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SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

VICTOR CORREA,

Defendant and Appellant.

No.

(Related Cases, Third Appellate District, C054365; Sacramento Superior Court No. 06F01135)

APPELLANT'S PETITION FOR REVIEW

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APPELLANT'S PETITION FOR REVIEW

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant Victor Correa petitions this court for review following the decision of the Court of Appeal, Third Appellate District filed in that court on April 4, 2008. A copy of the partially published decision of the Court of Appeal is attached as an Exhibit.

CERTIFICATE OF COMPLIANCE

The brief is proportionately spaced with Times Roman typeface, point size of 13, and the total word count is 2,746, not including tables, and thus is within the limits (8,400 words) of California Rules of Court, rule 8.504.

QUESTIONS PRESENTED

1. Whether it was a violation of Penal[1] Code section 654 to impose upon appellant seven consecutive 25 years to life sentences for the simultaneous possession of seven firearms stored together by appellant who had a prior conviction for a felony (§ 12021, subd. (a)?

2. Whether the sentencing court's imposition of seven consecutive 25 to life sentences relying upon factual findings without a jury finding that they had been proved beyond a reasonable doubt was violative of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution as applied in the United States Supreme Court's decision in *Blakely v. Washington* (2004) 542 U.S. 296 [124 S.Ct. 2531, 159 L.Ed.2d 403] and *Cunningham v. California* (2007) 549 U.S. ___ [127 S.Ct. 856, 166 L.Ed.2d 856]?

NECESSITY FOR REVIEW

A grant of review and resolution of this question by this Court is necessary to secure a uniformity of decision and settle important questions of law, of constitutional dimension, pursuant to rule 8.500, subdivision (b)(1), California Rules of Court.

Errors, as here, of constitutional dimension warrant this Court's review and intervention, particularly as an exercise of this Court's inherent supervisory power to do equity and administer justice. (*Bauguess v. Paine* (1978) 22 Cal.3d 626, 635 [150 Cal.Rptr. 461]; *Bloniarz v. Roloson* (1969) 70 Cal.2d 143, 147-148 [74

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1 All references are to this code unless otherwise noted.

Cal.Rptr. 285]; *Asbestos Claims Facility et al. v. Berry & Berry* (1990) 219 Cal.App.3d 9, 19 [267 Cal.Rptr. 896]; *Western Steel & Ship Repair, Inc. v. RMI, Inc.* (1986) 176 Cal.App.3d 1108, 1116-1117 [222 Cal.Rptr. 556].)

Question 1

Appellant was charged and convicted of seven counts of possession of a firearm by a person convicted of a felony in violation of section 12021, subdivision (a). (CT 119-123.) The firearms were found on the floor of the closet under the stair in the two story home appellant shared with his parents, brother, brother's girlfriend, and brother-in-law. (RT 265-267, 278-279; 2RT 282, 290, 319-320, 322-331, 334-337, 340-344, 372-379; People's exhs. 1-8, 33, 38, 65; Counts 1-7.)

The court imposed consecutive sentences for each of the seven counts of possession of a firearm. (3RT 763, CT 273-274.) The court found "that each one of these is a separate and individual offense with a separate and individual purpose," and thus was not governed by section 654. (3RT 757-758.) Yet, the court acknowledged:

> Where [654] might apply ..., if it did at all, would be Counts 2 through 7 because that was—I guess you'd call it, a cache... of weapons and so Counts 2 through 7 are each an individual weapon and—but the Court is finding that each of those is an individual and separate weapon, each had its own ammunition, and in the Court's view, there would be a different purpose and a different crime for each of those individual weapons and that's how the Court is addressing it. Not to say that you might want to make a 654 argument as to Counts 2 through 7, but my tentative ruling is I'm not doing that. ... I am treating them individually and separately. (3RT 758.)

Defense counsel argued that all the weapons were in one place, it was not an act of bringing things in or selling things; the totality of what appellant did was possess these weapons at one time. Counsel rhetorically posed what if it had been 400 weapons? It was one act done at one time. (3RT 759-760.) Defense counsel continued, "how much else can you do with a 42 year old man. You're going to

give him 25 to life. That's probably where he's going to end up for the rest of his life...." Defense counsel asked that the sentences be stayed under section 654. (3RT 760.)

