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IN THE SUPREME COURT OF FLORIDA

WILLIAM DAVID ALBRECHT,

Petitioner,

vs.

Case No. 80,427

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

JENNIFER Y, FOGLE
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ATTORNEYS FOR PETITIONER

TOPICAL INDEX TO BRIEF

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OTHER AUTHORITIES

PRELIMINARY STATEMENT

Petitioner, WILLIAM DAVID ALBRECHT, was the Appellant in the Second District Court of Appeal and the defendant in the trial court. Respondent, the State of Florida, was the Appellee in the Second District Court of Appeal. The record on appeal will be referred to by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

On April 5, 1991, the State Attorney of the Twentieth Judicial Circuit in Collier County filed an information alleging that the Petitioner, WILLIAM DAVID ALBRECHT, attempted to purchase cocaine on or about March 15, 1991, in violation of section 893.13, Florida Statutes (Supp. 1990). (R63-64) The Honorable Charles T. Carlton, Circuit Judge, presided over Mr. Albrecht's trial by jury on August 15, 1991. (R1) The jury returned a verdict of guilty as charged. (R106) Also on August 15, 1991, the state filed notice of intent to seek sentencing as a habitual felony offender. (R52, 104-105)

On August 19, 1991, after considering Mr. Albrecht's pre-sentence investigation and State exhibits pertaining to habitual offender qualifying offenses, the court adjudicated Mr. Albrecht guilty under section 893.13, and imposed a sentence of Seven years in prison as a habitual felony offender. (R108-112, 136-138) Mr. Albrecht's recommended guideline sentence called for community control or twelve to thirty months' incarceration, or a permitted prison term of up to three-and-one-half years. (R113) Defense counsel timely filed notice of appeal on August 19, 1991. (R127)

On appeal, Mr. Albrecht argued that because his crime occurred between October 1, 1989 and May 2, 1991, the trial court could not use his two out-of-state convictions to support a sentence as a habitual offender based on the holding in Johnson v. State, 589 So, 2d 1370, 1371 (Fla, 1st DCA 1991) (Chapter 89-280, Laws of Florida, which amended the habitual offender provisions, violates the single subject rule). The Second District court of Appeal affirmed the

sentence on August 5, 1991, on the basis of McCall v. State, 583 So. 2d 411 (Fla. 4th DCA 1991), jurisdiction accepted, 593 So. 2d 1052 (Fla. 1992) (Supreme Court Case #79,536), which holds that Chapter 89-280 does not violate the single subject rule.

On December 23, 1992, this Court entered an order accepting jurisdiction of Mr. Albrecht's case,

SUMMARY OF THE ARGUMENT

Chapter 89-280, Laws of Florida, violates article III, section 6 of the Florida Constitution because it embraces more than one subject and matter properly connected therewith. Petitioner's out-of-state offenses were thus impermissibly used to support a sentence as a habitual felony offender. Reversal is required for resentencing under the guidelines.

ARGUMENT

ISSUE

WHETHER CHAPTER 89-280, LAWS OF FLORIDA, WHICH AMENDED SECTION 775.084, FLORIDA STATUTES (1989), VIOLATES THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION?

The instant case involves a charge occurring on or about March 15, 1991. Because the alleged crime occurred between October 1, 1989 and May 2, 1991, the court could not use the Petitioner's two Michigan convictions (state exhibits 1 and 2) to support a sentence as a habitual offender. Johnson v. State, 589 So. 2d 1370 (Fla. 1st DCA 1991); contra McCall v. State, 583 So. 2d 411 (Fla. 4th DCA 1991), jurisdiction accepted, 593 So. 2d 1052 (Fla. 1992) (Case No. 79,536). Additionally, Petitioner's Florida conviction (state exhibits 3 and 4) involved only one prior offense. Because the requisite two prior felonies were not shown, the trial court erred in imposing a sentence as a habitual offender. § 775.084 (1)(a), Fla. Stat. (1989).

Johnson holds Chapter 89-280, amending the habitual offender provisions, violative of the single subject rule. It is the correct holding fox the following reasons.

Article III, section 6 of the Florida Constitution provides in part: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." Chapter 89-280 is designated, "An act relating to criminal law and procedure."

The first three sections of the act amend section 775.084, Florida Statutes, pertaining to habitual felony offenders; section 775.0842, Florida Statutes, pertaining to career criminal prosecutions; and section 775.0843, Florida Statutes, pertaining to policies for career criminal cases. However, the next eight sections of the act pertain to Chapter 493 which governs private investigation and patrol services licensed and administered by the Department of State. The changes to Chapter 493 specifically deal with the repossession of boats and cars, licensing requirements for repossessors, and required and prohibited acts and policies of licensees.

