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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JOSE LUIS RODRIGUEZ, Defendant and Appellant.	B190225 (Los Angeles County Super. Ct. No. TA076929)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gary R. Hahn, Judge. Affirmed.

Vanessa Place, for Defendant and Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lawrence M. Daniels and Shawn McGahey Webb, Deputy Attorneys General, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Jose Luis Rodriguez was charged by 16-count information with violations of Penal Code sections 288.5, subdivision (a) (continuous sexual abuse of a child under the age of 14), 288, subdivision (a) (lewd and lascivious acts with a child under the age of 14), and 269, subdivision (a)(5) (aggravated sexual assault of a child under the age of 14).[1] The alleged victims were his wife's younger cousins, K.O. and I. O.

At the time of trial, K.O. was a teenager and I.O. was in her 20's. K.O. testified that the abuse began when she was five or six and continued until she was ten and included both inappropriate touching and intercourse. The acts of abuse occurred approximately twice a month during this period. K.O. did not tell anyone until October 2004, approximately five years after the fact. I.O. testified that the abuse, which involved inappropriate touching and digital penetration but not intercourse, began when she was 10 or 11 and continued until she was 13 or 14. The acts occurred at a frequency of two to three times per week. I.O. did not tell anyone until she heard about K.O.'s accusation. Appellant confessed on tape to inappropriately touching the girls, but, at trial, denied the charges and testified that the confession had been coerced by police officers.

The jury convicted appellant on four counts of lewd and lascivious acts with a child -- counts three, four, five, and six of the information, all involving K.O. -- and deadlocked on the remaining counts.

The court sentenced appellant to the upper term of eight years for count three "because the victim was particularly vulnerable" and because "[appellant] showed . . . some premeditation." For each of counts four, five, and six, the court

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[1] The counts were numbered one through nine and twelve through eighteen.

sentenced appellant to two years or one-third the mid-term, to run consecutively, resulting in a total sentence of 14 years.

DISCUSSION

The only issue raised on appeal concerns the court's decision to sentence appellant to the upper term for count three due to the existence of aggravating factors. Appellant contends that imposition of the upper term based on facts that were neither found by the jury nor admitted by him violated his Sixth Amendment right to a jury trial under the United States Supreme Court's decision in *Blakely v. Washington* (2004) 542 U.S. 296. As appellant concedes, in *People v. Black* (2005) 35 Cal.4th 1238, the California Supreme Court resolved this issue, holding 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.) The decisions of the California Supreme Court are binding on all California state courts. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) We, therefore, reject appellant's contention.[2]

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[2] The United States Supreme Court has granted a petition for writ of certiorari in *Cunningham v. California* (Apr. 18, 2005, A103501), cert. granted Feb. 21, 2006, No. 05-6551, __U.S.__ [126 S. Ct. 1672] to address the issue whether California's upper term sentencing procedure violates *Blakely*.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.