Section 654 applies to sentencing both for crimes flowing from a single act and for crimes resulting from an indivisible course of conduct which violates more than one statute. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208 [23 Cal.Rptr.2d 144]; accord *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466 [83 Cal.Rptr.2d 307].) "Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." (*Neal v. State of California* (1960) Cal.2d 11, 19 [9 Cal.Rptr. 607]; *People v. Perez* (1979) 23 Cal.3d 545, 551 [153 Cal.Rptr. 40].)

"The question of whether the defendant held multiple criminal objectives is one of fact for the trial court, and, if supported by any substantial evidence,[2] it's finding will be upheld on appeal." (*People v. Herrera, supra,* at p. 1466.) However, the dimensions and meaning of section 654, and its application to conceded or undisputed facts, is a question of law. (*People v. Harrison* (1989) 48 Cal.3d 321, 335 [256 Cal.Rptr. 401]; *People v. Perez, supra*, 23 Cal.3d at p. 552, fn. 5.) In this case the facts relevant to a section 654 analysis are not in dispute.

The offenses here are seven counts of possession of a firearm by a felon (§ 12021, subd. (a).) The only evidence of appellant's involvement with the firearms is his proximity to them at the time of his arrest. As the trial court described them, it was "a cache ... of weapons." (3RT 758.) The trial court concluded that "there would be a different purpose and a different crime for each...." (*Ibid.*) The question of course is did appellant hold multiple criminal objectives. (*People v. Herrera, supra,* at p. 1466.)

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2 The standard of proof required for this finding is the topic of the second *Question* presented for review.

In resolving section 654 issues, this Court has recently stated that the appellate courts should not "parse[ ] the objectives too finely." (*People v. Lopez* (2004) 119 Cal.App.4th 132, 138 [13 Cal.Rptr.3d 921], quoting *People v. Britt* (2004) 32 Cal.4th 944, 953 [12 Cal.Rptr.3d 66].) Possession offenses are "instantaneous" crimes, like the majority of crimes, in that they are complete as soon as every element is satisfied. (*Wright v. Superior Court* (1997) 15 Cal.4th 521, 525-529 [63 Cal.Rptr.2d 322].) But, unlike most other instantaneous crimes, possession offenses are also "continuing" offenses in that each day (or each time interval of any length) brings "a renewal of the original crime or the repeated commission of new offenses." (*Id.* at pp. 525-529, quoting *Toussie v. United States* (1970) 397 U.S. 112, 119 [25 L.Ed.2d 156, 90 S.Ct. 858].) The court in *Wright* explained:

> "Ordinarily, a continuing offense is marked by a continuing duty in the defendant to do an act which he fails to do. The offense continues as long as the duty persists, and there is a failure to perform that duty." [Citations.] Thus, when the law imposes an affirmative obligation to act, the violation is *complete* at the first instance the elements are met. It is nevertheless not *completed* as long as the obligation remains unfulfilled. "The crime achieves no finality until such time." (*Id.* at p. 526, quoting *United States v. Cores* (1958) 356 U.S. 405, 409 [2 L.Ed.2d 876, 78 S.Ct. 875].)

In possession crimes, no one could effectively argue that each day or each hour created a new criminal objective for the possessor. The reason is that the gravitas of the offense is not substantially enhanced by time. In simple possession cases involving drugs, no one would effectively argue that each gram (or other increment of measurement) created a new criminal objective. Again, the gravitas of the offense, at least vis-à-vis the public, is not substantially enhanced. Illustrative by comparison is *People v. Butler* (1996) 43 Cal.App.4th 1224, 1248-1249 [51 Cal.Rptr.2d 150] where the defendant was convicted and sentenced on two counts of possession of a cloned cellular telephone. His section 654 claim there failed not just because there were two phones in his possession, but because

there were two victims, each a lawful owner of one of the phones. In short, the gravitas of the offense was twice as great.

In the limited context of the instant case, the gravitas of the offense of simple possession of a firearm was not enhanced by the addition of the second, third, or even seventh firearm. Appellant had only the realistic potential of being able to fire one weapon at a time. As a matter of law, there were no multiple criminal objectives. Thus, the trial court's imposition of consecutive 25 years to life sentences on Counts Two through Seven violated section 654 and should be stayed.

