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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DAVID LEON BATES, Defendant and Appellant.	B270760 Los Angeles County Super. Ct. No. BA229794

APPEAL from a post-judgment order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill and Carl N. Henry, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant David Leon Bates appeals the trial court's denial of his petition for recall and resentencing under Proposition 36, the Three Strikes Reform Act of 2012. He argues that the Act's exclusion of inmates who were armed with a firearm during the commission of their triggering offenses applies only to convictions in which the arming facilitated a different felony, not to convictions in which being armed *was* the triggering offense. We conclude an inmate serving a third-strike sentence for carrying a loaded firearm was armed with that firearm during the commission of the offense, rendering him ineligible for recall and resentencing under Proposition 36, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At his 2002 trial, defendant testified that as he fled from the police, a friend handed him a gun. When the police arrived, defendant hid the gun under a car.

The jury convicted him of possession of a firearm by an ex-felon (former Pen. Code,[1] § 12021.1; count 4) and carrying a loaded, unregistered firearm (former § 12031, subds. (a)(1), (a)(2)(F); count 5);[2] the jury acquitted him of four additional offenses. In January 2003, the court denied defendant's motion

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1 All undesignated statutory references are to the Penal Code.

2 The Deadly Weapons Recodification Act of 2010 repealed and recodified former sections 12000 to 12809 without substantive change. (§§ 16000, 16005, 16010.) Effective January 1, 2012, former sections 12021.1 and 12031 were recodified at sections 29900 and 25850, respectively. (Stats. 2010, ch. 711, § 4 [repealed]; Stats. 2010, ch. 711, § 6 [reenacted].)

to strike his prior convictions and imposed a third-strike sentence of 25 years to life for count 5; the court stayed count 4 under section 654. We affirmed by unpublished opinion (*People v. Bates* (Mar. 11, 2004, B164594) [nonpub. opn.]), and defendant's petition for review was denied.

Following the November 2012 passage of Proposition 36, defendant petitioned the superior court for recall of his third-strike sentence and resentencing as a second-strike offender. On February 22, 2016, the court found beyond a reasonable doubt that defendant was ineligible for resentencing because he used a firearm and was armed with a firearm during the commission of his current offense. (§ 667, subd. (e)(2)(C)(iii); § 1170.12, subd. (c)(2)(C)(iii).)

Defendant filed a timely notice of appeal.

CONTENTIONS

Defendant contends Proposition 36's exclusion of any third-strike inmate who was armed with a firearm during the commission of the triggering felony does not apply to inmates for whom being armed *was* the triggering felony. Instead, he argues, the exception can apply only to inmates who were armed during the commission of a *different* felony.

DISCUSSION

The meaning of *armed with a firearm* in Proposition 36 is a "question[] of statutory interpretation that we must consider de novo." (*People v. Prunty* (2015) 62 Cal.4th 59, 71.) " 'The first principle of statutory construction requires us to interpret the words of the statute themselves, giving them their ordinary meaning, and reading them in the context of the statute (or, here, the initiative) as a whole. If the language is unambiguous, there

is no need for further construction. If, however, the language is susceptible of more than one reasonable meaning, we may consider the ballot summaries and arguments to determine how the voters understood the ballot measure and what they intended in enacting it.' [Citation.] 'In construing constitutional and statutory provisions, whether enacted by the Legislature or by initiative, the intent of the enacting body is the paramount consideration.' [Citation.]" (*People v. Gonzales* (2017) 2 Cal.5th 858, 868 (*Gonzales*); accord *People v. Johnson* (2015) 61 Cal.4th 674, 682 (*Johnson*) [interpretation of a ballot initiative is governed by the same rules that apply when construing a statute enacted by the Legislature].)

1. Proposition 36 and its exceptions

"Under the 'Three Strikes' law as originally enacted in 1994, an individual convicted of any felony offense following two prior convictions for serious or violent felonies was subject to an indeterminate term of life imprisonment with a minimum term of no less than 25 years. [Citations.] In 2012, the electorate passed the Three Strikes Reform Act of 2012 (Reform Act or Act) (Prop. 36, as approved by voters, Gen. Elec. (Nov. 6, 2012)), which amended the law to reduce the punishment prescribed for certain third strike defendants." (*People v. Conley* (2016) 63 Cal.4th 646, 651.)

