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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID SAMUEL GRIFFIN,

Defendant and Appellant.

C051323

(Super. Ct. Nos.
NCR65580 & NCR66068)

After defendant David Samuel Griffin twice scuffled with jail personnel while he was incarcerated, a jury convicted him of three counts of resisting an executive officer, one count of battery on a custodial officer, and one count of misdemeanor battery on an officer. He was sentenced to an aggregate state prison term of eight years and eight months, including consecutive sentences for the three convictions for resisting an executive officer. The sentence imposed for battery on a custodial officer was stayed pursuant to Penal Code section 654.

On appeal, defendant contends the imposition of consecutive sentences violated the principles of *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403] (hereafter *Blakely*). We disagree and shall affirm the judgment.

BACKGROUND

Count I, resisting an executive officer in the performance of his duties, relates to the following incident: On February 9, 2005, defendant was an inmate in the Tehama County Jail. He became agitated when a jail officer confronted him about his violation of a jail rule. Defendant refused to comply with the officer's order and punched the officer's supervisor, Sergeant David Hohenstein, in the shoulder as he was attempting to get defendant to respond to the order.

Count IV, resisting an executive officer in the performance of his duties, relates to the following incident: On May 11, 2005, while still an inmate at the Tehama County Jail, defendant became agitated when jail officer John Davis stopped him from taking an extra roll of toilet paper to his cell. Davis was concerned because defendant's cellmate had been using extra toilet paper to plug up a drain and flood the cell or to soak the paper and throw it. When Davis told him to return the roll of toilet paper, defendant said he "was not going to do anything a fat old fucker like [Davis] told him to [do]." Defendant then walked away with the roll. Davis pursued defendant, who turned around and hit Davis in the face.

Count VI, resisting an executive officer in the performance of his duties, relates to the following incident: When defendant swung at Officer Davis again, Officer Clayton Delaughder grabbed defendant,

who struggled to get away, causing Delaughder to suffer a laceration behind his left ear and abrasions to his left eye.

After sentencing defendant on count I, the trial court imposed a consecutive sentence on count IV, explaining that it "is a separate offense committed at a separate time and place from Count I. The Court also notes a prior parole violation." The court also imposed a consecutive sentence on count VI, stating that it "is an offense which involved a separate victim. The Court also notes the prior parole violation."

DISCUSSION

Defendant argues *Blakely, supra*, 542 U.S. 296 [159 L.Ed.2d 403] invalidates the statutory method used by California trial judges to impose consecutive sentences, thereby invalidating his sentence. The contention fails.

Applying the Sixth Amendment to the United States Constitution, the United States Supreme Court held in *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] (hereafter *Apprendi*) 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. (*Id.* at p. 490 [147 L.Ed.2d at p. 455].) For this purpose, the statutory maximum is the maximum sentence that a court could impose based solely on facts reflected by a jury's verdict or admitted by the defendant; thus, when a sentencing 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. 302-304 [159 L.Ed.2d at pp. 413-414].)

Relying on *Apprendi* and *Blakely*, defendant claims the court erred in imposing consecutive sentences on counts IV and VI because it relied upon facts not submitted to the jury and proved beyond a reasonable doubt, thus depriving him of the constitutional right to a jury trial on facts legally essential to the sentence.

In *Cunningham v. California* (2007) ___ U.S. ___ [127 S.Ct. 856, 860, ___ L.Ed.2d ___] (hereafter *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 (DSL) "violates a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments." (*Ibid.*, overruling *People v. Black* (2005) 35 Cal.4th 1238 on this point.)

Cunningham did not address the constitutionality of the DSL pertaining to a trial court's decision to impose concurrent or consecutive sentences. It did not mention, let alone expressly overrule, the California Supreme Court's decision that "*Blakely's* underlying rationale is inapplicable to a trial court's decision whether to require that sentences on two or more offenses be served consecutively or concurrently." (*People v. Black, supra*, 35 Cal.4th at p. 1262, vacated in *Black v. California* (Feb. 20, 2007) ___ U.S. ___ [2007 WL 505809].)

For reasons that follow, we reject defendant's assertion that he was entitled to have a jury determine the facts upon which the trial court relied to impose consecutive sentences.