Yet, the Appellate Court below disagreed, citing *People v. Kirk* (1989) 211 Cal.App.3d 58 [259 Cal.Rptr. 44] and subsequent legislative corrective action to make the point that each firearm shall constitute a distinct and separate offense permitting separate sentences. (Exh. pp. 8-9.) In *Kirk* the court found multiple punishment of the defendant's simultaneous possession of two sawed-off shotguns was improper under section 654 because the governing statute (then § 12020, subd. (a)) was not clear whether more than one sawed-off shotgun constituted more than one violation of the statute. The legislature thereafter amended the section so that each firearm would constitute a distinct and separate offense. (Exh. p. 9.) However, the gravitas there was the inherent dangerousness of the sawed-off shotgun itself that would naturally be increased with each additional weapon. In the instant case, that was not the case. Here the gravitas was merely appellant's status as a felon; it had nothing to do with the nature of the weapons themselves.

The Appellate Court finds compelling that there were different makes and calibers of firearms, each with its own ammunition. From this the Court concludes without explanation that "defendant harbored separate objectives for possessing each one." (Exh. p. 9.) Again, the Court fails to perceive that it is appellant's status that is at the core of these offenses, not the weapons themselves, whatever their caliber.

The Appellate Court found "unconvincing" appellant's argument that he was only capable of firing one weapon at a time relying upon their unexplained earlier conclusion that the weapons could be used to "accomplish different objectives." (Exh. p. 10.) What objectives? Shotguns have different firing patterns and ranges than rifles; different calibers have differing stopping power. None of this changes the fact that the gravitas of the offense is the status of their possessor, not that the individual firearms had different firing characteristics.

Question 2

This question presents no grounds for review under rule 8.500, subdivision (b) and is raised solely to exhaust state remedies for federal habeas corpus purposes as authorized by rule 8.508. The legal bases of the questions is as phrased in the question itself.

The underlying proceedings and the factual and legal basis of the claim contemplated by rule 8.508, subdivision (b)(3) are intertwined. The facts follow.

Appellant was convicted of seven counts of possession of a firearm by a person convicted of a felony (§12021, subd. (a)) and one count of receiving stolen property (§ 496, subd. (a)). (CT 124-126, 138-147, 184-186, 202-214, 216-222.) At the time of his sentencing, appellant was 42 years old. (CT 232, 240.) The court refused to strike either of appellant's prior convictions alleged and proved within the meaning of sections 667, subdivisions (b) through (i), and 1170.12. (3RT 748-755, CT 119-123.)

The probation officer recommended that appellant receive concurrent terms for six of these counts (Two through Seven.) (CT 247.) However, the court elected not to follow that recommendation and imposed seven consecutive sentences to state prison totaling 200 years to life—25 years to life for each of the eight counts for which he had been found guilty. (3RT 757, 763, CT 273-274.) The court believed that consecutive sentences were warranted by appellant's record "and the significant number of aggravating factors with it." The court found there were no mitigating factors. (3RT 756.)

In regard to the firearm possession counts, the court explained:

> each of those is an individual and separate weapon, each had its own ammunition, and in the Court's view, there would be a different purpose and a different crime for each of those individual weapons ... (3RT 758.)
>
> Part of looking at the circumstances in aggravation and in using the context of what the Court understands of the facts of this case, Mr. Correa hiding under the stairs and refusing to come out and having to eventually be—them open up under the staircase to get him out despite SWAT and helicopters and tear gas attempting to extricate him from the residence peacefully. He's found within a manner [sic] of feet, literally his feet, from the dangerous weapons, shotguns, rifles. And so the totality of the circumstances here indicate to the Court that this was a very dangerous crime and that each of those weapons was an individual and separate crime for the purposes of sentencing. (3RT 758-759.)

In summary, the sentencing court in essence made the following factual findings to substantiate imposition of seven consecutive 25 years to life sentences:

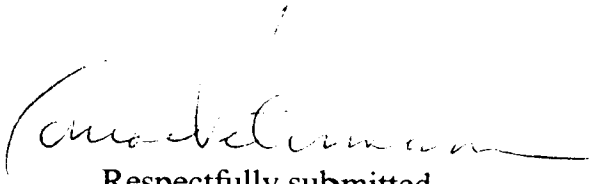
1. Each weapon had its own ammunition,
2. There was a different purpose for each of these individual weapons,
3. This was a very dangerous crime because appellant was found with his feet near the weapons,
4. The difficulty encountered in taking custody of appellant, and
5. Appellant's prior record.