"The Reform Act changed the sentence prescribed for a third strike defendant whose current offense is not a serious or violent felony. [Citation.] Under the Reform Act's revised penalty provisions, many third strike defendants are excepted from the provision imposing an indeterminate life sentence (see Pen. Code, § 1170.12, subd. (c)(2)(A)) and are instead sentenced in the same way as second strike defendants (see *id.*, subd.

(c)(2)(C)): that is, they receive a term equal to 'twice the term otherwise provided as punishment for the current felony conviction' (*id.*, subd. (c)(1)). A defendant does not qualify for this ameliorative change, however, if his current offense is … one in which he used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury (*id.*, subd. (c)(2)(C)(iii))." (*People v. Conley*, *supra*, 63 Cal.4th at pp. 652–653.)[3] Such defendants continue to receive third-strike sentences for nonserious, nonviolent crimes. (*Ibid.*; see § 667.5, subd. (c) [list of violent felonies]; § 1192.7 [list of serious felonies]; § 1192.8 [additional serious felonies for purposes of § 1192.7].)

"In addition to reducing the sentence to be imposed for some third strike felonies that are neither violent nor serious, the Act provides a procedure by which some prisoners already serving third strike sentences may seek resentencing in accordance with the new sentencing rules. (§ 1170.126.) … Like a defendant who is being sentenced under the new provisions, an inmate is disqualified from resentencing if any of the exceptions set forth in section 667, subdivision (e)(2)(C) and section 1170.12, subdivision (c)(2)(C) are present. (§ 1170.126, subd. (e).) In contrast to the rules that apply to [initial] sentencing, however, the rules governing resentencing [also] provide that an inmate

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[3] "The Three Strikes law was enacted twice in 1994, first by the Legislature (§ 667, subds. (b)–(i); Stats. 1994, ch. 12, § 1, p. 71), and thereafter by the voters by way of Proposition 184 (§ 1170.12)." (*Johnson*, *supra*, 61 Cal.4th at p. 681, fn. 1.) The armed exception at issue here appears in both section 667, subdivision (e)(2)(C)(iii) and section 1170.12, subdivision (c)(2)(C)(iii). Although the two clauses contain the same language, for convenience, we refer primarily to the latter version, and sometimes refer to the provisions collectively as "clause (iii)."

will be denied recall of his or her sentence if 'the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.' (§ 1170.126, subd. (f).)" (*Johnson*, *supra*, 61 Cal.4th at p. 682.)

As relevant here, section 1170.126, subdivision (e)(2) renders ineligible for resentencing any inmate whose current sentence was *imposed for* any of the offenses appearing in clause (iii). (§ 1170.126, subd. (e)(2) ["An inmate is eligible for resentencing if: … The inmate's current sentence was not imposed for any of the offenses appearing in" clause (iii)].) Taken together, the statutes disqualify an inmate from resentencing if his sentence was imposed for any felony in which, "[d]uring the commission of the … offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person." (§ 1170.12, subd. (c)(2)(C)(iii).)

The parties agree that defendant had two or more prior serious and/or violent felony convictions that were pled and proved, and his current offense was neither serious nor violent. The court ruled, however, that because defendant was armed with a firearm during the commission of the current offense, clause (iii) rendered him ineligible for the Act's remedial provisions.[4] We conclude that it is plain from the statutory

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[4] There is disagreement among the appellate courts as to whether the facts supporting such a conclusion must be pled and proved; whether the court may make factual findings at the eligibility stage; and if so, by what quantum of proof. (See, e.g., *People v. Berry* (2015) 235 Cal.App.4th 1417, 1420–1421 [eligibility finding limited to facts shown on face of the conviction; court may not "expand its inquiry to factual matters beyond the scope of defendant's earlier convictions and the offenses for which the original sentence was imposed[]" until the

elements of defendant's conviction that his sentence was imposed for being armed with a firearm, and he is therefore ineligible for recall and resentencing under section 1170.126, subdivision (e)(2).

2. The meaning of "armed with a firearm"

Whether a law is enacted by the Legislature or the voters, the "enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted' [citation], and to have enacted or amended a statute in light thereof [citation]. … [¶] Where, as here, the language of a statute uses terms that have been judicially construed, the presumption is almost irresistible that the terms have been used in the precise and technical sense [that] had been placed upon them by the courts. [Citations.]" (*People v. Osuna* (2014) 225 Cal.App.4th 1020, 1029 (*Osuna*), internal quotation marks omitted; accord, *Gonzales*, *supra*, 2 Cal.5th at p. 869.)

