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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. PAUL JOSEPH SHELL, Defendant and Appellant.	C046994 (Super. Ct. No. 01F6743)

Defendant Paul Joseph Shell pled no contest to cultivating marijuana (Health & Saf. Code, § 11358) and was sentenced to the upper term of three years because his "prior violations of law have been numerous, there has been prior prison term [*sic*] served, and performance on grants of probation has been poor . . . ." Execution of sentence was suspended, and defendant was placed on probation. After defendant violated probation on three separate occasions, probation was revoked and he was committed to state prison for the upper term.

On appeal, defendant contends the sentence violates the rule expressed in *Blakely v. Washington* (2004) 542 U.S. ___ [159 L.Ed.2d 403]. We disagree and shall affirm the judgment.

DISCUSSION

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 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 v. Washington, supra,* 542 U.S. at p. ___ [159 L.Ed.2d at pp. 413-414] (hereafter *Blakely*).)

Relying on *Apprendi* and *Blakely*, defendant claims the trial court erred in imposing the upper term for his cultivation of marijuana conviction because the court 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.

The contention fails. One of the reasons the court gave for imposing the upper term is defendant's prior criminal convictions. (Cal. Rules of Court, rule 4.421(b)(2).) As we have noted, the rule

of *Apprendi* and *Blakely* does not apply to a prior conviction used to increase the penalty for a crime. Since one valid factor in aggravation is sufficient to expose defendant to the upper term (*People v. Cruz* (1995) 38 Cal.App.4th 427, 433), the consideration of other factors, in addition to the prior convictions, did not result in a violation of *Apprendi* and *Blakely*.

DISPOSITION

The judgment is affirmed.

SCOTLAND, P.J.

We concur:

SIMS, J.

CANTIL-SAKAUYE, J.