FILED
MAY 2 8 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

517

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JAMES HERBERT SMITH,

Defendant-Appellant.

Filed May 28, 1985

5-124
84-384

Appeal from the Iowa District Court for Polk County - Louis A. Lavorato, Judge.

Defendant appeals from conviction and sentence for voluntary manslaughter asserting he was denied effective assistance of counsel. AFFIRMED BY OPERATION OF LAW.

Charles Harrington, Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Mary Jane Blink, Assistant Attorney General, for plaintiff-appellee.

Considered en banc.

PER CURIAM

Defendant appeals from conviction and sentence for voluntary manslaughter asserting he was denied effective assistance of counsel. Three judges would affirm the decision of the district court and three would reverse. Pursuant to Iowa Code section 602.5106(1)(1985), the decision of the district court is affirmed by operation of law.

AFFIRMED BY OPERATION OF LAW.