As defined by the Legislature and the courts, a defendant is "armed with a firearm" if he has a gun "available for use, either offensively or defensively." (See, e.g., § 1203.06, subd. (b)(3) [" 'armed with a firearm' means to knowingly carry or have available for use a firearm as a means of offense or defense."]; Health & Saf. Code, § 11370.1, subd. (a) [" 'armed with' means having available for immediate offensive or defensive use"];

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dangerousness stage]; *People v. Arevalo* (2016) 244 Cal.App.4th 836, 853 [court may find facts at eligibility stage, but all factual findings must be beyond a reasonable doubt].) We need not reach any of those questions, however, because in this case, the armed exception *was* pled and proved. Accordingly, we do not rely on or address the court's express or implied factual findings or its conclusion that defendant "used" a firearm during the commission of the offense.

People v. Bland (1995) 10 Cal.4th 991, 997 (*Bland*) [construing "armed with a firearm in the commission of a felony" in § 12022].) "Accordingly, we conclude the electorate intended 'armed with a firearm,' as that phrase is used in the Act, to mean having a firearm available for offensive or defensive use." (*Osuna*, *supra*, 225 Cal.App.4th at p. 1029.)[5]

3. A defendant is armed with a firearm within the meaning of clause (iii) when his sentence is imposed for carrying a loaded firearm.

Defendant was convicted of two counts in this case—carrying a loaded, unregistered firearm (former § 12031, subds. (a)(1), (a)(2)(F); count 5) and possession of a firearm by a violent felon (former § 12021.1; count 4).[6] At all times relevant to

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[5] Though defendant does not seriously dispute this definition, he insists it is incomplete. Arming, he contends, requires a temporal nexus *and* a facilitative nexus between the arming and the crime of conviction. On its face, however, the arming at issue in clause (iii) requires neither a temporal nor a facilitative nexus. As *Bland* explained, a "defendant is *armed* if [he] has the specified weapon available for use, either offensively or defensively." (*Bland*, *supra*, 10 Cal.4th at p. 997.) The nexus questions are relevant only to clause (iii)'s *additional* requirement that the arming occur "[d]uring the commission of the current offense[.]" (§ 1170.12, subd. (c)(2)(C)(iii).) We address that issue in section 4, *post*.

[6] As explained *ante*, the court selected count 5 as the base term and imposed a third-strike sentence of 25 years to life. The court stayed count 4 under section 654. Because the sentences for the two counts were imposed for the same act of carrying a firearm, our finding that defendant was armed as a matter of law as to count 5 necessarily applies to count 4 as well. Accordingly, we do not discuss his eligibility under the stayed count.

this appeal, the elements of carrying a loaded firearm (former § 12031, subd. (a)(1)) have been:

- defendant carried a loaded firearm on his person or in a vehicle;
- defendant knew he was carrying a firearm;
- at the time, defendant was in a public place or on a public street in an incorporated city.[7]

As discussed, arming is defined by the availability of and ready access to a prohibited weapon; mere possession is not sufficient. (*People v. White* (2014) 223 Cal.App.4th 512, 524–525, 527.) For example, if a firearm is under a defendant's dominion and control but not readily available for his use, the defendant possesses the firearm but is not armed with it. (*Osuna*, *supra*, 225 Cal.App.4th at pp. 1029–1030; see *People v. Peña* (1999) 74 Cal.App.4th 1078, 1083–1084 [defendant may be convicted of former section 12021.1 under a constructive possession theory].)

By contrast, a defendant who carries a firearm necessarily makes it available for his personal use and is, therefore, armed. (See, e.g., *People v. Aguilar* (2016) 245 Cal.App.4th 1010 ["a violation of section 25400(a)(1) [former § 12025] requires proof that the defendant *knowingly and intentionally* carried a firearm concealed in a vehicle under his control."]; *People v. Arzate* (2003) 114 Cal.App.4th 390, 399 ["the offense of having a concealed weapon is committed with the fact of possession of the weapon in

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[7] The statutory scheme enumerates various exemptions for the lawful transport of a firearm in a vehicle, including, for example, in a locked container (§ 25610), to and from a licensed target range (§ 25540), or by a licensed hunter or fisherman while engaged in hunting or fishing (§ 25640).

a concealed or partially concealed fashion within a vehicle under the defendant's control or direction. The offense is thus more akin to being *armed* with a firearm than with using one."]; *People v. Reaves* (1974) 42 Cal.App.3d 852, 856–857 ["A person is armed with a deadly weapon when he *simply carries* such weapon or has it available for use in either offense or defense." (Emphasis added)].)