The claim raised here and below is that the federal constitution requires that a jury, rather than a judge, find the facts that California law requires be present before a judge can impose consecutive sentences in general and transactionally-related offenses under section 654 in particular. (Exh. pp. 11-13.)

CONCLUSION

For the foregoing reasons, review should be granted.

Dated: April 30, 2008



Respectfully submitted,
Conrad Petermann
Attorney at Law

EXHIBIT

Opinion of the Third Appellate District, in *People v. Correa*, C054365

Filed 4/4/08

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. VICTOR CORREA, Defendant and Appellant.	C054365 (Super. Ct. No. 06F1135)

APPEAL from a judgment of the Superior Court of Sacramento County, Patricia C. Esgro, Judge. Affirmed with directions.

Conrad Petermann, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Charles A. French, Supervising Deputy Attorney General, Robert C. Nash, Deputy Attorney General, for Plaintiff and Respondent.

A jury found defendant Victor Correa guilty of seven counts of being a felon in possession of a firearm (Pen. Code, § 12021,

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* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of part II of the Discussion.

subd. (a)(1))[1] and one count of receiving stolen property (§ 496d, subd. (a)). The trial court sentenced him to an aggregate term of 200 years to life.

Defendant appeals, contending that (1) six of the seven sentence terms for firearm possession must be stayed pursuant to section 654, and (2) the sentence of multiple, consecutive life terms without the requisite jury findings violated his Fifth, Sixth, and Fourteenth Amendment rights under *Cunningham v. California* (2007) 549 U.S. ___ [166 L.Ed.2d 856] (*Cunningham*), *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403] (*Blakely*), and *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] (*Apprendi*). We shall order the abstract amended but otherwise affirm the judgment.

FACTUAL BACKGROUND

A. Prosecution's Case

On February 4, 2006, Sacramento Police Officer Kevin Howland was dispatched to a two-story residence at 60 Tundra Way at approximately 5:07 p.m. in response to a report of firearms being moved into the house. Two cars were parked in the driveway--a black Mustang and a silver Nissan. A third car, a green Lexus, was parked nearby on the street. The drivers of the Lexus and Mustang were observed entering the house and the garage of the residence.

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1 Undesignated statutory references are to the Penal Code.

Officer Howland radioed the vehicle identification number of the Lexus to dispatch and discovered that it was stolen. It was later discovered that the other two cars were also stolen. Officer Howland also identified defendant from a series of computer mug shots as the driver of the Lexus.

The driver of the Mustang and two females who had emerged from the residence were detained. Defendant barricaded himself inside the residence.

Members of the Sacramento Police Department SWAT team surrounded the residence and fired tear gas grenades into the house. The officers heard defendant's muffled voice coming from a closet under the stairs.

SWAT team member Officer William McCoin opened the closet door and heard defendant say he was stuck in the back of the closet. On the floor of the closet were numerous long gun cases containing rifles and shotguns,[2] and two shotguns without cases. Officer McCoin tore a hole in the back wall of the closet and discovered defendant lying on the ground under the stairs.

During a subsequent search of the premises, officers found a shotgun and a rifle in gun cases behind a couch in a downstairs room; a duffel bag containing 20-gauge shotgun shells in an upstairs bedroom closet; a duffel bag containing 12-gauge shotgun shells and .22-caliber rifle ammunition, as well as

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[2] One of the gun cases containing a .22-caliber Marlin rifle also had ammunition in a small bag next to the weapon.

letters addressed to defendant, in the garage; paperwork with defendant's name in an upstairs bedroom; and a key to the Lexus and paperwork for the vehicle in an upstairs bedroom.

Defendant's neighbor testified that she had seen defendant "on two or three occasions" carrying firearms while he was visiting her house or while she was visiting his home.

B. Defense Case

Defendant's mother testified that she and her husband owned the residence at 60 Tundra Way, and that defendant lived there along with her other son and his girlfriend, and her son-in-law. She stated that the Ford Mustang in the driveway belonged to her husband, that the Lexus may have belonged to her son's girlfriend who was living at the house, and that she had never seen defendant drive any of the stolen cars. She stated that she never saw any guns or gun cases in the house, and did not want guns in her home.