Penal Code section 669 imposes an affirmative duty on a trial court to determine whether the terms of imprisonment for multiple offenses are to be served concurrently or consecutively. (*In re Calhoun* (1976) 17 Cal.3d 75, 80-81.) In most cases, the section leaves this decision to the trial court's discretion. (*People v. Jenkins* (1995) 10 Cal.4th 234, 255-256.) "While there is a statutory presumption in favor of the middle term as the sentence for an offense [citation], there is no comparable statutory presumption in favor of concurrent rather than consecutive sentences for multiple offenses except where consecutive sentencing is statutorily required. The trial court is required to determine whether a sentence shall be consecutive or concurrent but is not required to presume in favor of concurrent sentencing." (*People v. Reeder* (1984) 152 Cal.App.3d 900, 923.)

Penal Code section 669 provides that when a trial court fails to determine whether multiple sentences shall run concurrently or consecutively, then the terms shall run concurrently. This provision reflects the Legislature's policy of "speedy dispatch and certainty" of criminal judgments and the sensible notion a defendant should not be required to serve a sentence that has not been imposed by a court. (See *In re Calhoun, supra*, 17 Cal.3d at p. 82.) This provision does not relieve a sentencing court of the affirmative duty to determine whether sentences for multiple crimes should be served concurrently or consecutively. (*Ibid.*) And it does not create a presumption or other entitlement to concurrent sentencing. Under Penal Code section 669, a defendant convicted of multiple offenses is entitled to the

exercise of the sentencing court's discretion, but is not entitled to a particular result.

The trial court is required to state reasons for its sentencing choices, including a decision to impose consecutive sentences. (Cal. Rules of Court, rule 4.406(b)(5); *People v. Walker* (1978) 83 Cal.App.3d 619, 622.) This requirement ensures that the court analyzes the problem and recognizes the grounds for the decision, assists meaningful appellate review, and enhances public confidence in the system by showing that sentencing decisions are careful, reasoned, and equitable. (*People v. Martin* (1986) 42 Cal.3d 437, 449-450.) However, the requirement that reasons for a sentence choice be stated *does not create a presumption or entitlement to a particular result.* (See *In re Podesto* (1976) 15 Cal.3d 921, 937.)

Therefore, entrusting to trial courts the decision whether to impose concurrent or consecutive sentencing under California's sentencing laws is not precluded by the decisions in *Apprendi*, *Blakely*, and *Cunningham*. In this state, every person who commits multiple crimes knows he or she is risking consecutive sentencing. While such a person has the right to the exercise of the court's discretion, the person does not have a legal right to concurrent sentencing, and as the Supreme Court said in *Blakely*, "that makes all the difference insofar as judicial impingement upon the traditional role of the jury is concerned." (*Blakely, supra*, 542 U.S. at p. 309 [159 L.Ed.2d at p. 417].)

Accordingly, the trial court here did not err in imposing consecutive sentences.

In any event, defendant's claim of error fails because the imposition of consecutive sentences rested wholly on facts found true by the jury -- as defendant acknowledges, the jury found true "the factors relating to separate times, places, and victims," which findings "are self-evident from the verdict forms."

Criteria justifying that imposition of consecutive sentences include that the crimes involved separate acts of violence or threats of violence (Cal. Rules of Court, rule 4.425, subd. (a)(2)) and that they were committed at different times rather than being committed so closely in time and place as to indicate a single period of aberrant behavior (Cal. Rules of Court, rule 4.425, subd. (a)(1)).

A single valid factor is sufficient to justify a sentencing choice, whether it is an aggravated term of imprisonment or a consecutive sentence. (*People v. Dancer* (1996) 45 Cal.App.4th 1677, 1695-1696, overruled on other grounds in *People v. Hammon* (1997) 15 Cal.4th 1117, 1123.) "Moreover, the same factor can support numerous consecutive sentences and a single proper statement of reasons will support them." (*Dancer, supra*, 45 Cal.App.4th at p. 1696.)

Here, in imposing a consecutive sentence on count IV because it is "a separate offense committed at a separate time and place from Count I" and in imposing a consecutive sentence on count VI because it "involved a separate victim," the trial court indicated

that it did so based on facts found true by the jury. There was no *Blakely* error.

DISPOSITION

The judgment is affirmed.

_____ SCOTLAND _____, P.J.

We concur:

_____ DAVIS _____, J.

_____ RAYE _____, J.