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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Glenn)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ANTHONY STAFFORD,

Defendant and Appellant.

C051859

(Super. Ct. No.
05SCR02288)

Defendant Charles Anthony Stafford was employed as a handyman at a residence. While the occupants were absent, defendant went into the residence and stole seven valuable handguns. He was charged with first degree burglary and seven counts of grand theft of a firearm. It was further alleged that he had a prior serious felony conviction within the meaning of the "three strikes law."

Defendant entered a negotiated plea of guilty to grand theft of a firearm, admitted having a prior serious felony conviction, entered a *Harvey* waiver allowing the court to consider, for purposes

of sentencing, the facts of the other charges (*People v. Harvey* (1979) 25 Cal.3d 754), and acknowledged that his plea and admission exposed him to a maximum prison term of six years.

In accordance with the plea agreement, defendant was sentenced to a state prison term of six years (the upper term of three years doubled pursuant to the three strikes law).

On appeal, defendant claims that imposition of the upper term violated his constitutional rights to a jury trial and proof beyond a reasonable doubt as interpreted in *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] (hereafter *Apprendi*) and *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403] (hereafter *Blakely*). In *Apprendi, supra*, 530 U.S. at page 490 [147 L.Ed.2d at p. 455], the United States Supreme Court held that a defendant in a criminal case is entitled to a jury trial and proof beyond a reasonable doubt with respect to any fact, other than the fact of a prior conviction, that increases the penalty for a crime beyond the prescribed statutory maximum. In *Blakely, supra*, 542 U.S. at pp. 303-305 [159 L.Ed.2d at pp. 413-414], the court held that for this purpose the "statutory maximum" is the maximum sentence that may be imposed solely on the basis of the facts reflected in the jury's verdict or admitted by the defendant.

The People assert, among other things, that defendant forfeited his claim of error when he entered his plea with the agreement that it exposed him to the upper term, doubled by the three strikes law.

We need not address the forfeiture argument because defendant's claim of error fails for two separate reasons.

In *People v. Black* (2005) 35 Cal.4th 1238, the California Supreme Court held that the upper term in our state's determinate sentencing scheme is the "statutory maximum" for purposes of the rule of *Apprendi* and *Blakely*. Unless the United States Supreme Court decides otherwise, we are bound by the decision in *People v. Black, supra*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

In any event, the United States Supreme Court has expressly excluded from the application of the rule of *Apprendi* and *Blakely* the consideration of a prior conviction for purposes of sentencing. (*Apprendi, supra*, 530 U.S. at p. 490 [147 L.Ed.2d at p. 455]; see also *United States v. Booker* (2005) 543 U.S. 220, 230-231 [160 L.Ed.2d 621, 641-642].)

Here, in selecting the upper term, the trial court cited defendant's criminal history as one of the aggravating factors supporting that term. Indeed, defendant's criminal history is dismal. The probation report identifies a plethora of prior misdemeanor convictions and a substantial number of prior felony convictions. The convictions were based on conduct at different times and places. They reflect a virtually continuous refusal to abide by the law.

Since defendant's prior convictions were not subject to the rule of *Apprendi* and *Blakely* and were sufficient to expose him to the upper term, the court's consideration of other factors as well does not require reversal of the judgment. A single factor in aggravation is sufficient to support the imposition of the upper term. (*People v. Cruz* (1995) 38 Cal.App.4th 427, 433.)

Accordingly, one properly determined factor in aggravation is legally sufficient to expose the defendant to imposition of the upper term. This is sufficient to satisfy the rule of *Apprendi* and *Blakely*.

The judgment is affirmed.

_____ SCOTLAND _____, P.J.

We concur:

_____ BLEASE _____, J.

_____ MORRISON _____, J.