IN THE SUPREME COURT OF FLORIDA

CHARLES EUGENE COLEMAN,

Petitioner,

vs. Case No. 80,109

STATE OF FLORIDA,

Respondent.

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

INITIAL BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

TIMOTHY J. FERRERI
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 774022

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ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

On October 22, 1990, the State Attorney for the Tenth Judicial Circuit of the State of Florida, in and for Polk County, Florida, filed an information charging the Petitioner, CHARLES EUGENE COLEMAN, with armed robbery in violation of sections 812.13 and 775.087, Florida Statutes (1989), and possession of a firearm by a convicted felon in violation of section 790.19, Florida Statutes (1989). The offenses allegedly occurred on October 2, 1990. On February 20, 1991, the Petitioner entered a guilty plea to all charges. (R96)

On November 21, 1990, the Respondent filed her notice that she was seeking to have Petitioner sentenced as a violent habitual felony offender. (R7) On March 19, 1991, the Petitioner filed a motion to preclude the application of the habitual violent felony offender statute. (R10-12) On March 20, 1991, the trial court sentenced Petitioner as a habitual violent felony offender to 12 years Florida State Prison with a 3 year minimum mandatory. For the offense of possession of a firearm by a felon, the trial court ordered Petitioner be placed on 10 years probation consecutive to the 12 year prison sentence. (R37) On April 16, 1991, the Petitioner filed his timely notice of appeal. (R74)

On June 12, 1992, the Second District Court of Appeal affirmed Petitioner's convictions. The court noted contrary authority. Coleman v. State, (Fla. 2d DCA, No. 91-01547, June 12, 1992). This Court accepted jurisdiction on September 25, 1992, and ordered the initial brief to be filed.

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. There is no logical connection between the law governing habitual felony offender and the repossession of motor vehicles by private investigators.

ARGUMENT

ISSUE

WHETHER SECTION 775.084, FLORIDA STATUTES (1989), CHAPTER 89-280, LAWS OF FLORIDA, VIOLATES THE ONE SUBJECT RULE OF THE FLORIDA CONSTITUTION.

Petitioner's offense date was October 2, 1990. (R4-5) This date was after the effective date of Section 775.084, Florida Statutes (1989). Petitioner contends that Section 775.084, Florida Statutes, Ch. 89-280, Laws of Florida violates the one subject rule of Article 111, Section 6 of the Florida Constitution which 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 shall read: "Be It Enacted by the Legislature of the State of Florida."

Chapter 89-280 embraces two subjects: habitual felony offenders and repossession of motor vehicles by private investigators. The first three sections of Chapter 89-280 amended Sections 775.084 (habitual offender statute), 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 493.306(6), adding license requirements for repossessor. Section six created section 493.317(7) and (8), prohibiting the repossessor 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 the repossessor to prepare and maintain an inventory. Section nine amended section 493.321, providing penalties. Section ten created section 493.3176, requiring information be displayed on vehicles used by repossessors.

The First District Court of Appeal in Johnson v. State, 589 So.2d 1370 (Fla. 2d DCA 1991), held that the 1989 amendment to the habitual felony offender provisions of section 775.084, Florida Statutes (1989), violated the one-subject rule of Article 111, section 6, of the Florida Constitution. The title of the act at issue designates is as an act relating to criminal law and procedure. The court reasoned that Chapter 89-280, § 12, Laws of Florida, was in violation of the single subject rule for the reasons noted above. The constitutional infirmity was later cured when the provisions were re-enacted as part of the Florida

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[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 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 repossessor is in control, custody, and possession of such motor vehicle or motorboat."

Statutes. The First District also ruled in another case on the same day that the statute was not unconstitutional in Hale v. State, 589 So.2d 1000 (Fla. 1st DCA 1991). The difference between Hale and Johnson is explained by the district court in Hale which states that Hale could have been sentenced as a habitual under the pre-amended version of the statute. Chapter 89-280 amended the habitual violent felony requirements by adding aggravated battery as one of the offenses needed to show a defendant is a violent habitual offender. Petitioner could not have been sentenced as *a* violent habitual offender under the previous statute.

Respondent will argue the statutes have a logical connection as the statute amended (493) applies to investigative and security services which are normally provided by law enforcement officers. Respondent will also argue the statute is "quasi-criminal" as the definition of "private investigation" in section 493.30 (4) involves the similar duties of a police officer. The district court in Johnson found it "was somewhat difficult to discern a logical or natural connection between career criminal sentencing and repossession of motor vehicles by private investigators." Under Burch v. State, 558 So.2d 1 (Fla. 1990), the test for "duplicity of subject is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort. The object of one bill is the sentencing of habitual felony offenders and the object of the other is set a procedure for the repossession of automobiles by private investigators. There is no single subject.

Even though the issue was not raised before the trial court, the facial invalidity of a statute can be raised for the first time on appeal. Trushkin v. State, 425 So.2d 1126, 1128 (Fla. 1982). For these reasons, Petitioner's sentence must be vacated and he must be re-sentenced within the guidelines.

CONCLUSION

Based upon the foregoing argument, reasoning and authority, Petitioner requests that the Florida Supreme Court reverse the District Court of Appeals ruling in the Petitioner's case.

APPENDIX

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CHARLES EUGENE COLEMAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 91-01547

Opinion filed June 12, 1992.

Appeal from the Circuit Court for Polk County: J. Tim Strickland, Judge.

James Marion Moonnan, Public Defender, and Timothy J. Ferreri, Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Erica M. Raffel, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed. See Beaubrum v. State, 595 So. 2d 254 (Fla. 3d DCA 1992); Jamison v. State, 583 So. 2d 413 (Fla. 4th DCA 1991), rev. denied, 591 So. 2d 182 (Fla. 1991); contra Johnson v. State, 589 So. 2d 1370 (Fla. 1st DCA 1991).

SCEOONOVER, C.J., and DANAHY and PATTERSON, JJ., Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Erica M. Raffel, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 19th day of October, 1992.

Respectfully submitted,

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