

Adverse Consequences of Appeal to Look For in Guilty Plea Cases **Materials & Presentation by Brad Bristow, CCAP Staff Attorney**

A. The most typical and harsh are the “unauthorized sentences”:

1. Failure to impose sentence on a count of conviction or a mandatory enhancement.
2. Failure to impose a mandatory fee or fine. (*People v. Talibdeen* (2002) 27 Cal.4th 1151.) But note that mere judicial error is not necessarily an unauthorized sentence. If court does not make express finding of inability to pay a discretionary fine or fee, that omission is not the type of error that makes the fine or fee unauthorized. (*People v. Tillman* (2000) 22 Cal.4th 300.) Also the appellate court may presume the finding was made. (*People v. Burnett* (2004) 116 Cal.App.4th 257.)
3. Failure to state reasons for striking a strike under Penal Code section 1385, or failing to place the reasons in the minutes. (*People v. Williams* (1998) 17 Cal.4th 148.)
4. Erroneous imposition of a one-third consecutive sentence when the sentence required was a full consecutive one, such as sentences for in-prison offenses, for Three Strikes life sentences, or for sexual offenses required to be sentenced under Penal Code section 667.6, subdivision (d); other erroneous stays and partial stays.
5. Credits errors (e.g., wrong formula - Penal Code section 2933.1 vs. section 4019?)

B. Advising your client:

Advisements to the appellant should be documented, clear, and appropriate to the circumstances. If the client does not expressly acknowledge receiving the advice, counsel should be certain the letter was properly addressed, such as by contacting the Prison Locator, (916) 445-6713. Many attorneys will insist on speaking to appellant personally, such as by a phone call, where the potential adverse consequence is great. On the other hand, a minimal risk should not be overemphasized. Also, keep in mind that the prison may spot the error, anyway. It often depends on how glaring the error is and whether there are enough facts to make a determination.

C. Other helpful articles:

Read more information on adverse consequences in articles from sister projects:

1. Grossman, Jonathan. "Four Easy Steps to Understanding Determinate Sentencing Law – IV. Frequent Adverse Consequences and Hidden Issues." <http://www.sdap.org/downloads/research/criminal/sentence.pdf>
2. O'Connell, Brad & Torres, Renee. "How to Approach a Case/Issue Spotting – Sentencing Issues." Appellate Advocacy College, pp. 38-44. May 2000. <http://www.courtinfo.ca.gov/jc/comlists/documents/lecture3.pdf>