

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

STATE OF FLORIDA,

Plaintiff,

CASE NO.: CF81-1860

v.

ANTHONY W. BROOM,

Defendant.

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**ORDER DENYING DEFENDANT'S BELATED AND SUCCESSIVE MOTION FOR  
POST-CONVICTION RELIEF**

**THIS MATTER** comes before the Court on Defendant's pro se *Belated and Successive Motion for Post-Conviction Relief*, filed on February 23, 2012, pursuant to Rule 3.850(b)(2). After review of the Motion, case file, and applicable law, the Court finds as follows:

The Court has previously granted Defendant permission to file this belated and successive Motion for post-conviction relief. In his Motion, Defendant claims that he is entitled to relief because he was convicted of a crime with which he was not charged. Defendant cites Coicou v. State, 39 So.3d 237 (Fla. 2010) as support for his claim.

In Coicou, the Supreme Court of Florida stated that second-degree murder was not necessarily a lesser included offense of first-degree felony murder, receding from the Court's previous position as stated in Linehan v. State, 476 So.2d 1262 (Fla. 1985). Defendant is mistaken in asserting that the decision in Coicou is applicable to the instant case. Defendant was charged with first-degree murder, not first-degree felony murder. *See attached Information*. He was convicted of the lesser included offense of second-degree murder with a firearm. *See attached Judgment*. It is well-established that second-degree murder is a lesser included offense of first-degree murder. Coicou has no application to Defendant's case.

Based on the above, it is hereby **ORDERED AND ADJUDGED** that Defendant's Motion is **DENIED**. Defendant has thirty (30) days from the date of this Order to appeal this Order to the Second District Court of Appeal.

2012 02 28 10:00

ORDERED at Bartow, Polk County, Florida, this 10 day of April, 2012.


  
KARLA F. WRIGHT, Circuit Judge

cc:

- Anthony Broom, Mayo CI Annex, 8784 W. US 27, Mayo, FL 32066
- Office of the State Attorney, Polk County

KFW/sly

I hereby certify that copy  
of the foregoing order was  
mailed to defendant this

4/10/12  
  
Deputy Clerk

40 01/15/11

State of Florida

Judgment for

ANTHONY W. BROOK

FIRST DEGREE MURDER (CF)  
F. S. 782.04

**In the Name and by the Authority of the State of Florida:**

The Grand Jurors of the State of Florida, empaneled and sworn to inquire and true presentment make in and for the County of Polk upon their oath do present that ANTHONY W. BROOK of the County of POLK and State of Florida, on the twenty fourth day of June in the year of our Lord one thousand nine hundred and eighty one in the County and State aforesaid from a premeditated design to effect the death of a human being, unlawfully did kill a human being, to-wit: Charlotte Martz, by shooting her with a firearm, in violation of Section 782.04, Florida Statutes, contrary to the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

FILED - CRIMINAL DIVISION  
L. B. HERRICK, CLERK  
COURT AND COUNTY COURTS  
'81 AUG 21 PM 3 30

A TRUE BILL  
Presented in Open Court this 21 day of August 1981  
*Leon A. Evans* Foreman of Grand Jury

Judge Sewell — NO Bond — In Custody of Jail.

90 b985m

CRIME REPORT

DATE

CASE NUMBER CF81-1860

Anthony Willie Brown  
Defendant

**FILED**

DEC 23 1981

E. D. "BUD" DIXON, Clerk  
BY \_\_\_\_\_

**JUDGMENT**

The Defendant, Anthony W. Brown

Order Book 98 Page 973  
being previously before this

Court represented by Richard Ernest, Esquire

his attorney of record, and having:

(Check Applicable)

- Been tried and found guilty of the following crime(s)
- Entered a plea of guilty to the following crime(s)
- Entered a plea of not guilty to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
<u>1</u>	<u>Second Degree Murder With Firearm</u>	<u>782.04</u>	<u>(F. 1)</u>	

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of ten dollars (\$10.00) pursuant to F.S. 900.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of two dollars (\$2.00) as a court cost pursuant to F.S. 943.25(4).