Like arming, "carrying" requires actual possession. (*People v. Wade* (2016) 63 Cal.4th 137 (*Wade*) [loaded firearm in a backpack was "on the person" as required to sustain a conviction for carrying a loaded firearm on the person because it was in defendant's immediate control].) And as with arming, a defendant can be convicted of carrying a loaded firearm even if the firearm doesn't work. (*People v. Taylor* (1984) 151 Cal.App.3d 432, 437 [construing former § 12031]; *Bland*, *supra*, 10 Cal.4th at pp. 1004–1005 [construing § 12022].)

We conclude, therefore, that when the jury convicted defendant of carrying a loaded weapon, it necessarily concluded he was armed. We next address whether the arming occurred "[d]uring the commission of the current offense[]" within the meaning of the Act. (§ 1170.12, subd. (c)(2)(C)(iii).)

4. The armed finding need not facilitate a different offense.

Defendant reads "[d]uring the commission of the current offense" to mean that the clause (iii) factors must exist in addition to—not just coextensive with—the current offense. He acknowledges that courts addressing firearm possession have uniformly rejected the argument that the arming factor applies only if it is "tethered" to a different felony, but contends those cases were wrongly decided. (See, e.g., *People v. Brimmer* (2014)

230 Cal.App.4th 782, 797–799; *People v. Elder* (2014) 227 Cal.App.4th 1308, 1312–1313; *Osuna*, *supra*, 225 Cal.App.4th at pp. 1030–1031.)

Defendant asks us to reject this universe of published authority, however, and instead import *Bland*'s analysis of arming *in* the commission of an offense to clause (iii)'s exclusion of defendants armed *during* the commission of the offense. *During* and *in*, he insists, are "frequently used interchangeably … with the distinction being between whether one is expressing duration or an exact time." That is, defendant believes the Legislature and the voters used different words to mean the same thing. We are not persuaded.

4.1. The difference between *during* and *in*

" 'Words and phrases in a statute are [typically] construed according to the rules of grammar and common usage.' (3 Singer & Singer, Sutherland Statutes and Statutory Construction (7th ed. 2014) § 59.8.)" (*People v. Valenti* (2016) 243 Cal.App.4th 1140, 1170.) *During* and *in* are both prepositions. (Garner, The Chicago Guide to Grammar, Usage, and Punctuation (2016) p. 139.) "A preposition is an uninflected function word or phrase linking a noun element (the preposition's object) with another part of the sentence to show the relationship between them." (*Ibid.*)

When a prepositional phrase modifies a verb, predicate adjective, or adverb, the phrase functions as an adverb. (Lester & Beason, The McGraw-Hill Handbook of English Grammar and Usage (2d ed. 2013) p. 41.) "In the commission of a felony" and "during the commission of a felony" are two such adverbial phrases; both phrases modify the verb (was) and its linked past participle (armed) and thereby describe the arming at issue.

That is, both phrases tell us *how* the arming relates to the commission of the felony.

Contrary to defendant's assertion, prepositions are not interchangeable; they are small but mighty.[8] Prepositions explain the relationship between a noun and other words in a sentence. They "express such notions as position (*about*, *above*, *below*, *on*, *under*), direction (*in*, *into*, *to*, *toward*), time (*after*, *before*, *during*, *until*), and source (*from*, *of*, *out of*)." (Garner, Chicago Guide, *supra*, at p. 139.) Here, *in* suggests direction whereas *during* suggests time. (See Garner, Dictionary of Modern Legal Usage (2d ed. 1995) p. 427.) *In* suggests action; *during* does not.

Even assuming *during* and *in* may be used interchangeably as a grammatical matter, however, the courts do not treat them as synonyms. Instead, courts construe *in* as expressing a facilitative nexus between arming and the crime because *in* suggests that the arming propels the crime forward. (See *People v. Pitto* (2008) 43 Cal.4th 228 [construing § 12022]; *In re Pritchett* (1994) 26 Cal.App.4th 1754 [§ 12022.5, subd. (a) enhancement for

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[8] Defendant provides one citation to support his contention that *during* and *in* are "frequently used interchangeably"—the landing page of the language-learners website grammar-quizzes.com. Defendant has provided no information about the authors or sponsors of this site, however, and we have no reason to believe it contains accurate information. (See LaJean Humphries, *How to Evaluate a Web Site* in Web of Deception: Misinformation on the Internet (Mintz edit., 2002), p. 165 ["just because you find information on the Internet … does not mean that the information is current, correct, or reliable."].) We note, however, that http://www.grammar-quizzes.com/preps_during-in.html instructs that *during* and *in* are not interchangeable and that *in* should not be used to express duration.

