

PRESS RELEASE**FOR IMMEDIATE RELEASE**
July 19, 2007Michael Rushford, President
(916) 446-0345**CAL. SUPREME COURT DECISIONS PRESERVE MOST EXISTING SENTENCES***Impact of Recent United States Supreme Court Decision Limited*

In a pair of unanimous decisions released today, the California Supreme Court clarified the impact on the state's determinate sentencing law of last January's U. S. Supreme Court ruling in **Cunningham v. California**. The law prescribes a sentencing choice of three terms (such as 2, 4, or 6 years), for specific felonies. The judge is directed to choose among the three based upon mitigating or aggravating factors found by the judge which are related to the crime or the defendant. An aggravating factor must be found to choose the upper term, and a mitigating factor must be found to choose the lower term. In **Cunningham**, the high court found that this system, in place since 1977, violated the Sixth Amendment by increasing the maximum authorized punishment based on facts not found by a jury.

Today's decision in **People v. Black** confirmed that **Cunningham** requires only one aggravating factor qualifying the defendant for the upper term be found by a jury, rather than the judge. The Court held that after one factor is found by the jury, the judge may consider any other factors which could affect the sentence. Also, a judge's decision to require sentences for multiple offenses be served consecutively was not limited by **Cunningham**.

Writing for the Court, Chief Justice Ronald George stated, "as long as a single aggravating circumstance that renders a defendant eligible for the upper term sentence has been established in accordance with the requirements of *Apprendi* and its progeny, any additional fact finding engaged in by the trial court in selecting the appropriate sentence among the three available options does not violate the defendant's right to jury trial." **Apprendi** was the first in a line of U. S. Supreme Court cases leading up to **Cunningham**.

In the **Black** case, one aggravating fact had been found by the jury. They had found that Black's child abuse had been forcible, making him ineligible for probation under another statute. In addition, Black's criminal history could properly be considered aggravating without a jury finding. Prior convictions as aggravating circumstances are exempt from the **Apprendi** jury trial requirement. The Court also rejected Black's claim, which was also made by Sandoval, that the **Cunningham** decision applies to the judge's choice of consecutive terms for multiple offenses. Black's sentence was affirmed.

However, no such aggravating facts had been properly found in the **Sandoval** case, so it was necessary to remand that case for resentencing. For that case, and others in the same posture, the California Supreme Court eliminated the fact-finding requirement and gave the judge discretion to choose among the three terms. This change tracks the one enacted by the Legislature, although the Legislature did not indicate expressly whether its change should apply to pending cases.

“These decisions help define the limited impact that **Cunningham** has on California sentencing,” said Kent Scheidegger, Legal Director of the Criminal Justice Legal Foundation. “We can expect that, in the vast majority of cases, convicted criminals whose crimes were found to be worse than the average will serve the longer sentences they deserve,” he added. The Foundation had submitted argument in the **Sandoval** case earlier this year to encourage today’s decision.

The case of **People v. Sandoval** involved the sentence given to Aida Sandoval for the voluntary manslaughter of two men and the attempted manslaughter of a third. Based upon the cold-blooded nature of the crime and the multiple victims, the judge sentenced her to the upper term of 11 years for the first manslaughter charge, 2 years for the second, and 1 year and 4 months for the attempted manslaughter with the terms (totalling 14 years 4 months) to be served consecutively.

The facts relate to killings which occurred on February 5, 2003, outside of the El Dorado, a Los Angeles bar frequented by gang members. The killings were arranged by Sandoval and her friend Yessenia Romero as revenge against Rolando Rojas, who had intervened to stop a fight between them and another woman in the bar’s parking lot the previous night. When the fight ended, Sandoval was reported to have said she “was going to bring some gang over to f- -k up (Rojas), to kill him.”

The next day Sandoval and Romero convinced members of two street gangs to kill Rojas. That night the two women, accompanied by several armed gang members, went to the El Dorado to find Rojas. When Rojas arrived with two friends, the women identified them to the gang members. A short time later Rojas was shot and killed in the parking lot. Hearing the gunshots, his two friends left through the back door of the bar, where they were both shot by another gang member recruited by Sandoval and Romero. One of the victims died.

Before the **Cunningham** ruling, the state Court of Appeal rejected Sandoval’s claim that the trial judge improperly gave her the upper-term sentence and consecutive sentences, rejecting her jury-trial argument in accordance with the precedent existing at the time.

Following the **Cunningham** ruling, the California Supreme Court accepted her appeal to determine if the change it requires renders her sentence improper.

The Criminal Justice Legal Foundation introduced an *amicus curiae* (friend of the court) brief in this case to argue that neither **Cunningham** nor earlier Supreme Court decisions limit a judge’s discretion to have the sentences for multiple crimes served consecutively.

Additionally, CJLF stressed that only one aggravating factor had to be found to justify an upper-term, leaving a judge free to consider any other factors that may influence the sentencing decision without violating the rule announced in **Cunningham**.

The Foundation's brief also addressed claims in the companion case of **People v. Hernandez**, which deals with the impact of the **Cunningham** ruling on sentences given to habitual criminals, an issue decided today in **Black**.

"Because this decision sends Sandoval's case back to the trial court for reconsideration of the upper term sentence in the judge's discretion, the judge will still be able to consider the many aggravating factors related to these killings. We expect the sentence to stand," said Scheidegger.

CJLF Legal Director Kent Scheidegger is available for comment at (916) 446-0345.

The Foundation has helped win seven precedent-setting state and federal court decisions benefitting law enforcement and victims' rights since last November.

The Foundation's brief for both cases is available at:

<http://www.cjlf.org/briefs/Hernandez.pdf>

Criminal Justice Legal Foundation

2131 L Street, Sacramento, CA 95816 * P.O. Box 1199, Sacramento, CA 95812
(916) 446-0345 * Web page: <http://www.cjlf.org>