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DEC 14 1992
CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,071

JOSEPH BURTON
Petitioner

-vs-

THE STATE OF FLORIDA
Respondent.

_____ /

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

REPLY BRIEF OF PETITIONER

JOSEPH BURTON
DC# 718725
Desoto Correctional Insti.
P.O. Drawer 1072
Arcadia, Florida 33821

Assisted by Paralegal
Julian Lawrence Marcus
Chief - Wash., D.C.

Elizabeth January, Assoc.
Criminal Law Division
Ft. Lauderdale, Florida

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.

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ISSUE:

THAT FLORIDA STATUTE SECTION 775.084
(AMENDED 1989) DOES VIOLATES THE SINGLE
SUBJECT RULE OF THE FLORIDA CONSTITUTION

The Respondents take the position that s.775.084 (amended 1989), is not violative of the single subject rule based on the principle that the statute entails the penalty of crimina' conduct.

The Respondent admits that the changes of the statute as it applies to repossession of cars is based on "private individuals conduct", (Response Brief at 6) as opposed to law enforcement officers duties to perform the act required (formally).

What the Respondent has refused to acknowledge is that Repossession of motor vehicles is not "logically connected with Habitual Felony Offenders". Repossessors of motor vehicles do not face a penalty of doubling a prison sentence up to, and including life in prison. That simply is inconsistent with the Constitutional mandate of Article III s.6., Florida Constitution.

The Respondent claim that "Repossessors and private investigators are quasi-law enforcement officers" defies the

definition of law enforcement officers as designated by the Legislature. There is nothing in the statutes that denotes prescribe or even sanction a "repossessor of motor vehicles" as a law enforcement officer with arresting powers and other duties or provisions.¹

The habitual felony offender statutes is designed to penalize the status of the offender, not the offense. Respondents brief at page five states that "there is a cogent relationship between its habitual or career felon provisions and its repossession provisions. Both respond to frequent incidence of criminal activity; both seek to deter repeat offenses." (Respondents Brief at 5) This in itself is contrary to the meaning of the legislative intent of habitual felony offender laws.

The provisions of the habitual felony offender law as amended in 1989 violates the single-subject rule of the Florida Constitution and should be so declared as such by

¹A excellent discription of who the legislature deems as law enforcement officers is the "Battery of a Law Enforcement Officer" statute. That statute defines specifically who are deemed law enforcement officer within the definition for criminal punishment of those felons who violate that law. For several years, officers of the Florida Department of Corrections were not deemed law enforcement officers for purposes of that statute until recent legislative amendment. A careful reading of that section clearly shows that repossessors of motor vehicles are not quasi-law enforcement officers. The legislature never intended such.

this court. The logical connection is not there and the disparity is quite relevant in this particular case.²

Repeating the courts decision in State v. Burch, 558 So.2d 11, 2, (Fla. 1990), this 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.

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

[T]he subject of an act "may be as broad as the Legislature chooses as long as the matters included in the act have natural or logical connections"

State v. Burch, 558 So.2d at 2.

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

²The amended statute provides for the use of criminal convictions outside of the State of Florida. Since the Petitioners conviction fell within this statutory definition, then clearly petitioner could not have been habitualized prior to the amended statute since any convictions he had were not within this amended definition which the State of Florida has candidly refused to mention.

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 the Constitution.

Section A.

THE STATUTE IS FACILLY UNCONSTITUTIONAL
BECAUSE IT PENALIZES DEFENDANTS FOR THEIR
STATUS AS HABITUAL FELONY OFFENDERS.

Petitioner relies on his arguement in his initial brief
on this ground.

Section B.

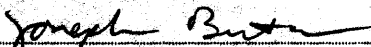
THE STATUTE IS FACIALLY UNCONSTITUTIONAL IN VIOLATION OF DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 9 OF THE FLORIDA CONSTITUTION.

The Petitioner relies on his argument in his initial brief on this ground.

CONCLUSION

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

Respectfully submitted



Joseph Burton
P.O. Drawer 1072
DC# 718725
P.O. Drawer 1072
Desoto Correctional Insti.
Arcadia, Florida 33821

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the afore has been furnished to Counsel for the Respondent, **BRENDA S. TAYLOR**, Assistant Attorney General, 2002 N. Lois Avenue, Department of Legal Affairs, Tampa, Florida, 33602, this 5 day of Dec., 1992, by U.S. Mail.



Joseph Burton, Pro se