Appeg.

IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,071

JOSEPH BURTON
Petitioner

-vs-

THE STATE OF FLORIDA
Respondent.

FILED
SID J. WHITE
JUL 9 1992
CLERK, SUPREME COURT:
By _____ Chief Deputy Clerk

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL FOR THE SECOND DISTRICT STATE OF FLORIDA

PETITIONERS BRIEF ON JURISDICTION

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INTRODUCTION

The Petitioner was the appellant in the district court below, and the Respondent was the appellee in the proceedings below. The parties will be referred to by their names respectively or by Petitioner or Respondent.

The reference to the portions of the record are attached in the appendix and will be referred to by the symbol ("A") in parenthesis followed by the appropriate page number.

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STATEMENT OF THE CASE AND FACTS

The Petitioner was charged with criminal violations of Florida Statute, in the Circuit Court of the Sixth Judicial Circuit of Florida.

The Petitioner was convicted and sentence under s.775.084 (amended) (1989). The trial court imposed said sentence under the statute and exceeding the sentencing guidlines.

The Petitioner subsequently filed a Motion to Correct illegal Sentence pursuant to Rule 3.800(a)., Florida Rules of Criminal Procedures, in the trial court alleging the claim that s.775.084 violated the single-subject rule of the Florida Constitution, Article III, section 6, and therefore due process and equal protection of the law. (App. 1)

The trial court denied the Motion and the Petitioner filed his timely appeal to the District Court of Appeal for the Second District.

The District Court of Appeal issued it's opinion affirming the decision of the trial court by citing the decision of the Fourth District Court of Appeal in McCall v. State, (cite omitted) (see App. pg.) and therefore holding that section 775.084 did not violate the single subject rule of Article III, section 6, Florida Constitution. The Petitioner then filed his Notice of

Discretionary Review in this Court of the decision of the Second District Court on the basis of conflict of decisions between district court of appeals and the granting of review in McCall, supra., by this court.

This brief follows.

SUMMARY OF THE ARGUMENT

It is the position of the Petitioner that s.775.084., F.S., violates the single-subject rule of Article III, Section 6., Florida Constitution.

That the district courts decision conflicts expressly with the decision of the First District Court of Appeal in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991) which holds that the statute in question here does violate the applicable law under Burch v. State, (cite omitted).

The Petitioner submits that this court has accepted jurisdiction to here the case of McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991), rev. granted, Case No. 78,536 February 10, 1992 (Fla. 1992), which found that the statute was constitutional, conflicting with Johnson, supra.

Based on the acceptance of McCall, supra., and the conflict with Johnson, supra., jurisdiction should be granted in Burton, supra.

ISSUE:

THAT THE DISTRICT COURTS DECISION CLEARLY AND EXPRESSLY CONFLICTS WITH THE DECISION OF ANOTHER DISTRICT COURT ON THE SAME QUESTION OF LAW (i.e., Constitutionality of s.775.084., violating the single-subject rule of the Florida Constitution)

The Second District Court's decision in Burton v. State, ___So.2d___(17 FLW)(Fla. 2nd DCA June 17, 1992), clearly and expressly conflicts with the decision of the First District Court of Appeal in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991), in holding that s.775.084., Florida Statute, (amended 1989) does not violate the single-subject rule of Article III, Section 6, Florida Constitution.

The defendant submits that his sentence is illegal and therefore subject to collateral attack due to the basis that said statute, i.e., s.775.084 F.S., violates the single subject rule of the Florida Constitution.

The defendants sentence was imposed after the October 1, 1989 effective date of section 775.084., Florida Statutes, (1989). Chapter 89-280., Laws of Florida. Defendant was sentenced to a term of years in the Department of Corrections as to the count involved in this case pursuant to the Statute.

Defendant contends that section 775.084., Florida Statutes, Chapter 89-280., Laws of Florida violates the one subject rule of Article III, Section 6, of the Florida Constitution. Chapter 89-280 embraces two subjects: habitual felony offenders and the repossession of motor vehicles. The first three sections of cChapter 89-280 amended Section 775.084 (habitual offender statutes)., 775.0842 (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"[1] Section five amended section 492.306(6), adding license requirements of repossessors. Section six created section 493.317(7) and (8) prohibiting repossessors from failing to remit money or deliver negotiable instruments. Section seven created section 493.3175, regarding the sale of property by repossessor. Section eight amended section 493.318(2), requiring repossessors to prepare and maintain inventory . Section ten created section 493.3176, requiring certain information

[1]Section 493.30(16) states: "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 inlieu 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 repossessor is in control, custody, and possession of such motor vehicle.

be displayed on vehicles used by repossessors.

In State v. Burch, 558 So.2d 11, 2, (Fla. 1990), the Florida Supreme Court quoted as follows from State v. Thompson, 163 So.2d 270 (1935):

> Where duplicity of subject-matter is contained for as violative of Section 6 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. Chenowith v. Kemp, 396 So.2d 1122 (Fla. 1981)

Defendant submits that there is no "natural or logical connections" between recidivits repossessors of cars and boats. Half of Chapter 89-280 addresses the prosecution and sentencign of recidivits, while the other half addresses the regulation of a lawful occupation. It is therefore clear that the law is "designed to accomplish separate and disassociated objects of legislative effort" as prohibited by Burch and Thompson.

Like the law in Bunnell, Chapter 89-280 is a two-subject law: it is not a comprehensive one. The relationship between recidivits and repossessors of cars and boates is even more tenuous than the relationship between the obstruction of justice by providing false information and reduction in the membership of the Florida Criminal Justice Council. Accordingly, the inescapable conclusion is that Chapter 89-280 violates the one-subject rule and is unconstitutional.

CONCLUSION

The Petitioner moves this court to accept jurisdiction and quash the decision of the Second District Court of Appeal and remand to the court for further proceedings not inconsistent with its opinion.

Respectfully submitted

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the afore has been furnished to Counsel for the Respondent, **ROBERT A. BUTTERWORTH**, Attorney General, 2001 N.Lois Avenue, Department of Legal Affairs, Tampa, Florida, 33602, this 2 day of ~~April~~ July 1992, by U.S. Mail.

Joseph Burton

Joseph Burton, Pro se
Petitioner