personal use *in* the commission of an offense requires facilitative nexus].) Courts use *during* to express a temporal nexus. (See *People v. Cavitt* (2004) 33 Cal.4th 187 [for nonkillers, felony murder requires logical nexus between felony and act resulting in death]; *People v. Fields* (1983) 35 Cal.3d 329, 365–368 [under the 1977 death penalty statute "during the commission" addresses whether the relationship between the special circumstance and the underlying crime "is sufficiently close to justify an enhanced punishment."]; *People v. Schoppe-Rico* (2006) 140 Cal.App.4th 1370 [no facilitative nexus required where defendant carried a firearm *during* the commission of a gang crime (§ 12021.5)].)

"In doing so," the courts have signaled that each word is "a term of art, which must be understood as it is defined, not in its colloquial sense." (*Gonzales*, *supra*, 2 Cal.5th at p. 871 & fn. 12; footnote omitted.) " ' "[W]hen the Legislature uses a term of art, a court construing that use must assume that the Legislature was aware of the ramifications of its choice of language." ' [Citation.] The same principle applies to the electorate." (*Ibid.*)[9]

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[9] In support of his contention that *during* and *in* are synonyms rather than distinct words or terms of art, defendant points to section 12022.7, an enhancement for the infliction of great bodily injury *in* the commission of another felony. Section 12022.7, he asserts, requires only a temporal nexus between great bodily injury and the underlying felony. The cases he cites do not support that proposition, however. The question in *People v. Poroj* (2010) 190 Cal.App.4th 165 was whether a section 12022.7 great bodily injury enhancement required a showing of intent to inflict great bodily injury separate or apart from the intent required to commit the underlying felony. It did not address firearms, facilitative conduct, or the meaning of *in*. (See *People v. Williams* (2005) 35 Cal.4th 817, 827 [" 'an opinion is not authority for a proposition not therein considered.' "].) *People v. Valdez* (2010) 189 Cal.App.4th 82 held that a victim's injuries, sustained when

In short, both the rules of grammar and the judicial and legislative constructions discussed above convince us that voters used *during* to signal that only a temporal nexus is required; had the drafters intended to require a temporal *and* a facilitative nexus, they would have used *in*.

4.2. Voter intent

At least half-a-dozen published decisions have addressed the ways in which the voters' expressed intent also supports this construction. (See, e.g., *People v. Blakely* (2014) 225 Cal.App.4th 1042, 1055–1057 [discussing ballot materials].) As explained in the Voter Information Guide, the goal of Proposition 36 was to "prevent the early release of dangerous criminals" and relieve prison overcrowding by allowing "low-risk, nonviolent inmates serving life sentences for petty crimes," such as "shoplifting and simple drug possession [to] receive twice the normal sentence instead of a life sentence." (Voter Information Guide, Gen. Elec. (Nov. 6, 2012) text of Prop. 36, § 1, subds. (3), (4) & (5), p. 105 (hereafter Voter Guide); see *Gonzales*, *supra*, 2 Cal.5th at pp. 869–871 [examining Voter Guide to discern electorate's intent].)

The Legislative Analyst explained that the Act would allow "certain third strikers to apply to be resentenced by the courts. The measure limits eligibility for resentencing to third strikers

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defendant's vehicle collided with her, were *not* inflicted "in the commission of" the offense of fleeing the scene of an injury accident; absent additional evidence that the defendant's flight aggravated the injuries, the great-bodily-injury enhancement did not apply. (*Id.* at pp. 84–85, 90.) That is, *Valdez* construed *in* to require a facilitative nexus.

whose current offense is nonserious, non-violent and who have not committed specified current and prior offenses, such as certain drug-, sex-, and gun-related felonies." (Voter Guide, *supra*, analysis by Leg. Analyst, p. 50.) Voters were told that nonserious, nonviolent felonies "include grand theft (not involving a firearm) and possession of a controlled substance." (Voter Guide, *supra*, analysis by Leg. Analyst, p. 48.) The Act's supporters argued that defendants "convicted of shoplifting a pair of socks, stealing bread or baby formula don't deserve life sentences." (Voter Guide, *supra*, arguments, p. 53.)

