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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

WESLEY DAVID FRENCH,

Defendant and Appellant.

C050785

(Super. Ct. No.
02F07203)

An information charged defendant Wesley David French with 12 counts of lewd and lascivious conduct involving three young children. (Pen. Code, § 288, subd. (a).) Defendant entered negotiated pleas of no contest to six of these counts. The trial court sentenced defendant to an aggregate prison term of 18 years and dismissed the remaining charges.

On appeal, defendant's sole claim of error is that the trial court violated principles enunciated in *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403] (*Blakeley*) when imposing sentence. We affirm the judgment.

DISCUSSION

In giving a factual basis for defendant's plea, the prosecutor described six instances in which defendant molested young children. As to count 1, the count at issue in this appeal, the prosecutor said that defendant took the victim "to a park bathroom and touch[ed the victim's] penis on repeated occasions." Defendant entered his plea of no contest with the understanding that the maximum aggregate sentence that could be imposed was 18 years.

In imposing exactly that sentence, the court selected the upper term for count 1, explaining that defendant "took advantage of a position of trust and confidence to commit the crime pursuant to [California Rules of Court] rule 4.421(a)(11)."

On appeal, defendant contends that the trial court erred in imposing the aggravated term based upon facts not proved beyond a reasonable doubt, thereby violating the principles enunciated in *Blakely, supra*, 542 U.S. 296 [159 L.Ed.2d 403]. But as defendant recognizes, the California Supreme Court rejected the identical claim in *People v. Black* (2005) 35 Cal.4th 1238. We are bound by that decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

We reject defendant's argument for another reason as well.

Plea bargaining is a judicially and legislatively recognized procedure (*People v. Masloski* (2001) 25 Cal.4th 1212, 1216; Pen. Code, § 1192.5) providing reciprocal benefits to the

People and to the defendant (*People v. Orin* (1975) 13 Cal.3d 937, 942). Where, as here, a defendant agrees that the court has the authority to sentence that defendant to an upper term, he is deemed to have admitted that his conduct, as a matter of fact, can support that term. (See generally, *People v. Hester* (2000) 22 Cal.4th 290, 295; *People v. Hoffard* (1995) 10 Cal.4th 1170, 1181-1182; *People v. Thomas* (1986) 41 Cal.3d 837, 842-843.) *Blakely* does not apply where a defendant stipulates to relevant facts that support a particular term of imprisonment. (*Blakely, supra*, 542 U.S. at p. 310 [159 L.Ed.2d at pp. 417-418].)

DISPOSITION

The judgment is affirmed.

_____ HULL _____, J.

We concur:

_____ NICHOLSON _____, Acting P.J.

_____ MORRISON _____, J.