

FINAL COPY

284 Ga. 754

S08A1817. SAPP v. THE STATE.

**Melton**, Justice.

On March 23, 1989, Roger Sapp was convicted by a jury of felony murder based on the underlying felony of possession of a firearm by a convicted felon. Sapp was sentenced to life imprisonment for felony murder. In Sapp v. State, 260 Ga. 86 (390 SE2d 38) (1990), this Court affirmed Sapp's conviction. On September 27, 2007, Sapp filed a motion to vacate his sentence, contending that his felony murder conviction was void because it could not be merged with or supported by the underlying felony of possession of a firearm by a convicted felon. The superior court denied Sapp's motion, and, acting pro se, he appeals.

Sapp's contention is misplaced. As we have previously decided,

[t]he only limitation on the type of felony that may serve as an underlying felony for a felony murder conviction is that the felony must be inherently dangerous to human life. A felony is inherently dangerous when it is dangerous per se or by its circumstances creates a foreseeable risk of death. Depending on the facts, possession of a firearm by a convicted felon can be an inherently dangerous felony.

(Punctuation and footnotes omitted.) Hines v. State, 276 Ga. 491, 493 (3) (578

SE2d 868) (2003). In this case, “the evidence showed that [Sapp] and the victim were arguing over money that [Sapp] claimed the victim owed him. The victim attempted to leave the scene of the argument, but [Sapp] fired a gun at him, inflicting a fatal wound.” Sapp, supra at 86-87. Under these facts, Sapp’s possession of a firearm could be considered an inherently dangerous felony supporting his conviction for felony murder. As a result, Sapp’s conviction was proper. Sapp’s sentence was proper as well. See Lawson v. State, 280 Ga. 881 (3) (635 SE2d 134) (2006) (felony murder predicated on possession of a firearm by a convicted felon carries a mandatory life sentence).

Judgment affirmed. All the Justices concur.

**Decided November 3, 2008 – Reconsideration denied December 16, 2008.**

Murder. Glynn Superior Court. Before Judge Tuten.

Roger E. Sapp, pro se.

Stephen D. Kelley, District Attorney, Robert German, Jr., Assistant District Attorney, Thurbert E. Baker, Attorney General, for appellee.