IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant, Petitioner.

v.

RONALD EUGENE DEHART,

Appellee, Respondent,

CASE NO. 80,357

ANSWER BRIEF ON THE MERITS OF APPELLEE/RESPONDENT

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :

Appellee. :

vs. CASE NO. 80,357

RONALD EUGENE DEHART,

Appellant,

_____:

I STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts.

II SUMMARY OF ARGUMENT

The district court rejected petitioner's argument that respondent's failure to object in the trial court prevents him from doing so on appeal. This Court should reach the same conclusion. Respondent has raised the single-subject issue in order to show that his sentence is illegal and thereby reduce his term of imprisonment. Hence, as the district court concluded, fundamental error occurred because the challenge here goes to the foundation of the case. Petitioner's argument muddles the distinction between trial and sentencing error. The purpose of the contemporaneous objection rule is not present in the sentencing process because any error can be corrected by a simple remand to the sentencing judge. If this court agrees that chapter 89-280 violates the single-subject provision, respondents sentence would be illegal, and a simple remand for resentencing would end the case.

Petitioner strains to find a connection between the two parts of chapter 89-280, Laws of Florida: career criminals and repossession of motor vehicles. Petitioner has failed to demonstrate any logical or natural connection between the two. Career criminal sentencing and repossession of motor vehicles have nothing ta do with one another. Even though the repossession law will reside in a chapter that contains criminal penalties, the repossession law does not address the same subject matter as career criminal sentencing.

III ARGUMENT

ISSUE I:
RESPONDENT NEED NOT HAVE RAISED THE ISSUE OF THE STATUTE'S CONSTITUTIONALITY IN THE TRIAL COURT SINCE THE FAILURE TO DO SO IS FUNDAMENTAL ERROR WHICH COULD BE RAISED ON APPEAL.

The district court rejected petitioner's argument that respondent's failure to object in the trial court prevents him from doing so on appeal. Dehart v. State, 17 FLW D1854 (Fla. 1st DCA August 3, 1992). Petitioner apparently concedes that respondent should not have been sentenced as an habitual felony offender, However, petitioner insists that a violation of the single-subject rule cannot be fundamental error because such an unconstitutional statute does not affect respondent's due process rights (IB 10-11). This analysis goes only half way and would have merit only if legal issues arose in a vacuum. Respondent raised the single-subject violation in order to show that his sentence was illegal. Hence, as the district court correctly held in Claybourne v. State, 600 So.2d 516, 17 FLW D1478 (Fla. 1st DCA 1992) and Pride v. State, 17 FLW D1737 (Fla. 1st DCA 1992), the error was fundamental because the statute affected a "central issue in litigation."

Since the challenge here goes to the foundation of the case, Sanford v. Rubin, 237 So.2d 134 (Fla. 1970), which the state cites as helpful to its cause, actually supports respondent's position. The district court cited Sanford as favorable authority, stating that the challenged act in Sanford "related only to

whether attorney's fees would be awardable to the prevailing party in a lawsuit.". Id.

Petitioner argues that the number of subjects in an otherwise proper legislative act can never be fundamental error (IB 4). Yet, as the district court stated in Claybourne, supra: "it has been long recognized that a facial invalidity challenge to an act of the legislature based upon violation" of the single-subject provisions can be raised for the first time on appeal. Claybourne: citing Parker v. Town of Callahan, 115 Fla. 266, 156 So. 334 (Fla. 1934); Town of Monticello v. Finalayson, 156 Fla. 568, 23 So.2d 843 (Fla. 1945); Sanford.

Petitioner's argument muddles the distinction between trial and sentencing error. The contemporaneous objection rule was fashioned primarily for use in trial proceedings to ensure that objections are made when witness recollections are freshest and to prevent "sandbagging" reversible issues. State v. Rhoden, 448 So.2d 1013, 1016 (Fla. 1984). This purpose "is not present in the sentencing process because any error can be corrected by a simple remand to the sentencing judge." Id. See also, Castor v. State, 365 So.2d 701 (Fla. 1978). Moreover, an error which could cause an offender to be incarcerated for a period longer than permitted by law is fundamental and may be raised at any time. Lentz v. State, 567 So.2d 997, 998 (Fla. 1st DCA 1990); Gonzalez v. State, 392 So.2d 334 (Fla. 3d DCA 1981).

