

Third District Court of Appeal

State of Florida

Opinion filed March 27, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-50
Lower Tribunal No. 09-8707A

Alphonso Pitts,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Marisa Tinkler-Mendez, Judge.

Alphonso Pitts, in proper person.

Ashley Moody, Attorney General, for appellee.

Before EMAS, C.J., and LOGUE and HENDON, JJ.

PER CURIAM.

Affirmed. See Connolly v. State, 172 So. 3d 893, 903-04 (Fla. 3d DCA 2015) (holding that “technical defects in a charging document are treated differently than the failure to allege an essential element of the crime. An indictment that wholly omits an essential element of a crime is a fundamental defect that may be raised at any time because the indictment fails to charge a crime when an essential element is omitted. Use or possession of a firearm, however, is not an essential element of second degree murder, but rather, it may serve to allow for a reclassification of the second degree murder from a first degree felony to a life felony or as an enhancement of the sentence imposed”) (internal footnote and citation omitted). See also Galindez v. State, 955 So. 2d 517 (Fla. 2007) (holding that an Apprendi/Blakely¹ error is subject to a harmless error analysis); Robinson v. State, 215 So. 3d 1262, 1274 (Fla. 1st DCA 2017).

¹ See Blakely v. Washington, 542 U.S. 296 (2004); Apprendi v. New Jersey, 530 U.S. 466 (2000).