

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CHRISTOPHER BAITY,

Appellant,

v.

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

CASE NO. 1D11-4286

STATE OF FLORIDA,

Appellee.

Opinion filed April 16, 2013.

An appeal from the Circuit Court for Leon County.
James C. Hankinson, Judge.

Sheila Callahan, Assistant Conflict Counsel, Office of Criminal Conflict and Civil
Regional Counsel, Region One, Tallahassee.

Pamela Jo Bondi, Attorney General, Tallahassee, for Appellee.

PER CURIAM.

We affirm appellant's convictions and sentences without discussion. However, the trial court could not impose the additional surcharge of \$20 pursuant to section 938.06(1), Florida Statutes (2009), because the court struck all fines imposed on appellant when it granted his rule 3.800(b)(2) motion. Sanders v.

State, 101 So. 3d 373, 376-77 (Fla. 1st DCA 2012). In addition, the trial court could not enhance appellant's second-degree felony murder conviction to a life felony under section 775.087(1), Florida Statutes (2009), because use of a firearm was an essential element of the underlying felony of attempted armed robbery with a firearm. See Traylor v. State, 785 So. 2d 1179 (Fla. 2000). Accordingly, we remand with directions that the trial court strike the additional \$20 surcharge and correct the written judgment and sentence to reflect appellant's second-degree felony murder conviction was for a first-degree felony punishable by life imprisonment.

AFFIRMED and REMANDED with directions.

BENTON, C.J., WOLF and SWANSON, JJ., CONCUR.