C. Verdict

Defendant was charged with nine counts of being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1)), one count of unlawful taking of a motor vehicle (Veh. Code, § 10851, subd. (a)), and three counts of receiving stolen property (Pen. Code, § 496d, subd. (a)). The jury convicted him of seven counts of being a felon in possession of a firearm and guilty of one count of receiving stolen property. By its verdict, the jury determined that defendant possessed all the guns found in

the closet, but not the two guns discovered in the downstairs room.

D. Sentencing

Defendant waived jury trial on three prior felony conviction allegations, and the prosecution dismissed one prior felony conviction allegation. The trial court found defendant had been convicted of two prior felonies within the meaning of sections 667, subdivision (b) through (i), and 1170.12, which qualified him for life sentencing under the three strikes law (§ 1170.12, subd. (c)(2)(A)(ii)). The court sentenced defendant to seven consecutive terms of 25 years to life on each count of being a felon in possession of a firearm and an additional consecutive term of 25 years to life for receiving stolen property. Defendant's aggregate sentence was therefore comprised of eight consecutive terms of 25 years to life.

DISCUSSION

I. Section 654

Defendant asserts that the sentences for six of the seven firearm possession offenses[3] "arose from a single incident in which he was found with seven firearms stacked on the floor in a

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[3] The weapons associated with each conviction were:

Count one, a Stevens .410 shotgun;
Count two, a .22-caliber Marlin rifle;
Count three, a 12-gauge Winchester shotgun;
Count four, a .22-Remington rifle;
Count five, an 8-millimeter rifle;
Count six, a .22-caliber Marlin rifle; and
Count seven, a 12-gauge Master Mag shotgun.

below stairs closet near his feet." Defendant contends the sentences on all firearm offenses but one must be stayed pursuant to section 654 "because they were part of an indivisible transaction." (*Ibid.*) In rejecting a similar argument by defendant's trial counsel, the trial court stated:

"They are individual, in the Court's view, separate crimes. So the only time a Court stays a sentence is if it qualifies under Penal Code Section 654, and then the Court would impose the sentence but stay it. In this case, I'm finding that each one of these is a separate and individual offense with a separate and individual purpose and, therefore, I'm not finding [section] 654. And, frankly, where that might apply and the only place I think it would apply in this case, if it did at all, would be Counts [two] through [seven] because that was--I guess you'd call it, a cache, c-a-c-h-e, of weapons and so Counts [two] through [seven] are each an individual weapon and--but the Court is finding that each of those is an individual and separate weapon, each had its own ammunition, and in the Court's view, there would be a different purpose and a different crime for each of those individual weapons and that's how the Court is addressing it. Not to say that you might want to make a [section] 654 argument as to Counts [two] through [seven], but my tentative ruling is, I'm not doing that. Or, my tentative sentence, rather, is that I am not. I am treating them individually and separately."

Defense counsel argued that the possession of all seven weapons was just "one act" rather than "a sequence of acts." In response, the prosecutor stated, "This is a case where each individual, separate weapon is a crime in and of itself" and that each gun "could be used separately" and "at different times." After hearing these arguments, the trial court reaffirmed its tentative ruling.

In relevant part, section 654 provides: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).) "[I]t is well settled that section 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. [Citation.] Whether a course of conduct is indivisible depends upon the intent and objective of the actor." (*People v. Perez* (1979) 23 Cal.3d 545, 551 (*Perez*).) "A trial court's implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if it is supported by substantial evidence." (*People v. Blake* (1998) 68 Cal.App.4th 509, 512.)

As the court in *Perez* explained, the purpose of section 654's protection against multiple punishments is to ensure that the defendant's punishment will be commensurate with his

culpability. (*Perez, supra*, 23 Cal.3d at p. 551.) Thus, for example, the court in *People v. Lopez* (2004) 119 Cal.App.4th 132, ruled that separate punishments for possession of a firearm and possession of ammunition inside the gun violated section 654. The court reasoned that since all of the ammunition was loaded into one firearm, both offenses comprised an indivisible course of conduct. (*Id.* at p. 138.) On the other hand, section 654 does not preclude multiple punishment of a defendant who commits a single act of violence with the intent to harm more than one victim. (See *Neal v. State of California* (1960) 55 Cal.2d 11, 20-21.)

