

PUBLISH

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 98-8830  
\_\_\_\_\_

**FILED**  
**U.S. COURT OF APPEALS**  
**ELEVENTH CIRCUIT**  
**APR 06, 2001**  
**THOMAS K. KAHN**  
**CLERK**

TRACY LEE HOUSEL,

Petitioner-Appellant,

versus

FREDERICK J. HEAD,

Respondent-Appellee.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Georgia

\_\_\_\_\_  
(April 6, 2001)

ON PETITION FOR REHEARING

Before DUBINA, CARNES and COX, Circuit Judges.

PER CURIAM:

Appellant Tracy Lee Housel has petitioned this court for rehearing and has suggested rehearing en banc. Among other arguments, he points out that the court

misspoke in describing the concurring opinion in *Devier v. Zant*, 3 F.3d 1445 (11th Cir. 1993), and that the court did not discuss the large body of state-court authority concerning the treatment of unadjudicated crimes in capital sentencing. We GRANT the petition for panel rehearing to make two changes to our opinion, which is published at 238 F.3d 1289.

First, the sentence “But it has never been accepted in any form by a majority of this court or the Supreme Court,” found on page 1297, is replaced with “But no Supreme Court majority has ever accepted it, and two judges of this court espoused it only in dicta.”

Second, the sentence that begins “Perhaps since last a court visited the question . . .,” also found on page 1297, should begin “Perhaps since last this court or the Supreme Court visited the question . . . .”

The petition is otherwise DENIED. No member of this panel nor any other judge in regular active service on the court having requested that the court be polled on rehearing en banc, the suggestion of rehearing en banc is also DENIED.