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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**AMY LYNN MELLOTT,**

**Defendant and Appellant.**

**A107798**

**(Sonoma County  
Super. Ct. No. MCR-425822)**

Appellant Amy Lynn Mellott contends her upper term sentence violates the Sixth Amendment of the federal Constitution, under *Blakely v. Washington* (2004) 542 U.S. \_\_\_ [124 S.Ct. 2531] (*Blakely*). We affirm the sentence, although we modify the judgment to correct the amount of the fines imposed.

**I. FACTS AND PROCEDURAL HISTORY**

This appeal raises solely sentencing issues after a plea agreement, and the facts of the offense are not directly relevant. In brief, appellant had possession of a wallet, knowing it to be stolen. On August 21, 2003, the Sonoma County District Attorney filed a complaint charging appellant with receiving stolen property in violation of Penal Code section 496, subdivision (a), as well as other offenses not in issue here. On September 3, 2003, in a negotiated disposition, appellant entered a plea of guilty to the stolen property count, and all other charges were dismissed.

On August 2, 2004, the trial court sentenced appellant to the upper term of three years, finding that the aggravating factors outweighed those in mitigation, but suspended

execution of sentence pursuant to Welfare and Institutions Code section 3051. The trial court also imposed restitution and parole revocation fines totaling \$600.

## II. DISCUSSION

Appellant maintains the trial court's exercise of its sentencing discretion to impose the upper term sentence deprived her of her constitutional rights under *Blakely, supra*, 542 U.S. \_\_ [124 S.Ct. 2531], because this sentencing decision was based on facts neither admitted by appellant nor found true by a jury.

After the parties' submission of their appellate briefs in this matter, our Supreme Court determined that *Blakely* does not apply to California's determinate sentencing scheme. (*People v. Black* (June 20, 2005, S126182) \_\_ Cal.4th \_\_ [05 D.A.R. 7308].) We are bound by the ruling, and appellant has therefore not established error on this ground. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Appellant also contends she should be subject to restitution fines of only \$200 each for restitution and parole revocation, for a total of \$400, not \$600 as was imposed by the trial court at the time of sentencing. The Attorney General concedes this error, and we will order the judgment of conviction to be modified accordingly.

## III. DISPOSITION

The judgment of conviction is ordered to be modified to provide for a total of

\$400 in restitution and parole revocation fines. As so modified, the judgment of conviction and sentence are affirmed.

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STEVENS, Acting P.J.

We concur.

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SIMONS, J.

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GEMELLO, J.