

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

DARLENE LYNNE CHAMBERS,

Defendant and Appellant.

C052245

(Super. Ct. No.  
CM022702)

Defendant Darlene Lynne Chambers entered a negotiated plea of no contest to willfully evading a pursuing peace officer, and she admitted having a prior serious felony conviction and having served three prior, separate prison terms. The trial court sentenced her to an aggregate term of nine years in prison (the upper term of three years, doubled to six years pursuant to the "three strikes law," plus three years for the prior prison term enhancements).

On appeal, defendant contends her upper term sentence violates *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403] (hereafter *Blakely*). We disagree and shall affirm the judgment.

#### FACTS

Just after noon on March 11, 2005, a deputy sheriff saw defendant in a car parked in the driveway of a home in Paradise, California. The deputy knew defendant "was 'a wanted absconding parolee.'" Defendant tucked her head down after the deputy approached and called out her name. When the deputy told her to get out of the vehicle, defendant said: "'That's not going to happen.'" She put the vehicle in gear and drove onto the public roadway. With a patrol car in pursuit, defendant fled at speeds reaching 80 to 90 miles per hour. She caused a minor traffic collision by failing to yield to traffic, and she passed numerous vehicles at blind curves or by crossing double yellow lines. Defendant then turned onto southbound Highway 99, but got off at an exit. After driving through a red light, she drove back onto southbound Highway 99 and exceeded 118 miles per hour as she passed many vehicles, forcing many to move to the shoulder of the roadway. Defendant did not stop even after driving over a spike strip north of Gridley. Instead, she drove through the town at a high rate of speed, "failing to yield at all stop lights and failing to obey the designated traffic laws in the city." With her left tires going flat, defendant reduced her speed to between 70 and 80 miles per hour as she continued south on Highway 99. Defendant drove over another spike strip,

but continued to drive as her left side tires disintegrated to the rims. She finally stopped when she lost control of her vehicle four miles north of Yuba City.

#### DISCUSSION

Defendant claims that *Blakely, supra*, 542 U.S. 296, invalidates the statutory method used by California trial judges to impose an upper term, thereby invalidating her sentence. The People retort that defendant forfeited her claim because she did not raise a *Blakely* objection in the trial court. Assuming, without deciding, that defendant did not forfeit her claim by failing to object at sentencing, her argument fails.

Defendant concedes we are bound by the California Supreme Court's holding that our state's sentencing scheme--including the procedure for selecting an upper term--does not violate *Blakely*. (*People v. Black* (2005) 35 Cal.4th 1238, 1261-1264 (hereafter *Black*); *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Thus, she raises the issue solely "to preserve it for federal court review."

Not only does the holding in *Black* defeat defendant's claim of error, the contention fails for another reason. Applying the Sixth Amendment to the United States Constitution, the United States Supreme Court held in *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435]) (hereafter *Apprendi*) that other than the fact of a prior conviction, any fact increasing the penalty for a crime beyond the statutory maximum must be tried to a jury and proved beyond a reasonable doubt. (*Id.* at p. 490 [147 L.Ed.2d at p. 455].) For this purpose, the statutory maximum is the maximum

sentence a court could impose based solely on facts reflected by a jury's verdict or admitted by the defendant. Therefore, when a sentencing court's authority to impose an enhanced sentence depends upon additional fact findings, there is a right to a jury trial and proof beyond a reasonable doubt on the additional facts. (*Blakely, supra*, 542 U.S. at pp. 303-304 [159 L.Ed.2d at pp. 413-414].)

One of the reasons the trial court gave for imposing the upper term is defendant's prior criminal convictions. (Cal. Rules of Court, rule 4.421(b)(2).) As we have noted, the rules of *Apprendi* and *Blakely* do not apply to a prior conviction used to increase the penalty for a crime. Since one valid factor in aggravation is sufficient to expose defendant to the upper term (*People v. Cruz* (1995) 38 Cal.App.4th 427, 433), her sentence did not violate the rules of *Apprendi* and *Blakely*.

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_  
SCOTLAND, P.J.

I concur:

\_\_\_\_\_  
DAVIS, J.

I concur in the result:

\_\_\_\_\_  
NICHOLSON, J.