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# MEDIA ADVISORY

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## California Supreme Court Disposes of Sentencing Cases

### ***Court Dismisses and Transfers More Than 200 cases***

San Francisco — The California Supreme Court today disposed of more than 200 cases that had been held pending resolution of issues related to the decision of the United States Supreme Court in *Cunningham v. California* (2007) \_\_ U.S. \_\_ [127 S.Ct. 856] (*Cunningham*).

*Cunningham* concluded that California's determinate sentencing law violated the federal Constitution's Sixth Amendment right to a jury trial in that it permitted a judge, rather than a jury, to determine the existence of aggravating circumstances essential to the imposition of an upper term sentence. The state supreme court addressed and resolved a number of *Cunningham* issues in *People v. Black* (2007) 41 Cal.4th 799 (*Black II*) and *People v. Sandoval* (2007) 41 Cal.4th 825 (*Sandoval*), which are now final.

The decision in *Black II* concluded that the Sixth Amendment is not violated if, in a given case, (1) the only *Cunningham* issue relates to the imposition of consecutive terms or (2) the defendant challenges imposition of the upper term sentence but that term is supported by an aggravating circumstance based upon defendant's prior convictions.

The decision in *Sandoval* concluded that (1) in cases in which the upper term was imposed in violation of the defendant's Sixth Amendment rights, the sentence may be upheld if the reviewing court concludes that the violation was harmless beyond a reasonable doubt, and (2) in cases that must be remanded to the trial court for resentencing, the trial court has full discretion to impose the lower, middle, or upper term.

The court today dismissed review in 145 cases in which the Court of Appeal affirmed the defendant's sentence and the result would be the same under the decision in *Black II*.

In another 11 matters, the court dismissed review of cases in which the

Court of Appeal resolved a *Cunningham* issue against the defendant on grounds that are not affected by the decisions in *Black* and *Sandoval* and that the court does not intend to address in any case that is currently pending. (These cases include ones in which, for example, the Court of Appeal concluded that the upper term was supported by aggravating circumstances based upon defendant's admissions or by facts found by the jury.)

In 75 cases, the court transferred to the originating Court of Appeal for reconsideration in light of *Black II* and *Sandoval*. The court transferred cases in which (1) the Court of Appeal ordered that defendant be resentenced in light of *Cunningham* or (2) the Court of Appeal denied relief to the defendant but in which it appears that there was a Sixth Amendment violation under *Black II* or *Sandoval*. The latter category includes cases in which the trial court imposed the upper term but did not cite any aggravating circumstance based upon the defendant's recidivism, defendant's admissions, or the jury's findings.

Finally, the court continued to hold, pending its resolution of *People v. Towne* (S125677), 22 cases in which the upper term is supported by aggravating circumstances related to probation, parole, or a prior prison term. *Towne* will address whether the exception to the federal Constitution's Sixth Amendment right to a jury trial, which the United States Supreme Court recognized in *Cunningham* for "the fact of a prior conviction," applies to other recidivism-related aggravating circumstances. The court also continued to hold 12 cases involving issues related to guilty or nolo contendere pleas and certain forfeiture issues that the court intends to address and resolve in *People v. French* (S148845).

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