

AFFIRM AS MODIFIED; Opinion Filed May 28, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00474-CR

**RASHAD KEITH WADE, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 194th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F19-00045-M**

MEMORANDUM OPINION

Before Justices Schenck, Molberg, and Nowell
Opinion by Justice Schenck

Rashad Keith Wade appeals his conviction for capital murder, arguing the judgment incorrectly reflects the offense for which he was convicted. By cross-issue, the State urges the judgment incorrectly reflects the sentence imposed. We affirm the judgment as modified below. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

BACKGROUND

Brenda Warren came from a large family with seven brothers and one sister, and she had three children of her own and two grandchildren. She owned a house

for more than twenty years. In February 2018, Brenda lived with her daughter, an infant granddaughter, and Brenda's cousin's fiancé whom Brenda had taken in after her cousin passed away. Appellant is the father of the infant granddaughter. Brenda and appellant argued frequently after the child was born. On or about February 9, 2018, appellant broke into Brenda's home by firing shots into the glass back door. Brenda heard appellant's entry and ran to her daughter's room, telling her to take the infant and hide in the bathroom. Brenda laid down on the floor in front of the bedroom doorway, and appellant entered the bedroom and shot Brenda to death. Appellant pointed the gun at Brenda's daughter and took the infant from her. He left the infant on the bed in the bedroom before leaving the house.

Appellant was charged by indictment with capital murder, specifically murder in the course of committing a burglary. Appellant pleaded not guilty, and the case proceeded to trial before a jury. The jury convicted him of capital murder as charged, and the trial judge pronounced his sentence as life without parole.

DISCUSSION

In his sole issue, appellant argues the judgment incorrectly reflects he was convicted of the offense of "capital murder terror threat" and should be modified to reflect he was convicted of "capital murder in the course of a burglary." The State agrees the offense listed in the judgment is inaccurate and requests that the judgment be modified to reflect appellant was convicted of "capital murder."

A judgment must reflect the offense for which the defendant was convicted. *See* TEX. CODE CRIM. PROC. ANN. art. 42.01 § 1(13). The record reflects appellant was charged by indictment with capital murder, specifically, murder in the course of committing burglary, *see* TEX. PENAL CODE ANN. § 19.03(a)(2), and that the jury convicted appellant of capital murder as charged in the indictment. However, the trial court’s written judgment reflects that appellant was convicted of “Capital Murder Terror Threat.”

We have the authority to modify the trial court’s judgment to make the record speak the truth. TEX. R. APP. P. 43.2(b); *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1991). We sustain appellant’s sole issue and modify the judgment to remove reference to “terror threat” and add reference to “burglary” as the predicate crime for capital murder. *See Asberry v. State*, 813 S.W.2d 526, 531 (Tex. App.—Dallas 1991, pet. ref’d).

By cross-issue, the State urges the sentence listed in the judgment should be modified to reflect that appellant was sentenced to “life without parole,” instead of “life.” The record reflects the judge pronounced appellant’s sentence as “life without parole,” but the judgment reflects appellant was sentenced to “life.” A person convicted of a capital felony in a case where the State does not seek the death penalty shall be imprisoned for life without parole if the person who committed the offense is eighteen years of age or older. PENAL § 12.31(b)(2). Appellant was twenty years old when he committed the offense. Because appellant was older than

eighteen when he committed the offense and the State did not seek the death penalty, he is subject to punishment of life in prison without parole. *Id.* We sustain the State’s cross-issue and modify the judgment to add “without parole” to appellant’s sentence. *See* TEX. R. APP. P. 43.2(b); *French*, 830 S.W.2d at 609.

As modified, we affirm the trial court’s judgment.

CONCLUSION

We modify the judgment to remove reference to “terror threat” and add reference to “burglary” as the predicate crime for capital murder and to add “without parole” to appellant’s sentence. As modified, we affirm the trial court’s judgment.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

DO NOT PUBLISH
Tex. R. App. P. 47
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

RASHAD KEITH WADE, Appellant

No. 05-19-00474-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 194th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F19-00045-M.
Opinion delivered by Justice
Schenck. Justices Molberg and
Nowell participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

to remove reference to "terror threat" and add reference to "burglary"
as the predicate crime for capital murder and to add "without parole"
to appellant's sentence.

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 28th day of May, 2020.