

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ESTEBAN MERCHAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D22-3509

March 17, 2023

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Samantha Ward, Judge.

Esteban Merchan, pro se,

PER CURIAM.

Affirmed.

CASANUEVA, SILBERMAN, and BLACK, JJ., Concur.

Opinion subject to revision prior to official publication.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT
1700 N. TAMPA STREET, SUITE 300, TAMPA, FL 33602

April 11, 2023

CASE NO.: 2D22-3509
L.T. No.: 09-CF-21603

ESTEBAN MERCHAN

v. STATE OF FLORIDA

Appellant / Petitioner(s),

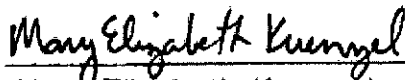
Appellee / Respondent(s).

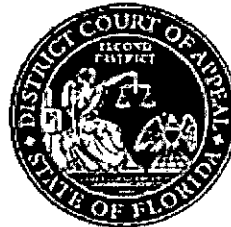
BY ORDER OF THE COURT:

Appellant's motion for rehearing en banc is treated as a motion for rehearing pursuant to Florida Rule of Appellate Procedure 9.330(a)(2)(A) and is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

lb


Mary Elizabeth Kuenzel
Clerk



Served:

ATTORNEY GENERAL, TAMPA
ESTEBAN MERCHAN

CERESE CRAWFORD TAYLOR, A.A.G.
CINDY STUART, CLERK

**IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice Division**

STATE OF FLORIDA

CASE NO.: 09-CF-021603

v.

**ESTEBAN MERCHAN,
Defendant.**

DIVISION: TR-3

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

THIS MATTER is before the Court on Defendant's "Motion to Correct Illegal Sentence," filed on August 8, 2022, pursuant to Florida Rule of Criminal Procedure 3.800(a). After reviewing Defendant's motion, the court file and record, the Court finds as follows:

In case 09-CF-021603, Defendant pleaded guilty pursuant to a negotiated plea agreement to three counts of First Degree Murder and one count of Attempted First Degree Murder and was sentenced to life in prison on all four counts. *See* Plea Form, Judgment and Sentence, and Amended Judgment and Sentence, attached.

In his motion, Defendant argues his "sentence of life imprisonment for attempted first degree murder with a firearm is illegal as it was improperly reclassified pursuant to Florida Statute 775.087(1)." *See* Motion to Correct Illegal Sentence, attached. Specifically, Defendant contends count four could not be reclassified "from a first degree felony to a life felony where [the] weapon was an essential element of the predicate felony relied upon the felony murder theory." *Id.* Defendant argues "the factual basis for the Attempted Murder was predicated upon a theory of felony murder, and the underlying felony 'Armed Robbery' included the use of a deadly weapon as an essential element." *Id.* Defendant concludes by arguing his "sentence is illegal as Attempted Murder under the Felony Murder theory carries a statutory maximum of 30 years and [he] received a life sentence." *Id.*

After reviewing Defendant's motion, the court file, and the record, the Court finds Defendant is not entitled to relief. Initially, the Court finds Defendant was not charged under the theory of felony murder with respect to count four; rather, he was only charged under a premeditated theory of Attempted First Degree Murder. *See Capital Indictment*, attached. Further, Defendant did not plead guilty to any underlying felony. *See Plea Form*, attached. Finally, to the extent Defendant argues an armed robbery was included as a factual basis for his plea to count four, the Court finds such a description to be inaccurate. Rather, as part of the plea colloquy, the State included the following:

STATE: The State believes in good faith that if the defendant were convicted at trial and subject to the death penalty, that we could prove beyond a reasonable doubt the following aggravating circumstances ... the defendant was a member of a criminal street gang at the time of these offenses and that these murders occurred during the course and commission of an armed robbery.

See Sentencing Transcript, p. 23, attached.

The Court does not find the State's recitation as to what it would argue as an aggravating factor at a potential penalty phase proceeding on counts one through three would otherwise preclude reclassification under Section 775.087(1) on count four in this instance. **Accordingly, Defendant's motion is denied.**

It is therefore **ORDERED AND ADJUDGED** that Defendant's "Motion to Correct Illegal Sentence" is hereby **DENIED**.

Defendant has thirty (30) days from the date of this order within which to appeal.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of August, 2022.

09-CF-021603-A 9/1/2022 8:44:29 AM
09-CF-021603-A 9/1/2022 8:44:29 AM

SAMANTHA L. WARD, Circuit Judge

**IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division**

STATE OF FLORIDA

CASE NO.: 09-CF-021603

v.

ESTEBAN MERCHAN,
Defendant.

DIVISION: TR-3

ORDER DENYING DEFENDANT'S MOTION FOR REHEARING

THIS MATTER is before the Court on Defendant's "Motion for Rehearing," filed on September 18, 2022. Previously, Defendant filed his "Motion to Correct Illegal Sentence" on August 8, 2022, which the Court denied on September 1, 2022. Defendant filed his "Motion for Rehearing" on September 18, 2022. After reviewing Defendant's motion, the court file, and the record, the Court finds:

In his motion, Defendant moves the Court for rehearing of his August 8, 2022, "Motion to Correct Illegal Sentence" and reiterates the arguments raised in his prior motion. *See* Motion for Rehearing, attached. Defendant argues the "State need not charge felony murder within the indictment in order to proceed under a felony murder theory for first degree murder" and states his plea form "did not differentiate between Premeditated Murder or Felony Murder," which therefore entitles him to relief. *Id.* Defendant states that his co-defendant ultimately went to trial, where the jury was instructed "under a felony murder theory" and argues that had he gone to trial, "the State would have pursued such a dual theory with the underlying felony being Armed Robbery and a conviction under the felony murder theory would have precluded reclassification." *Id.* Defendant concludes by requesting the Court to grant rehearing and "ultimately correct the sentence in count (4)." *Id.*

After reviewing Defendant's motion, his August 8, 2022, "Motion to Correct Illegal Sentence," the court file, and the record, the Court finds its September 1, 2022, order adequately addressed and disposed of Defendant's claims. *See* September 1, 2022, Order, attached. Accordingly, a rehearing is not warranted.

It is therefore **ORDERED AND ADJUDGED** that Defendant's "Motion for Rehearing" is hereby **DENIED**.

DONE AND ORDERED in Chambers, in Hillsborough County, Florida, this ____ day of October, 2022.

Electronically Conformed 10/6/2022
Samantha Ward

SAMANTHA L. WARD, Circuit Judge

Attachments:

Motion for Rehearing
September 1, 2022, Order

Copies furnished to:

Esteban Merchan, DC#: X69023
Avon Park Correctional Institution
8100 Highway 64 East
Avon Park, Florida 33825

Ron Gale, Assistant State Attorney