

In the Supreme Court of Georgia

Decided: March 19, 2012

S12A0380. SMITH v. THE STATE.

NAHMIAS, Justice.

On April 7, 1997, Appellant Demetric Andre Smith stabbed his girlfriend Yolanda Bridges to death in her apartment in Fulton County; her body was found next to her crying two-year-old son Darius and her one-year-old daughter. In May 1999, Appellant was convicted of felony murder and cruelty to the child Darius and sentenced to life in prison plus 20 years. This Court affirmed the convictions on direct appeal. See Smith v. State, 275 Ga. 326 (565 SE2d 453) (2002).

On October 22, 2010, Appellant, who is incarcerated in Hancock County, filed a pro se motion in arrest of judgment in the Fulton County Superior Court, which he amended on March 7, 2011. On July 26, 2011, the trial court denied Appellant's motion without a hearing after concluding that "the motion's underlying claims have no merit." Appellant timely appealed.

Appellant’s motion in arrest of judgment was untimely by more than ten years. See OCGA § 17-9-61 (b) (“A motion in arrest of judgment must be made during the term at which the judgment was obtained.”); Lay v. State, 289 Ga. 210, 211 (710 SE2d 141) (2011). The trial court could have dismissed it on that ground instead of denying it on the merits. See Johnson v. State, \_\_\_ Ga. \_\_\_, \_\_\_ n.3 (\_\_\_ SE2d \_\_\_) (Case No. S11A1327, decided Jan. 23, 2012, slip op. at 2 n.3) (“When a trial court is faced with an untimely motion in arrest of judgment, it may be more appropriate for the trial court to dismiss the motion than to deny it.”). In this situation, “this Court affirms the denial of the untimely motion in arrest of judgment.” Id. at \_\_\_. Accordingly, we affirm.

Judgment affirmed. All the Justices concur.