

FILED

SID J. WHITE

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CLERK, SUPREME COURT

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Chief Deputy Clerk

Petitioner,)
)
)

ON DISCRETIONARY REVIEW FROM A
QUESTION CERTIFIED TO BE OF GREAT PUBLIC
IMPORTANCE BY THE
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
WHETHER THE CHAPTER 89-280 AMENDMENTS TO SECTION 775.084 (1)(A)1, FLORIDA STATUTES (1989), WERE UNCONSTITUTIONAL PRIOR TO THEIR REENACTMENT AS PART OF THE FLORIDA STATUTES, BECAUSE [THEY WERE] IN VIOLATION OF THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION?	5
CONCLUSION	13
CERTIFICATE OF SERVICE	13

TABLE OF CITATIONS

<u>CASES CITED:</u>	<u>PAGE NO.</u>
<u>Blankenship v. State</u> 545 So.2d 908 (Fla. 2d DCA 1990)	9
<u>Bunnell v. State</u> 453 So.2d 808 (Fla. 1984)	8,9,11
<u>Butler v. State</u> 17 F.L.W. 1460 (Fla. 5th DCA June 12, 1992)	2
<u>Chenowith v. Kemp</u> 396 So.2d 1122 (Fla. 1981)	9
<u>Gilmore v. State</u> 17 F.L.W. 986 (Fla. 4th DCA April 15, 1992)	3
<u>Johnson v. State</u> 589 So.2d 1370 (Fla. 1st DCA 1991)	3,7,11
<u>Martinez v. Scanlan</u> 582 So.2d 1167 (Fla. 1991)	11,12
<u>State v. Burch</u> 558 So.2d 1 (Fla. 1990)	8,9-11
<u>State v. Levins</u> 17 F.L.W. 1203 (Fla. 1st DCA May 11, 1992)	9,10
<u>State v. Thompson</u> 120 Fla. 860, 163 So. 270 (1935)	8
<u>OTHER AUTHORITIES CITED:</u>	
Article 111, Section 6, Florida Constitution	2,4-10,12
Section 493.30(16), Florida Statutes	6
Section 493.306(6), Florida Statutes	6
Section 493.317 (7), Florida Statutes	6
Section 493.317(8), Florida Statutes	6

TABLE OF CITATIONS

<u>OTHER AUTHORITIES CITED:</u>	<u>(Continued)</u>	<u>PAGE NO.</u>
Section 493.3175, Florida Statutes		6
Section 493.3176, Florida Statutes		7
Section 493.318(2), Florida Statutes		7
Section 775.084, Florida Statutes (1989)		2,4,5-7
Section 775.084(1)(a)1, Florida Statutes (1989)		2,5
Section 775.0842, Florida Statutes		6
Section 775.0843, Florida Statutes		6
Chapter 82-150, Laws of Florida		8,11
Chapter 87-243, Laws of Florida		10,11
Chapter 89-175, Laws of Florida		9,10
Chapter 89-280, Laws of Florida		2,4-7,9-12

IN THE SUPREME COURT OF FLORIDA

WILLIE BUTLER,)
Appellant/Petitioner,)
)
)
v.) CASE NO.
)
)
STATE OF FLORIDA,)
Appellee/Respondent.)

STATEMENT OF THE CASE AND FACTS

Petitioner, Willie Butler, was **charged** by information in three separate circuit court cases with three counts of burglary of a dwelling, two counts of petit theft, and one count of grand theft (R44, 56, 57). The charged offenses were all alleged to have occurred during February of 1991 (R44, 56, 57). As part of a plea agreement, Petitioner entered a plea of guilty to three counts of burglary of a dwelling, and the State filed a nolle prosequi as to the remaining counts of petit theft and grand theft (R3-4, 79-84, 135-137).

The State filed a timely notice of its intent to seek enhanced punishment as a habitual offender on July 8, 1991 (R69). After a continuance, Petitioner's final sentencing hearing was held on August 27, 1991, before the Honorable Richard F. Conrad in Orange County (R14-18, 21-37). In an attempt to establish Petitioner's status as a habitual offender, the State introduced certified copies of judgments and sentences from four felony convictions which originated in Georgia. Two of these Georgia

convictions were **dated** November 4, 1986, and the remaining two **judgments** were dated August 18, 1982 (R22, 32-34, 119-134). There was also evidence of a Florida grand theft conviction entered October 15, 1980 (R33, 120-121).

Based on these out of state convictions (treated as **two** prior felony convictions as each **two** were entered on the same date), one of which fell within five years of the date of the instant offense, and the 1980 Florida conviction, Petitioner was found to be a habitual offender pursuant to Florida Statutes § 775.084 (1991) (R33-35, 149-150). Petitioner was sentenced to three concurrent terms of ten years incarceration as a habitual offender (R36, 151-156).

