

Circuit Court for Baltimore County
Case No: 03-K-90-000742

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1894

September Term, 2019

LARRY W. JENKINS

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 23, 2020

*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 1990, Larry W. Jenkins, appellant, was convicted by a jury of first-degree murder, felony murder, robbery with a deadly weapon, and handgun offenses. The court sentenced him for the first-degree murder to life imprisonment. His total sentence was life imprisonment, plus 30 years.¹ On direct appeal, this Court affirmed the judgments. *Jenkins v. State*, No. 1665, September Term, 1990 (filed August 8, 1991).

In 2019, Mr. Jenkins, representing himself, filed a Rule 4-345(a) motion to correct an illegal sentence in which he asserted that his life sentence for murder was illegal because he was indicted using the “short form” indictment for “common law murder” and, therefore, he was only charged with second-degree murder. He requested that his commitment record be amended to substitute the life sentence for first-degree murder with a sentence of 30 years’ imprisonment for second-degree murder. The circuit court denied the motion and later denied Mr. Jenkins’s motion to reconsider that decision.

On appeal, Mr. Jenkins continues to assert that his indictment was defective for first-degree murder. He seems to base his contention on the fact that count 1 of the indictment - which charged that, on August 24, 1989 in Baltimore County, he “feloniously, willfully and of deliberately premeditated malice aforethought did kill and murder one George Edward Day” - concluded with “(Murder – Art. 27, Sec. 616).” Art. 27, § 616 was the statutory provision that authorized the “short form” indictment for charging all forms of

¹ No sentence was imposed for the felony murder conviction, which we presume the court merged with the conviction for first-degree premeditated murder.

murder.² (The statute is now codified as § 2-208(a) of the Criminal Law Article of the Md. Code.) Mr. Jenkins, however, maintains that because the indictment did not include a specific citation to first-degree murder (Art. 27, § 407, 408, 409, or 410), count 1 of his indictment only charged him with “common law murder,” which he asserts is “functionally equivalent to, or wholly synonymous with, second-degree murder.” Accordingly, he claims that “the court imposed an illegal sentence due to an illegal and unconstitutional conviction.” As he did in the circuit court, he requests that this Court issue “an amended commitment [record] reflecting a conviction for second-degree murder with a sentence of 30 years,” and further requests that his other sentences either be vacated or run concurrently with the 30-year murder sentence.

The State, relying on *Ross v. State*, 308 Md. 337 (1987), responds that the short form indictment charging Mr. Jenkins with murder included all forms of murder, including first-degree premeditated murder. The State acknowledges that in 1990, Rule 4-202(a), which governs the content of charging documents, required that “[t]he statute or authority for each count shall be cited at the end of the count,” but maintains that the State satisfied that requirement here by including the citation to Art. 27, § 616. But even if that statutory

² At the time of Mr. Jenkins’s indictment, Art. 27, § 616 provided:

In any indictment for murder or manslaughter, or being an accessory thereto, it shall not be necessary to set forth the manner or means of death. It shall be sufficient to use a formula substantially to the following effect: “That A.B., on the . . . day of . . . nineteen hundred and . . . , at the county aforesaid, feloniously (willfully and of deliberately premeditated malice aforethought) did kill (and murder) C.D. against the peace, government and dignity of the State.”

citation was insufficient (which the State does not concede), the State asserts that Mr. Jenkins’s claim still fails because the Rule further provided that an “error in the omission of the citation of authority is not grounds for dismissal of the charging document or reversal of a conviction.”

In *Ross*, the Court of Appeals stated that a defendant charged with murder using the language in the short-form indictment “is clearly apprised that he is being charged with the crime of murder and that he may be convicted of murder in either degree, or manslaughter.” 308 Md. at 345. “That defendant is also told when and where the homicide occurred, and the identity of the victim. He is not told whether the State will proceed upon one or another, or upon several theories concerning the particular malevolent state of mind alleged to have been present, but neither is he entitled to this information as a matter of constitutional due process.” *Id.* See also *State v. Ward*, 284 Md. 189, 200 (1978) (“It is well settled that under an indictment pursuant to the statutory form, even though it spells out murder in the first degree, the accused may be convicted of murder in the first degree, of murder in the second degree, or of manslaughter.”). In short, count 1 of the indictment properly charged Mr. Jenkins with first-degree murder.

Because Mr. Jenkins’s conviction for first-degree murder is legal, and a life sentence for that offense is permissible, we hold that the circuit court did not err in denying Mr. Jenkins’s Rule 4-345(a) motion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**