

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

BRYAN A. SPELLERS,

Appellant,

v.

Case No. 5D17-1231

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed July 28, 2017

3.800 Appeal from the Circuit Court
for Orange County,
Dan Traver, Judge.

Bryan A. Spellers, Bristol, pro se.

No Appearance for Appellee.

PER CURIAM.

Bryan Spellers appeals the summary denial of his Florida Rule of Criminal Procedure 3.800(a) motion to correct illegal sentence. He argues that the jury's special finding that he discharged a firearm was insufficient under Apprendi¹ because the jury was not instructed that that they had to make the special finding beyond a reasonable doubt. Although the trial court is correct that "Florida law does not require an express

¹ Apprendi v. New Jersey, 530 U.S. 466, 490 (2000).

indication that special findings are made beyond a reasonable doubt when such indication may be inferred from the record," see State v. Woodall, 216 So. 3d 30, 33 (Fla. 5th DCA 2017), here, nothing may be inferred from the record because no record was attached to the order. Accordingly, we reverse the order summarily denying Spellers' claim and remand for attachment of the records conclusively refuting his claim.

REVERSED AND REMANDED.

TORPY, EVANDER and BERGER, JJ., concur.