

Digest: People v. Towne

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Opinion by George, C.J., with Baxter, J., Werdegar, J., Chin, J., Moreno, J., and Corrigan, J. Concurring Opinion by Kennard, J.

Issues

(1) Did the trial court violate a criminal defendant's Sixth Amendment right to a jury trial under *Cunningham v. California* by determining aggravating circumstances related to defendant's recidivism in imposing the upper term sentence?

(2) Did the sentencing court violate a criminal defendant's state and federal constitutional rights by relying on evidence underlying offenses of which defendant was acquitted?

Facts

On April 1, 2002, defendant Shawn Towne was picked up by Noe Arana while working as a prostitute.¹ Defendant tied up Arana, got into the driver's seat, took his wallet and personal identification numbers to his credit cards, and drove the car to a convenience store to use an ATM.² Arana escaped and called the police, who arrested defendant later that day.³

Defendant was charged with eight crimes, including kidnapping and robbery.⁴ He was acquitted of all counts except "joyriding" in violation of Vehicle Code section 10851(a).⁵ He waived his right to a jury trial and admitted that he had several prior convictions.⁶ The probation report recommended the maximum sentence of four years based on aggravating factors of service of a prior prison term, commission of the current offense while on probation or parole, and unsatisfactory performance while on probation or parole.⁷ The trial court selected the upper term sentence based on the circumstances that the victim had been afraid for his life and that defendant had a lengthy criminal history.⁸

¹ *People v. Towne* 186 P.3d 10, 13 (Cal. 2008).

² *Id.*

³ *Id.*

⁴ *Id.* at 14 (citing CAL. VEH. CODE 10851(a)).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* (citing Cal. Rules of Court 4.421(b)).

⁸ *Id.*

Defendant argued on appeal that the trial court's finding that the victim was afraid for his life conflicted with the jury's acquittal of all counts involving force or violence.⁹ The Court of Appeal affirmed, concluding that any error was harmless because the trial court properly relied on defendant's criminal history.¹⁰ The Supreme Court of California granted review and affirmed the judgment of the Court of Appeal.¹¹

Analysis

1. Factual Findings of Recidivism Factors Under *Cunningham*

The U.S. Supreme Court, in *Cunningham v. California*, held that any aggravating factor subjecting a criminal defendant to an upper-term sentence must be "established by the jury's verdict, the defendant's admissions, or the defendant's prior conviction."¹² In *People v. Black*¹³, the Supreme Court of California held that only a single aggravating factor must be established under *Cunningham* to pass Sixth Amendment scrutiny, "regardless of whether the trial court considered other aggravating circumstances in deciding to impose the upper term."¹⁴ *Black* also held that the *Almendarez-Torres*¹⁵ exception for the fact of a prior conviction allows a trial court to determine whether a defendant's convictions are "numerous or of increasing seriousness."¹⁶

The Court reasoned that, under *Black*, the trial court properly relied on the two aggravating factors that defendant's prior convictions were numerous and that he had served prior prison terms.¹⁷ The Court clarified that the *Almendarez-Torres* exception applies to all of the aggravating factors listed in the probation report.¹⁸ The Court reasoned that most state and federal appellate courts have not limited this exception to the "mere fact of a prior conviction" but allow a judge to "make factual findings on a variety of issues that are related to a defendant's recidivism."¹⁹

The Court also distinguished recidivism-related factors from other sentence-enhancing factors for three reasons: (1) recidivism has traditionally been used to increase an offender's sentence; (2) recidivism "does not relate to the commission of the charged offense"; and (3) prior convictions are established with procedural safeguards.²⁰ However, the Court clarified that performance on probation or parole will not be accepted

⁹ *Id.* at 15.

¹⁰ *Id.*

¹¹ *Id.* at 15, 25.

¹² *Id.* at 15 (citing 549 U.S. 270 (2007)).

¹³ *People v. Black*, 161 P.3d 1130 (Cal. 2007).

¹⁴ *Id.*

¹⁵ *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

¹⁶ *Towne*, 186 P.3d at 16 (quoting *People v. Black*, 161 P.3d 1130).

¹⁷ *Id.*

¹⁸ *Id.* at 16-17.

¹⁹ *Id.* at 18.

²⁰ *Id.* at 19-20.

from a jury trial if that circumstance can be established only by evidence apart from the defendant's prior convictions.²¹

2. Factual Findings Underlying Acquitted Charges

The Court then addressed defendant's contention that the trial court could not constitutionally consider factors in imposing the upper sentence, which the jury had implicitly found untrue.²² The Court noted that the Courts of Appeal are split over whether "a sentencing court can rely upon facts underlying charges on which the defendant was acquitted."²³ The Court, disapproving *Takencareof*, reasoned that a sentencing court has "broad discretion" to consider relevant evidence underlying a charge of which the defendant was acquitted.²⁴ The Court reasoned that the trial court did not violate defendant's Sixth Amendment right in doing so because other aggravating factors supported the upper term.²⁵

The Court rejected defendant's argument that permitting a judge to consider such evidence undermines the jury's role as a fact-finder.²⁶ The Court reasoned that the trial court was not thereby "correcting" the jury's verdict because it was limited by that verdict in imposing a sentence.²⁷

Holding

The Court held that the trial court did not violate defendant's state and federal Constitutional rights, including his Sixth Amendment right to a jury trial, by imposing the upper term sentence.²⁸

Concurrence

Justice Kennard agreed with the majority that the Sixth Amendment provides no protection for the recidivism-related factors associated with prior convictions.²⁹ He concurred simply to explain why the majority's holding was consistent with his dissent in *People v. McGee*, a decision on which the majority relied.³⁰ In *McGee*, he dissented that the lack of determination by a jury of two statutory elements of robbery violated defendant's right to a jury trial.³¹ Unlike *McGee*, he explained, the factual determinations of service of a prior prison term and being on probation or parole while the crime was committed can be established by a criminal

²¹ *Id.* at 21.

²² *Id.*

²³ *Id.* at 21–22 (discussing *People v. Takencareof*, 174 Cal. Rptr. 112 (Ct. App. 1981); *People v. Levitt*, 203 Cal. Rptr. 276 (Ct. App. 1984)).

²⁴ *Id.* at 23.

²⁵ *Id.* at 23–24.

²⁶ *Id.* at 24.

²⁷ *Id.*

²⁸ *Id.* at 12.

²⁹ *Id.* at 25–26.

³⁰ *Id.* at 26 (citing 133 P.3d 1054 (Cal. 2006)).

³¹ *Id.* at 26–27 (citing 133 P.3d 1054).

record and not by defendant's conduct.³² However, he said, as the majority notes, unsatisfactory performance on probation or parole must be put before a jury when it can only be determined by a defendant's conduct and not from a conviction while on probation or parole.³³

Legal Significance

This decision broadly interprets the *Almendarez-Torres* prior conviction exception, allowing trial courts to impose maximum sentences based on aggravating circumstances related to a defendant's recidivism that can be established by a criminal record and not solely by the defendant's conduct. This decision also clarifies that a sentencing court has discretion to consider relevant evidence underlying offenses of which the defendant was acquitted. As a result of this decision, trial judges have greater leeway in providing harsher sentences for criminal convicts.

³² *Id.* at 27.

³³ *Id.*