Circuit Court for Anne Arundel County
Case No: 02-K-10-002327

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 333

September Term, 2020

SHAWN ANTHONY JOHNSON

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 2, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2011, a jury sitting in the Circuit Court for Anne Arundel County found Shawn Anthony Johnson, appellant, guilty of first-degree felony murder and related offenses. The court sentenced him to life imprisonment, all but 40 years suspended, for felony murder and to consecutive terms totaling 10 years for related offenses. On direct appeal, this Court affirmed the judgments. *Johnson v. State*, No. 1261, September Term, 2012 (filed August 26, 2013). In 2020, Mr. Johnson, representing himself, filed a Md. Rule 4-345(a) motion to correct an illegal sentence in which he asserted that his sentence for felony murder was inherently illegal because "when the State added the felony murder to count one [of the Indictment charging murder], it changed the character of the offense." The circuit court summarily denied relief, without a hearing. On appeal, Mr. Johnson maintains that the court erred in denying relief without holding a hearing, which he had requested in his motion. We shall affirm the judgment because the court was not required to hold a hearing and Mr. Johnson's sentence is legal.

The charges against Mr. Johnson arose after he and several companions attempted to rob a carry-out restaurant in Glen Burnie and in the midst of doing so a friend of the cashier's was shot and killed. Count 1 of the Indictment read as follows:

> THE GRAND JURY charges that the aforesaid defendant on or about the aforesaid date, feloniously, willfully and of [sic] deliberately premeditated malice aforethought did kill and murder Misael Flores. (MURDER-FIRST DEGREE 2-0900. Common Law. CR 2-201. Penalty – Life/Death). (MURDER-SECOND DEGREE 1-0999. Common Law. CR 2-204. Penalty – 30 yrs). (MANSLAUGHTER 1-0910. Common Law. CR 2-207(a). Penalty – 10yrs/$500)

The State asserts that the language in Count 1 "is consistent with the statute," Md. Code, Criminal Law §2-208, "allowing for a short-form indictment" for murder, which necessarily included felony murder. We agree. The statute provides:

> (a) An indictment for murder or manslaughter is sufficient if it substantially states:
>
> "(name of defendant) on (date) in (county) feloniously (willfully and with deliberately premeditated malice) killed (and murdered) (name of victim) against the peace, government, and dignity of the State."
>
> (b) An indictment for murder or manslaughter, or for being an accessory to murder or manslaughter, need not set forth the manner or means of death.

In *Ross v. State*, 308 Md. 337 (1987), the Court of Appeals stated that a "charge of murder" using the short form indictment for murder "may be made out by proof of premeditated murder or proof of felony murder[.]" *Id*. at 347. The Court further stated that, although "murder in the first degree may be proved in more than one way[,] [t]here is no requirement [ ] that a charging document must inform the accused of the specific theory on which the State will rely." *Id.* at 344. Accordingly, the Court rejected the petitioner's claim that the State's use of the short form indictment charging murder in the first-degree, but not explicitly using the words "felony murder," deprived him of his constitutional right of fair notice and due process when the State successfully tried him for felony murder. *Id.* at 347. *See also Dishman v. State*, 352 Md. 279, 303 (1998) (The short form indictment "charges each of the homicide offenses, even if it is couched in terms of first degree murder.").

In *Nicholson v. State*, 239 Md. App. 228 (2018), *cert. denied*, 462 Md. 576 (2019), this Court rejected the appellant's contention that the short-form indictment for murder

applied only to first-degree murder and the lesser included offenses of that crime and, thereby, precluded second-degree felony murder. *Id.* at 257. Instead, we noted that, "[b]y its plain language, Crim. Law § 2-208 applies to *any* 'murder or manslaughter' charge, and Maryland appellate courts have consistently rejected attempts to narrow the range of homicide charges supported by the short-form indictment." *Id.* at 258 (citations omitted).

Because the bases of Mr. Johnson's illegal sentence claim - that his conviction for felony murder was defective because that offense was not specifically named in Count 1 of the Indictment - is without merit, we hold that the circuit court did not err in denying his Rule 4-345(a) motion and in doing so without holding a hearing. *See Scott v. State*, 379 Md. 170, 191 (2004) (Rule 4-345(a) "does not require a hearing in open court.").

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.