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FILED
SID J. WHITE
JUN 22 1992
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,669

WILFREAD BEAUBRUM,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

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INTRODUCTION

The State of Florida was the appellee in the district court below and William Beaubrum was the appellant. The parties shall be referred to as they stood in the trial court below.

STATEMENT OF THE CASE AND FACTS

The State accepts defendant's Statement of the Case and Facts except on the point of conflict.

SUMMARY OF THE ARGUMENT

Defendant incorrectly contends that § 775.084 Florida Statutes (1989) violates the single-subject rule of Article 111, Section 6, Florida Constitution and that the decision by the Third District Court of Appeals is expressly conflicting with the decision of the First District Court of Appeal in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991). The Johnson case does not hold that the statute in question violates applicable law under Burch v. State, 556 So.2d 1 (Fla. 1990). Both sections of the statute that defendant claims are unrelated naturally and logically connected in the area of penalty and therefore do not violate the single subject rule.

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POINT ON APPEAL

WHETHER THE THIRD DISTRICT COURT'S
DECISION CLEARLY AND EXPRESSLY
CONFLICTS WITH THE DECISION OF ANOTHER
DISTRICT COURT ON THE SAME QUESTION OF
LAW.

The Third District Court's decision in Beaubrum v. State, ___ So.2d (Fla 3d DCA opinion cited at 17 FLW D 680 March 10, 1992, does not conflict with the decision of the First District Court of Appeal in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991). Defendant mistakenly contends that the Johnson case holds that 8775.084, Florida Statutes, (amended 1989), violates the single-subject rule of Article 111, Section 6, Florida Constitution. To the contrary the Johnson case determined that the single subject rule is not violated where the different targets of an act are naturally connected. The court merely found "it somewhat difficult to discern a logical or natural connection between career criminal sentencing and repossession of motor vehicles by private investigators," Further, "the statute is not presently susceptible to a constitutional single subject challenge." Id at 1371.

The Constitution requires that the subject of a statute be expressed in its title. It provides that every statute must embrace only one subject and matter properly connected therewith, which subject must be briefly expressed in the title. Fla. Const. Art III section 6. This constitutional provision was intended

to require that the general nature and substance of the content of the body of the statute be apparent to one who reads it. Kirkland v. Phillips, 106 So.2d 909 (Fla. 1958).

The constitutional provision is designed to prevent the use of misleading titles and the inclusion of unrelated matters in one statute. Defendant here has misconstrued the purpose of this provision. Senate Bill No. 582 discussed amendments to two separate statutes; section 775.084 and section 793.318; section 793.318 makes reference of punishment pursuant to section 775.084. It does not attempt to "logroll" two separate provisions into one statute but rather amend two separate statutes which are interrelated. (Appendix A).

Defendant relies on Burch v. State, 558 So.2d 1 (Fla. 1990) which answered the certified question as one of great public importance:

Is Section 893.13(i)(e), Florida Statutes (1987) Constitutional?

In that case petitioner's initial argument was that chapter 87-243, Laws of Florida, of which section 893.13(i)(e) was part, violates article III section 6. The State asserted that all sections of the act are naturally and logically connected within the parameters of this Court's interpretation of the single-subject rule. **S.** at 2. The Supreme Court looked at chapter 87-243 and determined that each of the areas contained in the act bore a logical relationship to the single subject of controlling crime.

In the case at bar the subjects are related in that section 493.321 Florida Statutes was amended to read:

493.321 Violation; penalty -

(1) Except as provided in 8493.3175 any person who violates any provision of this part is guilty of a misdemeanor of the first degree, punishable as provided in §775.082, 5775.083, or §775.084.

(Appendix at 1637)

Therefore, both sections are specifically related and are properly dealt within the same chapter as to the penalties applied.


CONCLUSION

For the foregoing argument an authority the State of Florida requests this Court to deny jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT was furnished by mail to **WILFREAD BEAUBRUM**, DC # 422276, Desoto Correctonal Inst., P.I. Drawer 1072, Arcadia, FL 33821 on this 19th day of June 1992.



PATRICIA ANN ASH

Assistant Attorney General

/gdp

A water management district, upon entering into such interagency agreement with the Department of Natural Resources shall provide notice of such action by publication in a newspaper having general circulation in the affected area.

Section 42. This act shall take effect July 1, 1989.

Approved by the Governor July 6, 1989.

Filed in Office Secretary of State July 5, 1989.