Petitioner appealed the imposition of this sentence to the Fifth District **Court** of Appeal, arguing that his classification as a habitual offender was in error. The basis for this argument was that Chapter 89-280, Laws of Florida, amending § 775.084, was violative of the single subject rule of the Florida Constitution. Art. 111, § 6, Fla. Const. (1968).

The Fifth District Court of Appeal affirmed the sentence, and on motion for rehearing and clarification, the following question was certified as being of great public importance:

WHETHER THE CHAPTER 89-280 AMENDMENTS TO SECTION 775.084 (1)(A) 1, FLORIDA STATUTES (1989), WERE UNCONSTITUTIONAL PRIOR TO THEIR REENACTMENT AS **PART** OF THE FLORIDA STATUTES, BECAUSE [THEY WERE] IN VIOLATION OF THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION?

Butler v. State, 17 F.L.W. 1460 (Fla. 5th DCA June 12, 1992).

The same question was certified by the First District Court of Appeal in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991), and by the Fourth District Court of Appeal in Gilmore v. State, 17 F.L.W. 986 (Fla. 4th DCA Apr. 15, 1992).

SUMMARY OF THE ARGUMENT

Chapter 89-280, Section 775.084, Florida Statutes, violates the one subject rule of the Florida State Constitution. The law in Chapter 89-280 embraces two subjects. These subjects are the habitual felony offender and the repossession of motor vehicles. The amendment to the habitual offender statute was specifically applied to Petitioner's case, as Petitioner **could** not have been classified as a habitual offender but for the amendment to Section 775.084 contained in Chapter 89-280. There is absolutely no connection between the law governing the habitual felony offender and the repossession of motor vehicles. Chapter 89-280, Section 775.084, Florida Statutes, violates Article 111, Section 6, of the Florida Constitution, and is unconstitutional.

ARGUMENT

WHETHER THE CHAPTER 89-280 AMENDMENTS TO SECTION 775.084(1)(A)1, FLORIDA STATUTES (1989), WERE UNCONSTITUTIONAL PRIOR TO THEIR REENACTMENT AS PART OF THE FLORIDA STATUTES, BECAUSE [THEY WERE] IN VIOLATION OF THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION?

The trial court erred in sentencing Petitioner as a habitual offender. The habitual offender statute, § 775.084, Florida Statutes (1989), as amended and applied to Petitioner's sentence and classification as a habitual offender, is violative of the one subject rule of the Florida Constitution. Art. 111, § 6, Fla. Const. (1968); Ch. 89-280, § 12, Laws of Fla.. Petitioner's offenses occurred in February 1991, after the October 1, 1989 effective date of Section 775.084, Florida Statutes (1989), Chapter 89-280, Laws of Florida, and prior to May 2, 1991, the effective date of Chapter 91-44 which re-enacted the 1989 amendments to Florida Statutes.

In particular, the section of the habitual offender statute concerning the use of out of state convictions in establishing a defendant as a habitual offender was amended in Chapter 89-280, § 1, Laws on Florida. Section 775.084(1)(a)1, was amended in part as follows:

(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;

Chapter 89-280, § 1, Laws of Florida. Importantly, this change was specifically **applied** to Petitioner's case, as the State relied on evidence of two prior Georgia convictions (only one of which fell within five years of the instant offense), and one remote judgment from Florida in moving to have Petitioner classified as a habitual offender. Petitioner could not have qualified as a habitual offender prior to the effective date of this amendment to the habitual offender statute.

Article 111, Section 6 of the Florida Constitution provides:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: "Be It Enacted by the Legislature of the State of Florida."

Chapter 89-280 embraces two subjects: habitual felony offenders or habitual violent felony offenders, and the repossession of motor vehicles. The first three sections of Chapter 89-280 amended sections 775.084 (the habitual offender statute), 775.0842 (the career criminal statute), and 775.0843 (policies for career **criminals**), Florida Statutes. Section four of Chapter 89-280 created section 493.30(16), Florida Statutes, defining "repossession", and amended section 493.306(6), which concerns license requirements for repossessors. Section six of Chapter 89-280 created Florida Statutes Section 493.317(7) and (8), prohibiting repossessors from failing to remit money or deliver

negotiable instruments. Section seven of Chapter 89-280 created Florida Statutes section 493.3175, regarding the sale of property by a licensee. Section eight of Chapter 89-280 amended Florida Statute Section 493.318(2), requiring repossessors to prepare and maintain **an inventory**. Section nine of Chapter 89-280 amended Florida Statutes Section 493.3176, which concerns the requirements for certain information to be displayed on vehicles used by repossessors, and penalties for violation of the repossession laws. Chapter 89-280, Laws of Florida clearly embraces more than one subject through its coverage of both the habitual offender statute and repossession requirements, and is in violation of Article 111, section 6 of the Florida Constitution.

