

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DWAYNE DUNLAP,

Defendant and Appellant.

F049177

(Super. Ct. No. 05CM7144)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Louis F. Bissig, Judge.

Ross Thomas, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Lloyd G. Carter and Louis M. Vasquez, for Plaintiff and Respondent.

-ooOoo-

* Before Vartabedian, Acting P.J., Levy, J. and Gomes, J.

A jury convicted Dwayne Dunlap of possession of marijuana while in a state prison (Pen. Code, § 4573.6). In a bifurcated proceeding, the jury found true special allegations that Dunlap served three prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). The court sentenced Dunlap to an aggregate term of seven years, comprised of the upper term of four years on the possession charge and one year for each of the three prison priors. The court ordered the sentence to run fully consecutive to the sentence Dunlap was then serving.

Dunlap contends on appeal the trial court violated the constitutional principles enunciated in *Blakely v. Washington* (2004) 542 U.S. 296 in imposing the upper prison term by relying on aggravating sentencing factors not determined by a jury beyond a reasonable doubt. Dunlap recognizes the California Supreme Court held no such right exists under California's determinate sentencing laws (*People v. Black* (2005) 35 Cal.4th 1238) and this court is bound to follow that decision (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Dunlap "makes this argument to preserve the issue for possible federal court review." As such, we reject Dunlap's claim. (We are aware the United States Supreme Court has agreed to review the question of the applicability of *Blakely* to California sentencing in *People v. Cunningham* (Apr. 18, 2005, A103501 [nonpub. opn.]), cert. granted sub nom. *Cunningham v. California* (2006) ___ U.S. ___ [126 S.Ct. 1329].)

DISPOSITION

The judgment is affirmed.