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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER MICHAEL CAIRATI,

Defendant and Appellant.

A104764

(Sonoma County  
Super. Ct. No. SCR-32889)

THE COURT:

The petition for rehearing filed by appellant on August 5, 2004, is denied.

The opinion filed herein on July 23, 2004, is ordered modified by adding the following as footnote 2 at the end of the last sentence before the disposition: Defendant, citing *Blakely v. Washington* (2004) 542 U.S. \_\_\_\_ [124 S.Ct. 2531; 159 L.Ed.2d 403], requests rehearing on the ground that the trial court's imposition of the aggravated term violates his right to a jury trial because the issue of the aggravating factors was not submitted to a jury. In *Blakely*, the United States Supreme Court held 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.*, 124 S.Ct. at p. 2536.) Here, in imposing the aggravated term of 11 years in state prison, the court relied on several aggravating factors including defendant's "prior convictions [that] show a continuing pattern of violence and escalation which is frightening," the viciousness of the current offense, that defendant was armed

with a shovel when he committed the offense, and his prior poor or unsuccessful performance on probation. That defendant had prior convictions that were numerous or of increasing seriousness is a specific factor supporting an aggravated term. (Cal. Rules of Court, rule 4.421(b)(2).) Assuming *Blakely* applies to the California determinate sentencing scheme, under *Apprendi v. New Jersey* (2000) 530 U.S. 466 as reiterated in *Blakely*, the fact of defendant's prior convictions does not require a jury determination. (*Blakely, supra*, 124 S.Ct. at p. 2536.) Because even a single aggravating factor is sufficient to justify the imposition of the aggravated term (*People v. Castellano* (1983) 140 Cal.App.3d 608, 615), the trial court could properly rely on defendant's prior convictions without a jury determination in imposing the aggravated term.

There is no change in the judgment.

DATED:

\_\_\_\_\_ P. J.