper. *Pen C § 1210.1(e)(3)(A), (B)* does not require separate hearings. *People v. Budwiser* (2006, Cal App 3d Dist) 140 Cal App 4th 105, 44 Cal Rptr 3d 296, 2006 Cal App LEXIS 848, review denied (2006, Cal) 2006 Cal LEXIS 11796.