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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE MILWARD,

Defendant and Appellant.

C058326

(Super. Ct. No. 02F05876)

OPINION ON REMAND

While defendant George Milward was serving a life term in prison, he assaulted another inmate with a deadly weapon, a knife. Based upon the assault, a jury convicted him of assault with a deadly weapon by a life prisoner in violation of Penal Code section 4500¹ and of an assault with a deadly weapon, other than a firearm, in violation of section 245, subdivision (a)(1).²

¹ Undesignated statutory references are to the Penal Code.

² All references to section 245 are to the statutes in effect at the time of defendant's sentencing on February 22, 2008.

The jury also found defendant had two prior serious felony convictions (murder and attempted murder, arising out of the same case) within the meaning of sections 667, subdivisions (a) and (b) through (i) and 1170.12.

For the violation of section 4500, defendant was sentenced to state prison for life without parole for 27 years, a consecutive term of five years for the prior serious felony conviction, each of which were to run consecutive to the term he was presently serving (Super. Ct., Riverside County, 1993, No. ICR17175). The court imposed, but stayed (§ 654), a 25-year-to-life term for the violation of section 245, subdivision (a)(1).

On appeal, we rejected the defendant's contention that the violation of section 245, subdivision (a)(1) must be reversed and dismissed because it was a lesser included offense in the violation of section 4500, and we affirmed the judgment on March 22, 2010. (*People v. Milward* (2010) 182 Cal.App.4th 1477, review granted Jul. 14, 2010, S182263.)

The California Supreme Court granted defendant's petition for review and, in an opinion filed August 18, 2011,³ concluded that section 245, subdivision (a)(1) was an offense necessarily included within section 4500. The Supreme Court reversed our judgment and remanded the matter to us with directions to

³ *People v. Milward* (2011) 52 Cal.4th 580.

reverse defendant's conviction of section 245, subdivision (a) (1). We shall do so.

DISPOSITION

Defendant's conviction of section 245, subdivision (a) (1) is reversed and dismissed. The matter is remanded to the Sacramento County Superior Court with directions to prepare an amended abstract of judgment reflecting these changes and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.

_____ BUTZ _____, J.

We concur:

_____ NICHOLSON _____, Acting P. J.

_____ ROBIE _____, J.