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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BARBARA HALLEN ALLISON,

Defendant and Appellant.

F051941

(Super. Ct. No. F06903476-0)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Gary R. Orozco, Judge.

William Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, J. Robert Jibson and Judy Kaida, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Harris, Acting P.J., Cornell, J. and Dawson, J.

INTRODUCTION

Appellant Barbara Hallen Allison contends the imposition of the upper term of imprisonment violates her constitutional rights as articulated in *Blakely v. Washington* (2004) 542 U.S. 296 (*Blakely*) and *Cunningham v. California* (2007) 549 U.S. ____ [127 S.Ct. 856] (*Cunningham*).

We disagree with Allison's contentions and will affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Allison had been convicted of driving under the influence in 2003 and placed on felony probation. In November 2004, her probation was revoked and she was sentenced to 16 months in state prison, with 522 days' credit for time served. She was paroled within the month. She violated parole in March and April of 2005 and February and May of 2006.

On May 30, 2006, Allison was charged with driving under the influence, driving with a blood-alcohol level higher than .08 percent, and it was alleged that she had suffered a prior driving under the influence conviction and had served a prior prison term. She had a blood-alcohol level of .28 percent at the time of her arrest on April 23, 2006.

On October 12, 2006, Allison pled not guilty and denied the prior conviction allegation. On November 1, 2006, Allison withdrew her not guilty plea, pled no contest to driving under the influence, and admitted the prior conviction allegation as part of a plea agreement, including dismissal of the other charge and prior prison term allegation and a three-year lid on the plea.

On December 4, 2006, the trial court imposed the upper term sentence of three years.

DISCUSSION

Allison contends the trial court violated *Blakely* and *Cunningham* by imposing the upper term of three years for the driving under the influence conviction because her

history of offenses and her parole status are matters that require a jury determination. She is incorrect.

Under the terms of the plea agreement, Allison could have been sentenced to a total maximum term of imprisonment of three years. The trial court imposed a three-year sentence, within the maximum under the plea agreement. Allison agreed to imposition of a three-year maximum as a condition of the plea agreement.

By entering into the plea agreement, Allison effectively stipulated that there was a factual basis for the imposition of the maximum term that could be imposed within the terms of the plea agreement and that imposition of the lid was lawful. (*People v. Shelton* (2006) 37 Cal.4th 759, 768.) Under *Blakely*, the statutory maximum includes the maximum sentence a judge may impose based on facts admitted by the defendant. (*Blakely, supra*, 542 U.S. at p. 303.) *Cunningham* held that in accord with *Blakely*, the upper term could be imposed if the factual basis was found by the jury or stipulated to by the defendant. (*Cunningham, supra*, 549 U.S. at p. ____ [127 S.Ct. at p. 868].)

In *People v. Bobbit* (2006) 138 Cal.App.4th 445, the defendant entered into a plea agreement with a sentencing lid. The trial court imposed the maximum term that could be imposed under the plea agreement. (*Id.* at p. 447.) After first noting that the issue was not cognizable on appeal because the defendant failed to obtain a certificate of probable cause, the appellate court noted that imposition of the upper term pursuant to a plea agreement was not precluded, citing *People v. Shelton, supra*, 37 Cal.4th 759. As the California Supreme Court stated in *Shelton*:

“[T]he specification of a maximum sentence or lid in a plea agreement normally implies a mutual understanding of the defendant and the prosecutor that the specified maximum term is one that the trial court may lawfully impose and also a mutual understanding that, absent the agreement for the lid, the trial court might lawfully impose an even longer term.” (*Id.* at p. 768.)

The sentence imposed is within the maximum specified under the plea agreement and was stipulated to by Allison. The sentence does not violate *Blakely* or *Cunningham*.

DISPOSITION

The judgment is affirmed.