CHAPTER 89-280

Senate Bill No. 682

An act relating to criminal law and procedure; amending s. 776.064, F.S.; providing that prior convictions for qualified offenses outside of the state may be used to determine if a defendant is a habitual felony offender; expanding the definition of qualified offense for purposes of habitual felony offender; adding aggravated battery to the list of previous convictions for which habitual violent felony offender penalties may be imposed; amending s. 776.0662, F.S.; providing for career criminal prosecution of arrestees who qualify as habitual felony offenders or habitual violent felony offender and reenacting s. 775.0843(1) and (6), F.S., relating to policies for career criminal cases, to incorporate said amendment in references; amending s. 493.30, F.S.; defining the term "repossession"; amending s. 493.306, F.S.; limiting the number of reposessor interns a reposessor may supervise; amending s. 493.317, F.S.; revising prohibited acts; creating a. 498.8176, F.S.; providing procedures for the sale of repossessed property; providing a penalty; amending s. 493.318, F.S.; providing procedures for the disposition of certain recovered property not covered by a security agreement; amending s. 493.321, F.S.; providing penalties; requiring certain information to be displayed on certain vehicles; providing for review and repeal; amending s. 901.16, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 776.084, Florida Statutes, 1966 Supplement, is amended to read:

776.084 Habitual felony offenders and habitual violent felony offenders; extended term; definitions; procedure; penalties.—

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior felony or other qualified of-

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fense of which he was convicted, or parole or otherwise, from a period of 1 year as a result of a prior conviction for

3. The defendant has no conviction for an offense that is necessary for

4. A conviction of a felony under this section has not been

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, if it finds that:

1. The defendant has previously been convicted of a conspiracy to commit a felony

- a. Arson,
- b. Sexual battery,
- c. Robbery,
- d. Kidnapping,
- e. Aggravated child abuse,
- f. Aggravated assault,
- g. Murder,
- h. Manslaughter,
- i. Unlawful throwing, placing, or

j. Armed burglary, or;

k. Aggravated battery;

2. The felony for which the defendant is to be sentenced was committed within 6 years of the date of the conviction of the last prior felony, or 6 years of the date of the defendant's release from prison, or other commitment imposed for a felony, whichever is later;

3. The defendant has not been convicted of a crime that is necessary for the

4. A conviction of a crime under this section has not been set aside in any post-conviction proceeding;

(c) "Qualified offense" means a felony offense and penalties to an offense in

that was punishable under the law at the time of its commission and for which the maximum term of imprisonment is 1 year.

interagency agreement with
of such action by publi-
affected area.

fense of which he was convicted, or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;

9. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this section; and

4. A conviction of a felony or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an intended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

- a. Arson,
- b. Sexual battery,
- c. Robbery,
- d. Kidnapping,
- e. Aggravated child abuse,
- f. Aggravated assault,
- g. Murder,
- h. Manslaughter,
- i. Unlawful throwing, placing, or discharging of a destructive device or bomb,
- or
- j. Armed burglary, or
- k. Aggravated battery.

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior enumerated felony or within 6 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for an enumerated felony, whichever is later;

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section; and

4. A conviction of a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(c) "Qualified offense" means any offense, substantially similar in elements in violation of a law of jurisdiction, whether that of another state, the District of Columbia, or of the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction state or the United States at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

adding s. 775.084, F.S.;
outside of the state
felony offender; ex-
cesses of habitual felony
previous convictions for
y be imposed; amend-
prosecution of arrestees
violent felony offend-
ing to policies for ca-
in references; amend-
; amending s. 493.806,
; or may super-
acts; creating s.
repossessed property;
viding procedures for
covered by a security
alties; requiring cer-
; providing for review
effective date.

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(2) For the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the subsequent offense for which he is to be sentenced was committed during such probationary period.

(3) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

(a) The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

(b) Written notice shall be served on the defendant and his attorney a sufficient time prior to the entry of a plan or prior to the imposition of sentence so as to allow the preparation of a submission on behalf of the defendant.

(c) Except as provided in paragraph (a), all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

(d) Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

(e) For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

(4)(a) The court, in conformity with the procedure established in subsection (3), shall sentence the habitual felony offender as follows:

1. In the case of a felony of the first degree, for life.
2. In the case of a felony of the second degree, for a term of years not exceeding 80.
3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in subsection (3), may sentence the habitual violent felony offender as follows:

1. In the case of a felony of the first degree, for life, and such offender shall not be eligible for release for 16 years.
2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offenders shall not be eligible for release for 10 years.
3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c) If the court decides that imposition of sentence under this section is not necessary for the protection of the public, sentence shall be imposed without regard to this section. At any time when it appears to the court that the defendant is a habitual felony offender or a habitual violent felony offender, the court shall make that determination as provided in subsection (3).