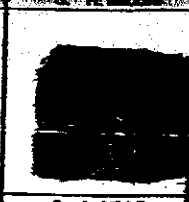
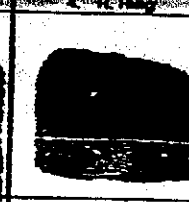
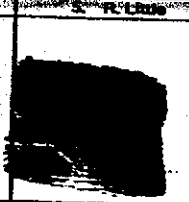



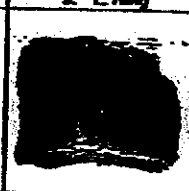
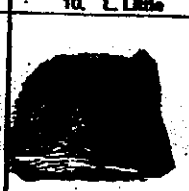
(Check if Applicable)

- The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(4).  
(This provision is optional; not applicable unless checked).
- The Defendant is further ordered to pay a fine in the sum of \$ \_\_\_\_\_ pursuant to F.S. 775.0835.  
(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).
- The Court hereby imposes additional court costs in the sum of \$ 637.00 as a condition of any parole.

The undersigned Court was advised of the right to appeal from the judgment of the Court and the defendant has waived the right to appeal from the judgment of the Court in the case of the State versus \_\_\_\_\_ of the County of \_\_\_\_\_ Florida.

*[Handwritten Signature]*  
JUDGE

FINGERPRINTS OF DEFENDANT

				
	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
				

Fingerprints taken by:  
*Ronald Ray Hume* Bailiff  
Name and Title

DONE AND ORDERED in Open Court at Folk County, Florida, this 23rd day of December A.D. 1981. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, Anthony W. Brock and that they were placed thereon by said Defendant in my presence in Open Court this date.

*[Handwritten Signature]*  
JUDGE

FILED

DEC 23 1981

E. D. "BUD" DIXON, Clerk

BY \_\_\_\_\_

98-174

\_\_\_\_\_ and the Court having given the Defendant an opportunity to be heard on the matter of the sentence, and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

- and the Court having on \_\_\_\_\_ delayed imposition of sentence until this date.
- (Check either provision if applicable)  and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

- The Defendant pay a fine of \$ \_\_\_\_\_, plus \$ \_\_\_\_\_ as the 5% surcharge required by F.S. § 71.25.

- The Defendant is hereby committed to the custody of the Department of Corrections \_\_\_\_\_ County, Florida  
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

- For a term of Natural Life  
 For a term of \_\_\_\_\_  
 For an indeterminate period of 6 months to \_\_\_\_\_ years.

If "split" sentence complete either of these two paragraphs

- Followed by a period of \_\_\_\_\_ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of \_\_\_\_\_ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm — 3 year mandatory minimum

- It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this court, as the Defendant possessed a firearm.

Drug Trafficking — mandatory minimum

- It is further ordered that the \_\_\_\_\_ year minimum provisions of F.S. 893.135(1)(X) are hereby imposed for the sentence specified in this court.

Retention of Jurisdiction

- The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of \_\_\_\_\_. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

- The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence to accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

- It is further ordered that the Defendant shall be allowed a total of 150 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/Concurrent

- It is further ordered that the sentence imposed for this court shall run  consecutive to  concurrent with (check one) the sentence set forth in court \_\_\_\_\_ above.

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Any other sentence being served.

Specific sentence: \_\_\_\_\_

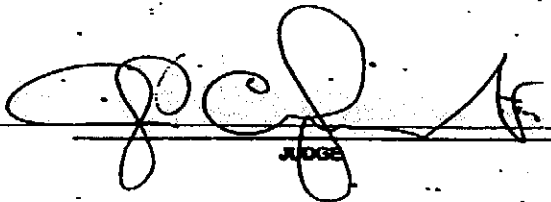
In the event the above sentence is in the Department of Corrections, the Sheriff of Folk County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

Respecting the above sentence, the Court makes the following recommendations: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE AND ORDERED in Open Court at Folk County, Florida, this 23rd day of December A.D. 19 81

  
\_\_\_\_\_  
JUDGE

**FILED**

DEC 23 1981

E. D. "BUD" DIXON, Clerk

BY \_\_\_\_\_

98-100-976