Section 12021, subdivision (a)(1) states, "Any person who has been convicted of a felony . . . and who owns, purchases, receives, or has in his or her possession or under his or her custody or control *any* firearm is guilty of a felony." (Italics added.) In *People v. Kirk* (1989) 211 Cal.App.3d 58 (*Kirk*), the court held that section 654 barred multiple punishment for defendant's simultaneous possession of two sawed-off shotguns in violation of a former version of section 12020, subdivision (a): "'Any person . . . who . . . possesses . . . any instrument or weapon . . . known as a . . . sawed-off shotgun . . . is guilty of a felony.'" (*Kirk*, at p. 60.) The court found that the word "any" was ambiguous and failed to warn the offender that separate convictions would result for each weapon simultaneously possessed. (*Id.* at p. 65.)

In response to *Kirk's* ruling, the Legislature amended section 12001 to add subdivision (k), which states: "For purposes of Sections 12021, . . . notwithstanding the fact that the term 'any firearm' may be used in those sections, each firearm . . . shall constitute a distinct and separate offense under those sections." (§ 12001, subd. (k).)[4]

The trial court's imposition of a separate sentence for each of the weapons defendant unlawfully possessed is fully consistent with the Legislature's expressed intent that a felon's possession of each firearm be deemed a distinctly punishable offense.

There is also factual support for the trial court's determination that defendant's possession of each firearm had a "separate and individual purpose." Each weapon had its own ammunition and, therefore, each could serve a different purpose or be used to commit a different crime. The fact that the firearms were of different makes and calibers indicated that defendant harbored separate objectives for possessing each one.

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[4] In 1994, the Legislature stated: "The amendments to Section 12001 of the Penal Code made by this act adding subdivision[] (k) . . . thereto are intended to overrule the holding in [*Kirk, supra*], 211 Cal.App.3d 58 [a 1989 case], insofar as that decision held that the use of the term 'any' in a weapons statute means that multiple weapons possessed at the same time constitutes the same violation. It is the further intent of the Legislature in enacting this act that where multiple weapons are made, imported, transferred, received, or possessed, each weapon shall constitute a separate and distinct violation." (Legis. Counsel's Dig., Sen. Bill No. 37, 5 Stats. 1994 (1993-1994 1st Ex. Sess.) ch. 32, § 5, pp. 8657-8658; see hist. notes, 51D West's Ann. Pen. Code (2008 supp.) foll. § 12001, p. 4.)

Defendant's conduct on the night in question also supports the trial court's finding. Witnesses observed that the firearms were being moved into defendant's home and defendant was discovered hiding in a closet under the stairs. The trial court could infer that defendant was stockpiling different firearms for a variety of future uses.

We reject defendant's argument that "the gravitas of the offense of simple possession of a firearm was not enhanced by the addition of the second, third, or even seventh firearm." As the trial court noted, these were "dangerous weapons, shotguns, rifles . . . [a]nd this was a very dangerous crime." The purpose of section 12021 is to protect public welfare by precluding the possession of guns by those who are more likely to use them for improper purposes (*People v. Pepper* (1996) 41 Cal.App.4th 1029, 1037, citing *People v. Bell* (1989) 49 Cal.3d 502, 544), and to provide a greater punishment to an armed felon than to another (*People v. Winchell* (1967) 248 Cal.App.2d 580, 597).

Defendant's claim that there were no multiple objectives as a matter of law because he was capable of firing only one weapon at a time is unconvincing. A felon who possesses multiple weapons that can be used to accomplish different objectives is inherently more dangerous than one who possesses only one. Defendant's culpability increased with each additional weapon in his possession. (*Perez, supra,* 23 Cal.3d at pp. 550-551; see *People v. Trotter* (1992) 7 Cal.App.4th 363, 367-368 [separate

punishment for three counts of assault with a firearm arising from three gunshots fired at one victim, did not violate section 654, since the defendant's conduct became more egregious with each successive shot].)

We conclude that defendant was properly punished for each of the seven firearm possession counts.[5]

II. Constitutional Challenges*

Defendant next argues that the trial court's imposition of consecutive terms violated the Fifth, Sixth, and Fourteenth Amendments. He relies on *Cunningham, supra*, 549 U.S. ___ [166 L.Ed.2d 856], *Apprendi, supra*, 530 U.S. 466 [147 L.Ed.2d 435] and *Blakely, supra*, 542 U.S. 296 [159 L.Ed.2d 403] to argue the recidivist factor of his two prior convictions did not justify the trial court's sentence of consecutive sentences, and that he was denied his right to a jury trial when the trial court imposed consecutive sentences. We reject the argument.

