

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2023-0257

KENNETH BURNS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Taylor County.
Gregory S. Parker, Judge.

July 3, 2024

ON APPELLANT'S MOTIONS FOR REHEARING
AND REHEARING EN BANC

PER CURIAM.

We deny Appellant's motions for rehearing and rehearing en banc. On our own motion, we withdraw our opinion docketed May 15, 2024, and substitute the following in its place.

Appellant Kenneth Burns was convicted of first-degree murder and sentenced to life in prison without parole, with costs imposed. Burns appealed and filed a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) to correct certain costs—which was not ruled on by the trial court. Burns raises three issues on appeal. We affirm without comment on the first two and write to briefly explain why we reverse on a portion of the third.

Burns claims that the trial court wrongly imposed certain costs. Among those costs was \$151 imposed pursuant to section 938.085, Florida Statutes. Burns argues he was not convicted of any qualifying offenses indicated in section 938.085 and, therefore, should not have had the cost imposed. Indeed, the underlying conviction for first-degree murder is not one of the enumerated qualifying offenses set forth in section 938.085. *See generally* § 938.085, Fla. Stat. Therefore, the trial court's imposition of the cost was erroneous. *See Thomas v. State*, 351 So. 3d 197, 209 (Fla. 1st DCA 2022) (striking costs imposed under section 938.085 when the underlying crime was not enumerated in the statute). We affirm the imposition of other costs Appellant challenges without comment.

Accordingly, we AFFIRM the trial court's judgment and sentence. We also REVERSE and REMAND the Judgment for Fine and Costs for the \$151 cost to be stricken.

B.L. THOMAS, BILBREY, and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.