IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

ANTHONY W. BROOM,
Defendant,

vs. CASE NO.: **CF81-1860**

STATE OF FLORIDA,
Plaintiff.
_____/

MOTION FOR REHEARING

COMES NOW, ANTHONY W. BROOM, Defendant, *pro se*, and respectfully moves this Honorable Court pursuant to Rule 9.330(a), Fla.R.App.P., (2012), for rehearing of its ORDER DENYING DEFENDANT'S BELATED AND SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF, ordered the 10th day April 2012, on the grounds that the Court overlooked or misapprehended controlling points of law on the facts. In support of the motion, Defendant states as follows:

1. This Court has overlooked and/or misapprehended the holding of State v. Falcon, 556 So.2d 762, 764 (Fla. 2d DCA 1990) and Mazzara v. State, 51 So.3d 480 (Fla. 1st DCA 2010) stating that:

> [A] trial court must follow precedent established by our state supreme court 'even though it might believe the law should be otherwise.' (quoting State v. Dwyer, 332 So.2d 333, 335 (Fla. 1976).

2. By misapprehending Coicou v. State, 39 So.3d 237 (Fla. 2010), the trial court erred in finding Coicou distinguishable on the basis that Coicou was charged with first-degree felony murder whereas Defendant was charged with premeditated first-degree murder. However, Florida recognizes no such distinction, because charging either offense implies a charge of the other offense, as seen in Crain v. State, 894 So.2d 59 (Fla. 2004) holding:

> It is well settled that if an indictment charges premeditated murder, the state need not charge felony murder or the particular underlying felony to receive a felony murder instruction. See *Woodel v. State*, 804 So.2d 316, 322 (Fla. 2001); *Gudinas v. State*, 693 So.2d 953, 964 (Fla. 1997); *Kearse v. State*, 662 So.2d 667, 682 (Fla. 1995). ("We have held that in felony murder situations the notice required by due process of law and supplied by the charging document as to other offenses is provided instead by our state's reciprocal discovery rule and by the enumeration in section 782.04(1)(a)(2), Florida Statute (2003)... ("we have repeatedly rejected claims that it is error for a trial court to allow the state to pursue a felony murder theory when the indictment gave no notice of the theory.").

Id. at 69. *Accord*, Knight v. State, 338 So.2d 201, 204 (Fla. 1976). Also see, Baker v. State, 2011 WL 2637418 (Fla. 2011), the Supreme Court held that:

> A general guilty verdict rendered by a jury instructed on both first-degree murder alternatives may be upheld on appeal where the evidence is sufficient to establish either felony murder or premeditation." *Crain v. State*, 894 So.2d 59, 73 (Fla. 2004).

WHEREFORE, the Defendant respectfully moves the Court for an order granting rehearing pursuant to Rule 9.330(a), Fla.R.App.P. (2012) and discharge the Defendant from the unlawful and unconstitutional conviction for an offense not charged and any other relief this Court deems just and proper.

Respectfully Submitted,

Anthony W. Broom

Anthony W. Broom, *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true copy of the foregoing document was placed in the hands of Mayo Correctional Institution Annex officials to forward by U.S. Mail to: Office of the State Attorney, Jerry Hill, 255 N. Broadway Ave., P.O. Box 9000-Drawer AS, Bartow, FL 33831 on this 20 day of April, 2012.

Anthony W. Broom

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