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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

TONY MASON MANNING,

Defendant and Appellant.

F069250

(Super. Ct. No. CF94518121)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

William I. Parks, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Ivan P. Marrs, William K. Kim and Kathleen A. McKenna, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J. and Franson, J.

Appellant Tony Mason Manning appeals from the denial of his petition to recall a sentence pursuant to Penal Code section 1170.126¹. Appellant claims his conviction for drawing or exhibiting a deadly weapon with the intent to prevent arrest or detention by a police officer (§ 417.8) cannot, on its own, support the conclusion that appellant is ineligible for resentencing because he was armed with a deadly weapon during the commission of his current offense (§§ 1170.126, subd. (e)(2), 667, subd. (e)(2)(C)(iii)). For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 9, 1994, appellant was convicted by a jury of drawing or exhibiting a deadly weapon with intent to resist or prevent arrest or detention by a police officer. The jury found true two alleged prior serious felony convictions, both for robbery (§ 211). Appellant was sentenced as a third-strike offender to an indeterminate term of 25 years to life.

As detailed in our resolution of appellant's prior appeal, this conviction arose from a contact between appellant and the Fresno Police Department. During that contact, appellant "revealed a five-inch boning knife in his right hand." (*People v. Manning* (Mar. 16, 1999, F027903) [nonpub. opn.]) Appellant refused to drop the knife on command and, at one point, "lunged forward and made a slashing motion with the knife" toward one of the responding officers. (*Ibid.*) These core facts were presented to the trial court.

The trial court concluded that appellant's possession of a knife demonstrated he was armed with a deadly weapon during the commission of his current offense. The trial court therefore found appellant ineligible for resentencing. This appeal timely followed.

¹ All statutory references are to the Penal Code unless otherwise noted.

DISCUSSION

Appellant contends he cannot be found ineligible for resentencing based on the single offense of drawing or exhibiting a deadly weapon because that crime necessarily includes possessing a deadly weapon. In other words, appellant argues there must be “an *additional* offense (sometimes called a ‘tethering’ offense)” to trigger disqualification for being armed during the commission of the current offense.

As appellant admits, we have previously considered this issue where the underlying crime was possession of a firearm. (*People v. Osuna* (2014) 225 Cal.App.4th 1020, 1030 (*Osuna*)). In that context, we rejected the notion that a tethering offense is needed and held that “the literal language of the Act disqualifies an inmate from resentencing if he or she was armed with a firearm during the unlawful possession of that firearm.” (*Id.* at p. 1032.) We see no reason to deviate from that analysis.

Appellant further admits that his conviction for drawing or exhibiting a deadly weapon with the intent to prevent arrest or detention necessarily involved being armed with a deadly weapon. And the facts surrounding appellant’s conviction confirm that he had a boning knife available for use, either offensively or defensively, during the commission of his crime; demonstrating he was armed during the commission of his current offense. (*Osuna, supra*, 225 Cal.App.4th at p. 1029.) This disqualifies appellant from resentencing (*id.* at p. 1032), and this disqualification comports with the purposes of the sentencing revisions. (*People v. White* (2016) 243 Cal.App.4th 1354, 1362-1364.)

Appellant’s supporting arguments for a tethering-offense requirement under *People v. Bland* (1995) 10 Cal.4th 991, section 12022, various principles of statutory construction, and the rule of lenity, were all expressly considered and rejected in *Osuna*. (*Osuna, supra*, 225 Cal.App.4th at pp. 1030-1031, 1035.) And appellant’s argument that a temporal connection between possessing a weapon and being armed with a weapon for

the purposes of resentencing is immaterial to the analysis is simply a veiled request that we reconsider *Osuna*. We reject the invitation to do so.

DISPOSITION

The order is affirmed.