

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-4745

MICHAEL SCOTT SMITH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Michael C. Overstreet, Judge.

June 28, 2019

PER CURIAM.

AFFIRMED.

LEWIS, OSTERHAUS, and M.K. THOMAS, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

APPENDIX
A

IN THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA
IN AND FOR BAY COUNTY

CASE NO.: 9-1527-CFMA

STATE OF FLORIDA,

Plaintiff,

v.

MICHAEL SCOTT SMITH,

Defendant.

COPY

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

THIS MATTER is before the Court on the Defendant's pro se Motion to Correct Illegal Sentence, pursuant to Fla. R. Crim. P. 3.800(a), filed on June 4, 2018. Having considered said Motion, court file and records, and being otherwise fully advised, this Court finds as follows:

On April 1, 2010, the Defendant was found guilty of First Degree Murder, and sentenced to life in prison. (Verdict; J. & Sentence.) On appeal, his judgment and sentence were affirmed. (Mandate & Op.) He has now filed the present Motion, arguing that his sentence is illegal because at trial the State made argument pertaining to – and the jury was instructed in part on – Felony Murder, when the indictment only included a charge for First Degree Murder, and when there was no section on the verdict form for the Jury to indicate by which theory of Murder it was finding the Defendant guilty.

The Defendant correctly asserts that, generally, a charging document which omits an essential element of the crime cannot support a conviction for that crime. *See Figueroa v. State*, 84 So. 3d 1158, 1161 (Fla. 2d DCA 2012). However, the Florida Supreme Court has clearly and specifically stated that "the state may proceed on theories of both premeditated and felony murder when only premeditated first-degree murder is charged. Also, a special verdict form demonstrating which theory the jury based its verdict on is not required." *Young v. State*, 579 So. 2d 721, 724 (Fla. 1991). *See also Bedford v. State*, 589 So. 2d 245, 252 (Fla. 1991); *Lynch v. State*, 2 So. 3d 47, n.7 (Fla. 2008). Accordingly, the Defendant's Motion is due to be denied.

Therefore, it is

APPENDIX
B

ORDERED AND ADJUDGED that the Defendant's Motion is hereby **DENIED**. The Defendant has thirty days from the rendition of this Order to appeal this decision.

DONE AND ORDERED in chambers, Bay County, Florida, this 25 day of September, 2018.



HONORABLE MICHAEL C. OVERSTREET
CIRCUIT JUDGE

Attachments:

Verdict, filed on April 1, 2010

Judgment and Sentence, filed on April 1, 2010

Mandate and Opinion, filed on July 18, 2011

I HEREBY CERTIFY that a true and exact copy of the foregoing has been provided by U.S. Mail to the Defendant, Michael Scott Smith, DC# A50419, Liberty Correctional Institution, 11064 N.W. Dempsey Barron Rd., Bristol, FL 32321; and the State Attorney's Office, P.O. Box 1040, Panama City, FL 32402, this 25 day of September, 2018.



Robin Owens, Judicial Assistant