

1 On September 11, 2006, petitioner submitted a petition for a writ of
2 habeas corpus which was filed on September 27, 2006 as a new case and
3 assigned to the undersigned as case number 06-5990 CRB (PR). A close reading
4 of the new petition makes clear that it is an amended petition intended for filing
5 in C 04-5285 CRB (PR) now that petitioner has exhausted his Blakely claim.

6 In order to expedite petitioner's habeas proceedings, the clerk is instructed
7 to file a copy of the new petition into C 04-5285 CRB (PR) as petitioner's First
8 Amended Petition ("FAP") and to reopen C 04-5285 CRB (PR). The clerk is
9 further instructed to serve a copy of the FAP on respondent and to close case
10 number C 06-5990 CRB (PR) as improvidently opened.

11 Respondent previously addressed all of the claims in the FAP, save two
12 new ones – petitioner's recently-exhausted Blakely claim and an additional claim
13 of state sentencing error. Unfortunately for petitioner, his two new claims must
14 be dismissed. It is well-established that federal courts must defer to the state
15 courts' interpretation of state sentencing laws, see Bueno v. Hallahan, 988 F.2d
16 86, 88 (9th Cir. 1993); see also Christian v. Rhode, 41 F.3d 461, 469 (9th Cir.
17 1994) ("Absent a showing of fundamental unfairness, a state court's
18 misapplication of its own sentencing laws does not justify federal habeas relief."),
19 and the Ninth Circuit more recently made clear that Blakely announced a new
20 constitutional rule of criminal procedure that does not apply retroactively on
21 habeas review, see Schardt v. Payne, 414 F.3d 1-25, 1038 (9th Cir. 2005).

22 Petitioner may file a traverse to respondent's previous answer within 30
23 days of this order.

24 SO ORDERED.

25 DATED: Oct. 20, 2006


26 CHARLES R. BREYER
27 United States District Judge
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