

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND,
IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2002

ROBERT L. SMITH,
Appellant,

vs.

THE STATE OF FLORIDA,
Appellee.

**

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** CASE NO. 3D01-2944

** LOWER

** TRIBUNAL NO. 97-13771

**

Opinion filed July 31, 2002.

An Appeal under Fla. R. App. P. 9.141(b)(2) from the Circuit
Court for Miami-Dade County, Thomas M. Carney, Judge.

Robert L. Smith, in proper person.

Robert A. Butterworth, Attorney General, and Meredith L. Balo,
Assistant Attorney General, for appellee.

Before JORGENSON, COPE and SORONDO, JJ.

PER CURIAM.

Robert Smith appeals from the summary denial of his motion for
post conviction relief. The State concedes that the trial court
should have conducted an evidentiary hearing with regard to
appellant's allegations of ineffective assistance of counsel, based
on defense counsel's failure to inform appellant that his charge of
second-degree murder had been increased to first-degree murder.
Appellant alleges that he would have accepted the state's plea

offer of twenty-five years if he had known he was being charged with first-degree murder where he faced a possible life sentence. We accept the State's concession and remand for an evidentiary hearing on this issue. The appellant's remaining points lack merit.

Accordingly, the trial court's order is affirmed, in part, reversed, in part, and remanded for further proceedings consistent with this opinion.