Nothing in the ballot materials suggests that the voters wanted to release third-strike offenders convicted of carrying loaded, unregistered guns.

4.3. Severity of the crime

Finally, defendant argues that carrying a loaded firearm is a "relatively minor … low-level felony" that is not dangerous enough to warrant exclusion from the Act.[10] Carrying a loaded,

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[10] The penalty for this offense depends on the circumstances of the carrying, and the difference can be subtle. If the gun is stolen or the defendant is an ex-felon, a gang member, or barred from gun possession, the crime is a felony. (§ 25850, subds. (c)(1)–(c)(4).) If the defendant is not the registered owner or has been convicted of a dangerous drug offense or a crime against a person or property, it is a wobbler. (*Id.*, subds. (c)(5)–(c)(6).) In all other cases, it is a misdemeanor. (*Id.*, subd. (c)(7).) As these fine distinctions illustrate, the term of imprisonment can be an imperfect proxy for the seriousness of an offense. (See § 18 [unless a statute prescribes a different punishment, felony term is 16 months, 2 years, or 3 years].)

unregistered firearm, he emphasizes, is not classified as serious or violent.[11]

Defendant appears to misunderstand the ways in which the Act amended the Three Strikes law. Under the Act, defendants convicted of serious or violent felonies continue to receive life sentences. (§ 1170.12, subd. (c)(2)(A); *People v. Conley*, *supra*, 63 Cal.4th at pp. 652–653.) The Act's resentencing provisions *only* apply to inmates convicted of nonserious, nonviolent offenses. (§ 1170.12, subd. (c)(2)(C).) The resentencing exclusions, in turn, apply to crimes committed by *that* group of inmates—nonserious, nonviolent offenders. Thus, for these purposes, it doesn't matter whether carrying a firearm is inherently dangerous because *every* third-strike offense potentially subject to clause (iii) is nonserious and nonviolent.

In any event, we disagree that carrying a loaded, unregistered firearm is an essentially passive act that "only becomes dangerous when it might facilitate a crime." As the Supreme Court has explained, former section 12031 was enacted as urgency legislation. (*Wade*, *supra*, 63 Cal.4th at p. 143.) Why? Because the " 'State of California has witnessed, in recent years, the increasing incidence of organized groups and individuals publicly arming themselves for purposes inimical to the peace and safety of the people of California. [¶] Existing laws are not adequate to protect the people of this state from either the use of such weapons or from violent incidents *arising from the mere presence of such armed individuals in public places*. Therefore, in order to prevent the potentially tragic consequences of such

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[11] We note that slave trading (§ 181) and hostage taking (§ 210.5) are also classified as nonserious, nonviolent felonies.

activities, it is imperative that this statute take effect immediately.' " (*Ibid*.; emphasis added.)

People v. Aguilar, *supra*, 245 Cal.App.4th 1010 is instructive. In that case, our colleagues in Division Eight concluded that a felony conviction for carrying a concealed firearm in a vehicle (§ 25400) is a crime of moral turpitude. (*Aguilar*, *supra*, at p. 1017; The court reasoned that "crimes involving firearms pose a recognized risk of violence. [Citation.] Because of the risk of violence inherent in the possession and use of firearms, statutes imposing prohibitions on firearms have long been upheld as a legitimate exercise of the state's regulatory authority [notwithstanding the Second Amendment]. [Citations.]" (*Ibid*.; see *Wade*, *supra*, 63 Cal.4th at p. 143 [section 25400 addresses same concerns as section 25850]; *People v. Elder*, *supra*, 227 Cal.App.4th at p. 1314 [" 'public policy generally abhors even momentary possession of guns by convicted felons who, the Legislature has found, are more likely to misuse them.' [Citation.]"].)

We also note that "the culpability levels of … offenses are policy decisions for the electorate to make." (*Gonzales*, *supra*, 2 Cal.5th at p. 874.) The "electorate was entitled to draw a line decreeing that any third strike felon who was actually armed with a prohibited firearm—no matter how benign the circumstances—was categorically ineligible for resentencing relief." (*People v. White*, *supra*, 243 Cal.App.4th at pp. 1364–1365.) Voters' decision to treat a wide range of such "offenses similarly may be debated but it is not absurd." (*Gonzales*, *supra*, at p. 874].)

DISPOSITION

The post-judgment order denying defendant's petition for recall and resentencing is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

ALDRICH, Acting P. J.

JOHNSON (MICHAEL), J. *

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.