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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES PACK,

Defendant and Appellant.

B187954

(Los Angeles County
Super. Ct. No. LA049451)

APPEAL from a judgment of the Superior Court of Los Angeles County, Susan M. Speer, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Ana R. Duarte and Dawn S. Mortazavi, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Charles Pack appeals from the judgment entered following a jury trial that resulted in his conviction for assault with a deadly weapon. The trial court sentenced Pack to a term of 13 years in prison.

Pack contends imposition of an upper term sentence violated his right to trial by jury (*Blakely v. Washington* (2004) 542 U.S. 296). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

Viewed in accordance with the usual rules governing appellate review (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; *People v. Johnston* (2003) 113 Cal.App.4th 1299, 1303-1304), the evidence presented at trial established the following.¹ Pack was a transient. On December 18, 2004, Pack slashed another transient, Gregory Westervelt, with a knife, cutting him twice in the back and once on his arm. Pack's statements before, during, and after the attack indicated he was retaliating for Westervelt's punching him earlier in the day. Both Pack and Westervelt were intoxicated.

2. *Procedure.*

Trial was by jury. Pack was found guilty of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)).² In a bifurcated proceeding, the trial court found Pack had suffered a prior conviction of a serious or violent felony (§§ 667, subds. (a)(1), (b) – (i), 1170.12, subds. (a) – (d).) Pack's *Romero*³ motion was denied. The trial court sentenced Pack to a term of 13 years in prison pursuant to the Three Strikes law. It also imposed a restitution fine, a suspended parole revocation fine, and a court security fee. Pack appeals.

DISCUSSION

1. *Imposition of the upper term did not violate Blakely v. Washington.*

At sentencing, the trial court imposed a sentence of four years for the assault, the

¹ Because the circumstances of the crime are not directly relevant to our analysis of the issue presented on appeal, we limit discussion of the facts to a brief summary.

² All further undesignated statutory references are to the Penal Code.

³ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

upper term for the offense. The trial court observed that the crime involved great violence; the victim was particularly vulnerable; the crime involved planning; Pack demonstrated a pattern of violence; Pack's previous crimes were numerous and increasing in severity; Pack had served a prior prison term, and was on parole at the time of the conviction; Pack was an alcoholic, and his alcoholism had contributed to his past crimes; and Pack was a transient with no family support. The trial court found only one mitigating factor to exist, i.e., that the victim had initiated the confrontation.

Pack contends that imposition of the upper term violated his constitutional right to a jury trial, citing *Blakely v. Washington*, *supra*, 542 U.S. 296. As Pack acknowledges, our Supreme Court resolved the issue adversely to him in *People v. Black* (2005) 35 Cal.4th 1238. *Black* concluded that "the judicial factfinding that occurs when a judge exercises discretion to impose an upper term sentence or consecutive terms under California law does not implicate a defendant's Sixth Amendment right to a jury trial." (*Id.* at p. 1244.) We are bound by *Black*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)⁴ Accordingly, Pack's *Blakely* claim lacks merit.

⁴ The United States Supreme Court is currently reviewing the effect of *Blakely* on California's sentencing scheme. (*People v. Cunningham* (Apr. 18, 2005, A103501) [nonpub. opn.], cert. granted sub nom. *Cunningham v. California* (Feb. 21, 2006, No. 05-6551) ___U.S.___ [126 S. Ct. 1329, 164 L. Ed. 2d 47].)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.