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

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN ALEXANDER STEELE,

Defendant and Appellant.

C052743

(Super. Ct. No.
04F10823)

A jury convicted defendant Justin Alexander Steele of making a criminal threat and assault with a deadly weapon, and the trial court sentenced him to the upper term on each count (an aggregate term of four years in state prison). On appeal, defendant contends that imposition of the upper term violates the Sixth Amendment to the United States Constitution as interpreted in *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] (hereafter *Apprendi*), *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403] (hereafter *Blakely*), and *Cunningham v. California* (2007) 549 U.S.

___ [166 L.Ed.2d 856] (hereafter *Cunningham*). We shall affirm the judgment.

DISCUSSION

Apprendi held that other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be tried to a jury and proved beyond a reasonable doubt. (*Apprendi, supra*, 530 U.S. at p. 490 [147 L.Ed.2d at p. 455].) For this purpose, the statutory maximum is the maximum sentence a court could impose based solely on facts reflected by a jury's verdict or admitted by the defendant; thus, when a court's authority to impose an enhanced sentence depends upon additional fact findings, there is a right to a jury trial and proof beyond a reasonable doubt on the additional facts. (*Blakely, supra*, 542 U.S. at pp. 303-305 [159 L.Ed.2d at pp. 413-414].)

In *Cunningham*, the United States Supreme Court held that by "assign[ing] to the trial judge, not to the jury, authority to find the facts that expose a defendant to an elevated 'upper term' sentence," California's determinate sentencing law "violates a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments." (*Cunningham, supra*, 549 U.S. ___ [166 L.Ed.2d at p. 864], overruling *People v. Black* (2005) 35 Cal.4th 1238 on this point.)

Citing the aforementioned authorities, defendant contends that the trial court's imposition of the upper term violated his constitutional right to a jury trial. We disagree.

The court imposed the upper term based upon the fact that defendant was "on CYA [California Youth Authority] parole" at the

time he committed the present offenses. Juvenile adjudications are prior convictions within the meaning of *Apprendi* (*People v. Palmer* (2006) 142 Cal.App.4th 724, 732; *United States v. Burge* (11th Cir. 2005) 407 F.3d 1183, 1190; *United States v. Jones* (3d Cir. 2003) 332 F.3d 688, 695-696; *United States v. Smalley* (8th Cir. 2002) 294 F.3d 1030, 1032-1033); and the prior conviction exception applies not only to the fact of a prior conviction, but also to "an issue of recidivism which enhances a sentence and is unrelated to an element of a crime." (*People v. Thomas* (2001) 91 Cal.App.4th 212, 223.)

For example, "'the fact of a prior conviction,' and related facts such as the timing of the conviction and the type and length of sentence imposed, may be judicially found at sentencing." (*U.S. v. Cordero* (5th Cir. 2006) 465 F.3d 626, 632-633, fns. omitted.) Thus, the trial court may determine and rely on the defendant's probation or parole status to impose the upper term. (Cf. *United States v. Fagans* (2d Cir. 2005) 406 F.3d 138, 141-142 (district court did not violate defendant's Sixth Amendment jury rights by finding the offense was committed while the defendant was on probation); *United States v. Corchado* (10th Cir. 2005) 427 F.3d 815, 820 [the "prior conviction" exception extends to "subsidiary findings" such as whether a defendant was under court supervision when he or she committed a subsequent crime].)

Accordingly, defendant's status in parole after incarceration for a criminal offense committed as a juvenile falls within the prior conviction exception because it is premised on defendant's prior criminal adjudication, does not relate to commission of the

current offense, and is verifiable by review of court records.
(See *People v. Thomas, supra*, 91 Cal.App.4th 212, 216-223.)
Hence, defendant's claim of constitutional error fails.

DISPOSITION

The judgment is affirmed.

_____ SCOTLAND _____, P.J.

We concur:

_____ RAYE _____, J.

_____ ROBIE _____, J.