COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Bumgardner and Kelsey
Argued at Alexandria, Virginia

YAW AMOAKO FRIMPONG

v. Record No. 1904-03-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE D. ARTHUR KELSEY
NOVEMBER 9, 2004

FROM THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY
Rossie D. Alston, Jr., Judge

Joseph W. Kaestner (J. Paul Walla; Kaestner & Associates, P.C., on brief), for appellant.

Richard B. Smith, Senior Assistant Attorney General (Jerry W. Kilgore, Attorney General, on brief), for appellee.

A jury found Yaw Amoako Frimpong guilty of first-degree murder. On appeal, Frimpong claims his short-form indictment — patterned after the language of Code § 19.2-221 — charged him with second-degree, but not first-degree, murder. Because the trial court erroneously treated the indictment as a first-degree murder charge, Frimpong argues, the court violated his due process rights and prejudiced his right to plead guilty to second-degree murder.

Frimpong concedes that our recent decision in Walshaw v. Commonwealth, 44 Va. App. ___, 2004 Va. App. LEXIS 483, at *13 (2004), holds that the statutory short-form indictment "clearly charged first-degree murder." Walshaw also held that this indictment, used for over a century in Virginia, does not violate due process principles. Id. at *10-18. It follows that Walshaw undermines Frimpong's guilty-plea argument, as no defendant has a right to plead guilty to a lesser-included offense. See generally Code § 19.2-254 (providing that a trial court

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

"may refuse to accept a plea of guilty to any lesser offense included in the charge"); Graham v. Commonwealth, 11 Va. App. 133, 137, 397 S.E.2d 270, 272 (1990).

Frimpong claims Walshaw was wrongly decided. Under our interpanel accord doctrine, however, we have no authority to overrule a decision of another panel of this Court. "The decision of one panel 'becomes a predicate for application of the doctrine of *stare decisis*' and cannot be overruled except by the Court of Appeals sitting *en banc* or by the Virginia Supreme Court." Clinchfield Coal Co. v. Reed, 40 Va. App. 69, 73, 577 S.E.2d 538, 540 (2003) (citation omitted). "This principle applies not merely to the literal holding of the case, but also to its *ratio decidendi* — the essential rationale in the case that determines the judgment." Id. at 73-74, 577 S.E.2d at 540; see also Congdon v. Congdon, 40 Va. App. 255, 265, 578 S.E.2d 833, 838 (2003).

Because Walshaw governs this case, we reject Frimpong's challenge to the statutory short-form indictment and affirm his conviction for first-degree murder.

Affirmed.