

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DAVID ALLEN GLENN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-3141

[October 19, 2016]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Robert E. Belanger, Judge; L.T. Case No. 562009CF003499B.

David Allen Glenn, Avon Park, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed. The trial court properly denied relief on appellant's claim that the information charging him with burglary was fundamentally defective. See *DuBoise v. State*, 520 So. 2d 260, 265 (Fla. 1988) (holding that an information is not fundamentally defective for failing to charge an essential element if it refers to the specific portion of the criminal code that details the elements); *Fulcher v. State*, 766 So. 2d 243, 244-45 (Fla. 4th DCA 2000). Moreover, appellant's reliance on *Hicks v. State*, 407 So. 2d 252 (Fla. 5th DCA 1981), is completely without merit, as the case was quashed in *State v. Hicks*, 421 So. 2d 510, 510-11 (Fla. 1982) (holding that consent to entry is an affirmative defense and non-consent is not an element of burglary).

WARNER, DAMOORGIAN and CONNER, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.