The First District Court of Appeal in Johnson v. State, 589 So. 2d 1370, 1371 (Fla. 1st DCA 1991), has ruled **on** this issue in Petitioner's favor. The court found that the inclusion of the array of subjects in Chapter 89-280 raised a "viable question concerning the legitimacy of the 1989 amendments to section 775.084, prior to their formal incorporation into the Florida **Statutes**." The opinion stated, "**We find it somewhat difficult to discern a logical or natural connection between career criminal sentencing and repossession of motor vehicles by private investigators.**" Johnson, 589 So. 2d at 1371.¹ The court in Johnson, supra, indicated that there was a narrow time frame, between October 1, 1989, effective date of Chapter 89-280, and

¹ The first District Court of Appeal certified the question concerning the amendment's constitutionality to this Court as one of great public importance.

May 2, 1991, effective date of 91-44 (which re-enacted the 1989 Florida Statutes amendments), in which the habitual offender statute was unconstitutional as applied to offenses within this period.

A similar violation of the one subject requirement was found in Bunnell v. State, 453 So. 2d 808 (Fla. 1984), where this Court reversed the district court's finding that Chapter 82-150, Laws of Florida, was constitutional. Chapter 82-150 created a statutory section prohibiting the obstruction of justice by **false** information, amended a statute section relating to the Florida Council on Criminal Justice, and repealed sections relating to the "Florida Criminal Justice Council Act." This Court ruled that section one of Chapter 82-150, concerning the obstruction of justice, was enacted in violation of Article 111, section 6, of the Florida Constitution, and that the defendant's motion to dismiss this charge should have been granted. This ruling **was** based on the fact that this section of the amendment had no "cogent relationship" with the subject matter of the latter two sections dealing with the Criminal Justice Act. Bunnell, 453 So. 2d at 809. The connection between recidivists and repossessors is much more tenuous than the connection between obstruction of justice and a criminal justice act and council. In fact, no relationship exists between the habitual offender statute and legislative acts concerning repossession.

In State v. Burch, 558 So.2d 1 (Fla. 1990), this Court's opinion quoted the following from State v. Thompson, 120 Fla.

860, 163 So. 270 (1935):

Where duplicity of subject matter is contended for as violative of Section 16 of Article III of the Constitution relating to and requiring but one subject to be embraced in a single legislative bill, the test of duplicity of subject is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort.

Burch, supra, at 2.

The opinion in Burch, supra also quoted from Chenowith v. Kemp, 396 So.2d 1122 (Fla. 1981), providing:

The subject of an act "may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection."

Burch, supra, at 2.

The different targets of the act must therefore be naturally and logically connected. Blankenship v. State, 545 So.2d 908 (Fla. 2d DCA 1990). There is no natural or logical connection between a habitual offender and repossessors of cars and boats. Half of Chapter 89-280 addresses the prosecution and sentencing of recidivists, while the other half addresses the regulation of a lawful occupation. There is no "cogent relationship" between these **subject areas**. It is, therefore, clear that the law is "designed to accomplish separate and disassociated objects of legislative effort," and therefore violative of the "one-subject" provision of the Florida Constitution. Bunnell, 453 So. 2d at 809; Art. 111, § 6, Fla. Const. (1968).

As the First District Court of Appeal noted in State v. Levins, 17 F.L.W. 1203 (Fla. 1st DCA May 11, 1992), where Chapter

89-175 was found to violate the single subject rule, "The supreme court has accorded great deference to the legislature in the single subject area. The court has also applied a somewhat relaxed rule in cases where it found that the subjects of an act were reasonable related to an identifiable crisis the legislature intended to address." *Id.* at 1205. In the instant case, however, there **is** no such "identifiable crisis" which encompasses within its realm both habitual offenders and repossession. Although the State in Levins argued that the subjects addressed in Chapter 89-175, (i.e. prohibition of certain leases for oil and gas exploration in South Florida, establishing a surcharge on wholesalers of oysters, and changing fees for certain hunting stamps), were all logically connected under the subject of "an act relating to environmental **resources**," this stance was rejected, and the amendment was ruled unconstitutional. The court was "unable to discern a logical interconnection between the various subject matters of Chapter 89-175. Although each individual subject addressed might be **said** to bear some relationship to the general topic of environmental resources, such a finding would not, and should not, satisfy the test under Article 111, Section 6." Levins, 17 F.L.W. at 1206.²

In contrast, this Court in Burch, supra, upheld the constitutionality of Chapter 87-243 against a single subject challenge.

