

CERTIFIED FOR PARTIAL PUBLICATION[†]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN ROBERT JAFFE,

Defendant and Appellant.

H026265

(Santa Clara County
Super.Ct.No. EE220540)

**ORDER MODIFYING OPINION
AND DENYING REHEARING**

NO CHANGE IN THE JUDGMENT

It is hereby ordered that the opinion filed herein on October 13, 2004, be modified as follows:

1) On page 17, in the final paragraph, replace the fifth sentence beginning “That the key was in the ignition . . .” with “That the key was in the ignition originally was also inferable from the evidence that Gaddi Ittah reported in a 911 call that the car was running when he first found defendant.”

2) On page 35, after the first paragraph concluding, “In other words, the prosecutor was not required . . .” please add the following paragraphs:

By way of petition for rehearing, defendant contends that *Blakely* limits a court looking for “the facts . . . admitted by the defendant” to admissions “made pursuant to a formal proceeding such as a guilty plea” “or some type of formal evidentiary stipulation personally entered by the defendant.” Defendant contends that his admissions, contained in his letter to the probation officer responding to the probation report’s sentencing recommendations, were not formal enough.

[†] Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of parts 2, 3B, 5, and 7.

We see nothing in *Blakely* setting any threshold of formality for a defendant's admission. As quoted above, *Blakely* acknowledged that *Apprendi* could be satisfied in a guilty plea context if the defendant "either stipulates to the relevant facts or consents to judicial factfinding." (*Blakely, supra*, ___ U.S. at p. ___, 124 S. Ct. at p. 2541.) This does not address the formality of the stipulation in the context of a trial.

We reiterate, the rule of *Apprendi, supra*, 530 U.S. 466 is that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Id.* at p. 490.) In adding the alternative of facts "admitted by the defendant," *Blakely* cited page 488 in *Apprendi*. That passage in *Apprendi* described the earlier decision of *Almendarez-Torres, supra*, 523 U.S. 224, which allowed a higher sentence to be imposed without jury findings based on a defendant's admissions of three prior convictions. Among the reasons given by *Apprendi* for allowing a sentence to be based on such facts were that the prior convictions "had been entered pursuant to proceedings with substantial safeguards of their own" and "the reality that Almendarez-Torres did not challenge the accuracy of that 'fact' in his case." (*Apprendi, supra*, at p. 488.) None of these cases required the admission itself to be accompanied by procedural safeguards, so long as the prior conviction was.

As indicated above, aggravating factors, like sentence enhancements, are conceived by *Apprendi* to be the functional equivalent of elements of a greater offense. (*People v. Sengpadychith, supra*, 26 Cal.4th 316, 326.) It is already established that judicial advisements pursuant to *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122 are not required when a defendant does not plead guilty but merely stipulates to an element of an offense, such as having the status of an ex-felon. (*People v. Newman* (1999) 21 Cal.4th 413, 422; *People v. Adams* (1993) 6 Cal.4th 570, 577.)

In this case, defendant's written admissions were contained in his letter responding to the probation report's sentencing recommendations. It is apparent that defendant intended that the sentencing judge receive and rely on his letter for purposes of sentencing. Under these circumstances, we conclude that the judge was entitled to rely on the facts admitted by defendant for sentencing purposes even without their prior proof to a jury.

3) On page 36, delete all citations to *People v. Sykes* (2004) 120 Cal.App.4th 1331 and *People v. Vonner* (2004) 121 Cal.App.4th 801.

The petition for rehearing by appellant is denied.

There is no change in the judgment.

Dated:

Walsh, J.*

Rushing, P.J.

Premo, J.

* Judge of the Santa Clara County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.