In *Cunningham,* the United States Supreme Court, relying on its decisions in *Blakely* and *Apprendi*, stated that, "*Except for a prior conviction*, 'any fact that *increases the penalty for a*

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[5] Defendant's related argument, that under *Apprendi* he had the right to have a jury determine whether his firearm possession involved "separate acts or a single act of aberrant behavior" pursuant to section 654, is contrary to settled case law. (See *People v. Cleveland* (2001) 87 Cal.App.4th 263, 270 [because section 654 is not a sentencing enhancement, but rather a sentencing reduction statute, the rule of *Apprendi* is inapplicable to multiple punishment determinations].)

* See footnote, *ante*, page 1.

crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.'" (*Cunningham, supra*, 549 U.S. at p. ___ [166 L.Ed.2d at p. 873], italics added.) Thus, the court held that California's statutory procedure for selecting an upper term sentence violated the defendant's right to a jury trial because the trial judge determined the facts that "expose[d] a defendant to an elevated 'upper term' sentence." (*Id.* at p. ___ [166 L.Ed.2d at p. 864].)

Defendant initially suggests that the imposition of his life sentences pursuant to the three strikes law without a jury finding to that effect violated *Cunningham*. Not so. Defendant had been convicted of two prior violent felonies. Section 667, subdivision (e)(2)(a)(ii) expressly states that a defendant so convicted must receive a minimum of 25 years in prison up to life imprisonment. *Cunningham* only applies to facts that *increase* a defendant's sentence. (*Cunningham, supra*, 549 U.S. at p. ___ [166 L.Ed.2d at p. 873].) Here, defendant's sentence was not increased--it was prescribed by statute.

Defendant's central claim that the trial court's imposition of seven consecutive life sentences "deprived [him] of his Sixth Amendment right to have a jury determine beyond a reasonable doubt all facts legally essential to his sentence" has been rejected by the California Supreme Court. In *People v. Black* (2007) 41 Cal.4th 799 (*Black*), the state's high court held that the imposition of consecutive sentences does not violate a

defendant's Sixth Amendment rights under *Blakely* and *Cunningham*. (*Black*, at p. 823.) Defendant acknowledges the holding in *Black*, but "respectfully disagrees" with it. His argument is made to the wrong court. As an intermediate appellate court, we are bound by the higher court's ruling and have no authority to rule otherwise. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)[6] ***[THE REMAINDER OF THIS OPINION IS TO BE PUBLISHED.]***

III. Error on Abstract of Judgment

We note a typographical error in item 1. of the abstract of judgment. Defendant was convicted in count twelve of possession of a stolen vehicle, a violation of section 496d, subdivision (a). The abstract sets forth the violation as "PC 406." We will direct the trial court to correct the code section.

DISPOSITION

The trial court shall prepare an amended abstract of judgment to reflect that defendant was convicted in count twelve of a violation of Penal Code section 496d, subdivision (a) and

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[6] Defendant's discussion of whether his recidivism justified consecutive life terms misapprehends the import of *Cunningham* and related cases. The "recidivism exception" only applies when the trial court states its reasons for selecting an upper term. (*Black, supra,* 42 Cal.4th at p. 812.) The exception is irrelevant to the imposition of consecutive terms because, as we have noted, a defendant has no right to a jury trial on consecutive sentences.

not section "406." As amended, the judgment is affirmed.

(CERTIFIED FOR PARTIAL PUBLICATION.)

BUTZ, J.

We concur:

SIMS, Acting P.J.

MORRISON, J.

CONRAD PETERMANN
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CASE NUMBER: C054365

DECLARATION OF SERVICE

I, undersigned, say: I am a citizen of the United States, a resident of Ventura County, over 18 years of age, not a party to this action and with the above business address.

On the date executed below, I served the *APPELLANT'S PETITION FOR REVIEW* by depositing a copy thereof in a sealed envelope, postage thereon fully prepaid, in the United States Mail at Ojai, California. Said copies were addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2008, at Ojai, California.

Conrad Petermann
Attorney for Appellant