

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed January 7, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-1282
Lower Tribunal No. 79-9011

Willard Bryant,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, David H. Young, Judge.

Carlos J. Martinez, Public Defender and Robert Godfrey, Assistant Public Defender, for appellant.

Bill McCollum, Attorney General, and Magaly Rodriguez, Assistant Attorney General, for appellee.

Before SUAREZ and SALTER, JJ., and SCHWARTZ, Senior Judge.

SUAREZ, J.

Willard Bryant appeals from the trial court's order finding that his original 1979 conviction and sentence, made pursuant to a negotiated plea, was for "second degree murder with a firearm," and was accordingly reclassified as a life felony pursuant to section 775.087(1), Florida Statutes (1979). Our thorough examination of the record shows no support for that conclusion. The record, in fact, shows that Bryant's plea was to a reduced charge of second degree murder, without any reference to a firearm. We find that the record evidence shows that Bryant's second degree murder conviction in Count 1 was not reclassified to a life felony pursuant to 775.087(1), Florida Statutes (1979).

We therefore remand with instructions to clarify and correct Bryant's 1979 judgment and sentence to reflect a conviction for Count 1 of second degree murder, and that this is a first degree felony punishable by a term of years not exceeding life. § 782.04, Fla. Stat. (1979).

Remanded with instructions.