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(d) A sentence imposed in this section shall be in addition to any other sentence imposed.

(e) A sentence imposed under this section shall be in addition to any sentence imposed by the Department of Corrections for 20 days of incentive gain-time.

Section 2. Section 775.082 read:

775.082 Persons subject to the jurisdiction of the Department of Corrections or prison superintendent

(1)(a) A person who is convicted of a felony or conspiracy to commit any felony or conspiracy to commit any felony, or a habitual violent offender or a habitual violent offender convicted of two or more felonies

(b) As used in this section, a conviction of a felony in this jurisdiction when:

1. A sentence to a term of years or life or death could have been imposed

2. The offender was committed to or was transferred to a correctional institution

3. The defendant was convicted of a felony or other qualified offense in the commission of the present offense

4. The defendant has been convicted of a felony or other qualified offense in the commission of the present offense

5. A conviction of a felony in this section has not been obtained

(2) If a person is on probation, parole, or is convicted of a felony has been sentenced to a term of years or life, this fact shall be considered in determining the sentence to be imposed.

Section 3. For the purpose of this section, Florida Statutes, sections 775.082 and (5) of section 775.0843 read:

775.0843 Policies to be followed

(1) Criminal justice age enforcement management and prosecution

(d) A sentence imposed under this section shall not be increased after such imposition.

(e) A sentence imposed under this section shall not be subject to the provisions of s. 821.001. The provisions of chapter R47 shall not be applied to such person. A defendant sentenced under this section shall not be eligible for gain-time granted by the Department of Corrections except that the department may grant up to 20 days of incentive gain-time each month as provided for in s. 944.275(4)(b).

Section 2. Section 775.0842, Florida Statutes, 1986 Supplement, is amended to read:

776.0842 Persons subject to career criminal prosecution efforts; duties of officers or prison superintendent. —

(1)(a) A person who is under arrest for the commission, attempted commission, or conspiracy to commit any felony in this state shall be the subject of Career criminal prosecution efforts provided that such person is a habitual violent felony offender under s. 775.084 has previously been convicted of two or more felonies as outlined in section 775.084(1).

(b) As used in this section and ss. 775.0841 and 775.0843, a previous felony conviction is a conviction of a felony in this state or a conviction of a crime in any other jurisdiction when:

1. A sentence to a term of imprisonment of 1 year or more or a sentence of death could have been imposed therefor.

2. The offender was over the age of 16 years at the time the offense was committed or was transferred for adult criminal prosecution pursuant to section 39.06(8) or any similar statute in another jurisdiction.

3. The defendant was imprisoned on at least one occasion for conviction of a felony or other qualified offense necessary for the operation of this section prior to commission of the present felony.

4. The defendant has not received a pardon on the ground of innocence for any felony or other qualified offense that is necessary for the operation of this section.

5. A conviction of a felony or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(2) Whenever it shall become known to any superintendent of a prison or to any probation, parole, or law enforcement officer that any person charged with or convicted of a felony has been convicted once previously within the meaning of paragraph (1)(b), this fact shall immediately be reported to the state attorney of the judicial circuit in which the charge lies or the conviction occurred.

Section 3. For the purpose of incorporating the amendment to section 776.0842, Florida Statutes, 1988 Supplement, in references thereto, subsections (1) and (5) of section 775.0343, Florida Statutes, 1988 Supplement, are reenacted to read:

776.0845 Policies to be adopted for career criminal cases. —

(1) Criminal justice agencies within this state shall employ enhanced law enforcement management efforts and resources for the investigation, apprehension, and prosecution of career criminals. Each state attorney, sheriff, and the police

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chief of each municipality with a population in excess of 50,000 shall designate a career criminal program coordinator with primary responsibility for coordinating the efforts contemplated by this section and ss. 775.0841 and 775.0842. Enhanced law enforcement efforts and resources shall include, but not be limited to:

- (a) Assignment of highly qualified investigators and prosecutors to career criminal cases.
- (b) Significant reduction of caseloads for investigators and prosecutors assigned to career criminal cases.
- (c) Coordination with federal, state, and local criminal justice agencies to facilitate the collection and dissemination of criminal investigative and intelligence information relating to those persons meeting the criteria of a career criminal.

