

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,
Plaintiff and Respondent,
v.
EDILBERTO SAPHAO,
Defendant and Appellant.

A103716

(Solano County
Super. Ct. No. 201751)
ORDER MODIFYING OPINION
AND DENYING REHEARING

THE COURT:

It is ordered that the opinion filed herein on February 10, 2005, be modified as follows:

1. On page 9, we are adding one sentence at the beginning of footnote 3, so that footnote 3 is modified to read in its entirety as follows:

The Attorney General asserts its standard claims that any *Blakely* error is waived because Saphao failed to object, and that *Blakely* does not apply to California's determinate sentencing scheme. We recently rejected these arguments, premised on the same authorities, in an opinion in which the California Supreme Court has granted review. (*People v. Butler* (2004) 122 Cal.App.4th 910, 918-919, review granted Dec. 15, 2004, S129000.) Pending final word from the California Supreme Court, we see no reason either to depart from that holding here, or to reiterate its reasoning. The issue regarding the application of *Blakely* to an aggravated term under California's determinate sentencing law is also currently pending before the California Supreme Court in *People v. Towne*, review granted

July 14, 2004, S125677, and *People v. Black*, review granted July 28, 2004, S126182.

There is no change in the judgment. Respondent's petition for rehearing is denied.

DATED: _____

Kline, P.J.

Trial Court: Solano County Superior Court

Trial Judge: Hon. Harry S. Kinnicutt

Counsel for Appellant: David D. Martin, Under the Assisted Case
Assignment of the First District Appellate
Project

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