² In its answer brief to the Fifth District Court of Appeal, the State in the instant case summarily argued that Chapter 89-280 was not violative of the single subject requirement, and did not even attempt to create a category of legislative intent which could encompass both recidivists and repossession.

Chapter 87-243 dealt with comprehensive criminal regulations and procedures, money laundering and safe neighborhoods. This Court found that "each of these areas bear a logical relationship to the single subject of controlling crime, whether by providing for imprisonment or through taking away the profits of crime and promoting education and safe neighborhoods." Burch, 558 So. 2d at 3. The Burch Court distinguished Bunnell v. State, 453 So.2d 808 (Fla. 1984), in finding:

In Bunnell this court addressed chapter 82-150, Laws of Florida, which contained two separate topics: the creation of a statute prohibiting the obstruction of justice by false information and the reduction in the membership of the Florida Criminal Justice Council. The relationship between these two subjects was so tenuous that this court included that the single-subject provision of the constitution had been violated. Unlike Bunnell, chapter 87-243 is a comprehensive law in which all of its parts are directed toward meeting the crisis of increased crime.

Burch, supra, at 3. See also Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991) (this Court invalidated Chapter 90-201, the Comprehensive Economic Development Act of 1990, rejecting the State's argument that worker's compensation and international trade are each logically related to subject of comprehensive economic development).

Just as this Court found in Bunnell, supra, and the **First** District Court held in Johnson v. State, supra, Chapter 89-280 is a two-subject law; it is not a comprehensive one. The relationship between recidivists and repossessors of cars and boats is even more insubstantial than the relationship between the ob-

struction of justice by providing false information and reduction in the membership of the Florida Criminal Justice Council. The subjects included in the act "are simply too dissimilar and lack the logical and rational relationship to the legislature's stated purpose [of an act relating to criminal law and procedure] ... to pass constitutional muster." Martinez, 582 So. 2d at 1172.

Accordingly, the inescapable conclusion is that Chapter 89-280 violates the one-subject rule and is unconstitutional. To hold otherwise would ignore the single subject requirement under the Florida Constitution. Furthermore, this unconstitutional amendment was specifically applied to Petitioner's case, in allowing Petitioner to be "habitualized" through out of state convictions. If Article 111, Section 6 of the Florida Constitution is to have any meaning, whatsoever, then this court should come to the logical conclusion that Chapter 89-280 violates the single subject requirement. The single subject requirement has a valuable and necessary purpose, and it should be enforced by declaring that Chapter 89-280 violates the single subject rule and is unconstitutional.

CONCLUSION

BASED ON the argument contained herein, and authorities cited in support thereof, Petitioner requests that this Honorable Court answer the certified question **in the affirmative and find** the amendments to Section 775.084, Florida Statutes, contained in Chapter **89-280**, Laws of Florida, unconstitutional during their effective date prior to their reenactment as part of Florida Statutes.

Respectfully submitted,

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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true **and** correct copy of the foregoing **has** been served upon the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave., Suite 447, Daytona Beach, Florida 32114, in his basket at the Fifth District Court of Appeal; and mailed to **Willie** Earl Butler, Inmate No. 101263, #B-25, Polk Corr. Inst., 3876 Evans Road, Box 50, Polk City, Fla. 33868-9213, on this 21st day of July, 1992.

S. B. Ehringer

SOPHIA B. EHRINGER
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

WILLIE EARL BUTLER,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

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S.Ct. CASE NO. 80,060

A P P E N D I X

✓ 91-945
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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT
JANUARY TERM 1992

WILLIE BUTLER,
Appellant,

v.

CASE NO. 91-2137 ✓

STATE OF FLORIDA,
Appellee.

RECEIVED

JUN 12 1992

PUBLIC DEFENDER'S OFFICE
7th CR. APP. DIV.

Opinion filed June 12, 1992

Appeal from the Circuit Court
for Orange County,
James C. Hauser, Judge.

James B. Gibson, Public Defender,
and Kenneth Witts, Assistant Public
Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and James N.
Charles, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

ON MOTION FOR REHEARING AND CERTIFICATION

We certify as being of great public importance 'the' following question to
our supreme court, the same question as is certified by the First District
Court of Appeal and the Fourth District Court of Appeal:

WHETHER THE CHAPTER 89-280 AMENDMENTS TO SECTION
775.084(1)(A)1, FLORIDA STATUTES (1989), WERE
UNCONSTITUTIONAL PRIOR TO THEIR REENACTMENT AS PART OF
THE FLORIDA STATUTES, BECAUSE [THEY WERE] IN VIOLATION
OF THE SINGLE SUBJECT RULE OF THE FLORIDA
CONSTITUTION.

Motion granted, question certified.

DAUKSCH, COWART and GRIFFIN, JJ., concur.