(5) Each career criminal apprehension program shall concentrate on the identification and arrest of career criminals and the support of subsequent prosecution of such career criminals. The determination of which suspected felony offenders shall be the subject of career criminal apprehension efforts shall be made in accordance with written target selection criteria selected by the individual law enforcement agency and state attorney consistent with the provisions of this section and s. 775.0842.

Section 4. Subsection (16) is added to section 493.30, Florida Statutes, to read:
493.30 Definitions, part I.—As used in this act:

(16) "Repossession" is the legal recovery of a motor vehicle or motorboat as authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause. A repossession is complete when a licensed reposessor is in control, custody, and possession of such motor vehicle or motorboat.

Section 5. Subsection (6) of section 493.806, Florida Statutes, is amended to read:

493.806 License requirements.—

(6) In addition to any other requirements, an applicant for a Class "E" license must have 1 year of work experience performing repossessing, 1 year as a Class "EE" reposessor intern, or a combination of 1 year of work experience and internship. A Class "E" reposessor may not supervise more than six Class "EE" reposessor interns at one time.

Section 6. Subsections (7) and (8) are added to section 493.317, Florida Statutes, to read:

493.317 Prohibited acts by Class "E" and Class "EE" licensees.—In addition to other requirements imposed by this part or by rule of the department, reposessor licensees and reposessor interns are prohibited from:

(7) FAILING TO REMIT MONEYS.—Failing to remit moneys collected in lieu of repossession to a client within 10 working days.

(8) FAILING TO DELIVER NEGOTIABLE INSTRUMENT.—Failing to deliver to a client a negotiable instrument which is payable to the client, within 10 working days after receipt of such instrument.

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Section 7. Section 493.317

493.3176 Sale of property

(1) A licensee must have to sell repossessed property f

(2) A licensee must send t to the owner or lienholder, wi documents which permit the

(3) A person who violat third degree, punishable as y

Section 8. Subsection (2) read:

493.318 Repossessor req

(2) give written notification to r repossession of the whereab pursuant to this section. At l or other property, the repo owner or lessee of the intent to the person who controlled erty contained within the r notification.

Section 9. Section 493.3

493.321 Violation; pena

of this Except as provided i in s. 775.082, s. 775.083, or

(2) Any person who is c ble for licensure for a peric

Section 10. Vehicles use or "EE" licensee shall be ic the licensee. The license n shall appear in lettering n the background.

Section 11. Each sectio this act is repealed on Oct pursuant to section 11.62,

Section 12. This act sh fenses committed an or aft

Approved by the Govern

Filed in Office Secretary

Section 7. Section 493.3175, Florida Statutes, is created to read:

493.3175 Sale of property by a licensee; penalty.—

(1) A licensee must have written authorization from the owner or lienholder to sell repossessed property for which the licensee has a negotiable title.

(2) A licensee must send the net proceeds from the sale of repossessed property to the owner or lienholder, within 20 working days after the licensee executes the documents which permit the transfer of legal ownership to the purchaser.

(3) A person who violates a provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Subsection (2) of section 493.318, Florida Statutes, is amended to read:

493.318 Repossessor required to prepare and maintain inventory.—

(2) Within 5 working days after the date of a repossession, the reposessor shall give written notification to the registered owner or lessee of the property prior to repossession of the whereabouts of personal effects or other property inventoried pursuant to this section. At least 20 days prior to disposing of such personal effects or other property, the reposessor must, by certified mail, notify the registered owner or lessee of the intent to dispose of said property. Upon written notification to the person who controlled the property prior to repossession, the personal property contained within the repossessed property may be disposed of 10 days after notification.

Section 9. Section 495.321, Florida Statutes, is amended to read:

495.321 Violation; penalty.—

(1) Except as provided in s. 493.3175, any person who violates any provision of this part is guilty of a misdemeanor of the first degree, punishable as provided in a. 776.082, s. 775.083, or s. 775.084.

(2) Any person who is convicted of any violation of this part shall not be eligible for licensure for a period of 6 years.

Section 10. Vehicles used solely for the purpose of repossession by a Class "E" or "EE" licensee shall be identified during repossession by the license number of the licensee. The license number shall be displayed on the side of the vehicle and shall appear in lettering no less than 4 inches tall and in contrasting colors from the background.

Section 11. Each section which is added to chapter 493, Florida Statutes, by this act is repealed on October 1, 1990, and shall be reviewed by the Legislature pursuant to section 11.61, Florida Statutes.

Section 12. This act shall take effect October 1, 1989, and shall apply to offenses committed on or after the effective date.

Approved by the Governor July 5, 1989.

Filed in Office Secretary of State July 5, 1989.

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