Petitioner's assertion that courts apply the rule of preservation uniformly in trial and sentencing (IB 10) is misleading, for the test of fundamental error differs from one context to the

other. If this Court finds that petitioner's sentence was unauthorized by statute or that the statute is unconstitutional as applied to him, he will face longer incarceration than the law permits, an error he may raise at any time.

Petitioner cites a wealth of cases, all of which are distinguishable for the foregoing reasons. Nonetheless, petitioner argues that Davis v. State, 383 So.2d 620 (Fla. 1980) is "particularly instructive" (IB 8). Davis may well be instructive, but not on the issue before this court. Davis pled no contest without reserving any issues, then on appeal attacked the trespass statute under which he was prosecuted, Clearly, there is a distinction between the unpreserved constitutional challenge to a substantive criminal statute in Davis and the sentencing challenge made here. The former is sandbagging; the latter is not. Section 924.06(1)(d), Florida Statutes, expressly provides for appeals from illegal sentences, Davis did not attack the legality of his sentence.

Petitioner urges this Court to turn its face from constitutional sentencing issues unless a defendant has gone through his paces below. If this Court limits the jurisdiction of district courts to consider such appeals, trial counsel will habitually hold up sentencing hearings to utter the required incantations. This cannot be a pleasing prospect to anyone in the criminal justice system. These issues will eventually have their day in this court; better now than later.

ISSUE 11:

CHAPTER 89-280 VIOLATES THE SINGLE SUBJECT PROVISION OF THE FLORIDA CONSTITUTION, THUS RESPONDENT'S HABITUAL OFFENDER SENTENCE IS ILLEGAL.

In Johnson v. State, **589** So.2d 1370 **(Fla.** 1st **DCA** 1991), the First District Court of Appeal held that chapter **89-280,** Law of Florida, violates the single-subject provision of the Florida Constitution.' Art. 111, Section **6** Fla. Const. Based on Johnson and Claybourne, the district court reversed respondent's habitual offender sentence. Dehart v. State, 17 FLW D1854 (Fla. 1st DCA August **3,** 1992). **See** also, Pride **v.** State, 17 FLW D1737 (Fla. 1st **DCA** July 15, 1992). Petitioner argues that chapter 89-280 relates to one subject and thus Johnson and Claybourne are in error. This court should reject petitioner's argument.

Petitioner strains to find a connection between the two parts of chapter **89-280,** Laws of Florida: career criminals and repossession of motor vehicles. The repossession provision amends **a** statute that protects the public against abuse by repossessors, **and** provides criminal penalties, while the habitual felon statute provides enhanced penalties for repeat felony offenders. Petitioner argues the two are "properly connected"

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[1]The third and the fourth district courts of appeal, have held that Chapter **98-280** does not violate the single subject provision. Beaubrum v. State, 595 So.2d **254 (Fla. 3d DCA** 1992); Jamison v. State, 583 So.2d 413 (Fla. 4th DCA 1991). Neither court has provided any analysis **as** they have rejected the argument in cursory fashion.

single-subject challenge. In doing so the court distinguished Bunnell, supra:

> Unlike Bunnell, chapter 87-243 is a comprehensive law in which all of its parts are directed toward meeting the crisis of increased crime.

Id. at 3. The same can not be said of chapter 89-280. Repossession of motor vehicles has nothing to do with "meeting the crisis of increased crime" and thus there is no logical connection to career criminal sentencing. Id.

This Court should affirm the district court's decision.

CONCLUSION

Based on the foregoing argument, this court should affirm the decision of the district court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded by U.S. Mail to James W. Rogers, Assistant Attorney General, 2020 Capital Circle Southeast, Suite 211, Tallahassee, Florida, 32301, and copy has been mailed to appellant, Ronald Eugene Dehart, DC #113291, DeSoto Correctional Institution, Post Office Drawer 1072, Arcadia, Florida 33821, this 5th day of October, 1992.

JOHN R. DIXON