The Johnson court found no logical or natural connection between career criminal sentencing and reposession of motor vehicles by private investigators. It thus held that Chapter 89-820, amending section 775.084, violated the single subject rule. The court's holding is applicable for the period between October 1, 1989, the effective date of the 1989 amendments to the habitual felony offender provisions, and May 2, 1991, the date of re-enactment of the 1989 amendments. Johnson, 589 So. 2d at 1371.

Johnson is consistent with holdings by this and other Florida courts finding enactments facially unconstitutional because of single subject violations, As stated in Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991):

> The purpose of this constitutional prohibition against a plurality of subjects in a single legislative act is to prevent 'logrolling' where a single enactment becomes a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter. State v. Lee, 356 So. 2d 276 (Fla. 1978) The act may be as broad

> as the legislature chooses provided the matters included in the act have a natural or logical connection, Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981)

Martinez addressed an act relating to comprehensive economic development which included the subjects of workers' compensation and international trade. The Court held the subjects too dissimilar and lacking the necessary logical and rational relationship -- to the legislature's stated purpose of comprehensive economic development -- to pass constitutional muster. Martinez, 582 So. 2d at 582, citing Bunnell v. State, 453 So. 2d 808 (Fla. 1984).

In Bunnell the Court addressed an act relating to the Florida Council on Criminal Justice. The first section of the act created a statute prohibiting obstruction of justice by false information, Sections two and three amended the membership requirements of the Council on Criminal Justice and established sunset provisions. The Court held the legislation was enacted in violation of the single subject requirement of the constitution because section one had no cogent relationship with the subject of the other two sections and it was separate and disassociated from the object of the other two sections. Bunnell, 453 So. 2d at 809.

In State v. Leavins, 599 So. 2d 1326 (Fla. 1st DCA 1992), the court addressed an act relating to environmental resources. The act addressed gas and oil exploration, coastal resources management, coastal spills, coastal construction, an environmental multi-state compact, litter dumping in canals and litter receptacles at commercial boat facilities, dredging and dredge spoil, oyster harvesting, and shellfish cultivation. The Leavins court

noted that the legislature attempted to bundle together the various matters under the rubric, "an act relating to environmental resources." In holding that the act violated the single subject requirement the court said:

> We are unable to discern a logical interconnection between the various subject matters . . . 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. If a purpose of the constitutional prohibition was . . . to insure . . . that a member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic, the reviewing court must examine each subject in light of the various other matters affected by the act, and not simply compare each isolated subject to the stated topic of the act.

Leavins, 599 So, 2d at 1334-1335.

In comparison to the foregoing authorities, the holding by the lower court in McCall, that Chapter 89-280 does not violate the single subject rule, is incorrect. McCall relies on Burch v. State, 558 So. 2d 1, 3 (Fla. 1990). In Burch, this Court considered an act dealing with the definition of certain crimes, drug abuse education, money laundering, safe neighborhoods, entrapment, crime prevention studies, and criminal forfeiture. It held that the legislation, although broad, was a comprehensive law aimed at meeting the crisis of increased crime in Florida. The court found each of the areas addressed showed a logical relationship to the single subject of controlling crime: thus, the legislation did not violate the single subject rule of article III, section 6 of the Florida Constitution.

However, as stated in Martinez, disparate subjects contained within a comprehensive act do not violate the single subject requirement where the subjects are reasonably related ~~to a~~ crisis the legislature intended to address. (Emphasis added) Martinez, 592 So. 2d at 1172, citing Burch (1987 Crime Prevention and Control Act), and Smith v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987) (1986 Tort Reform and Insurance Act),

As the Leavins court also explained:

> 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 reasonably related to an identifiable crisis the legislature intended to address.

Leavins, 599 So. 2d at 1334, citing Burch and Smith.

In the instant case the legislature did not address any crisis or comprehensive law, but simply bunched together subjects having no natural or logical connection under the broad heading of criminal law and procedure, As the Leavins court noted:

> The dissenting opinion of Chief Justice Shaw, concurred in by Justices Barkett and Kogan, in Burch v. State, supra, is instructive:
>
> > [T]he matters included in an act must bear a logical and natural connection and must be germane to one another. In my view, it will not suffice to say that all of the act's provisions deal with crime prevention or control.
> >
> > * * *
> >
> > As noted in Bunnell v. State, 453 So. 2d 808 (Fla. 1984), the constitution requires a 'cogent relationship' among sections of an act in order to avoid unconstitutionality.

Leavins, 599 So. 2d at 1335, n. 16, citing Burch v. State, 558 So. 2d 1, 4, (Fla. 1990) (Shaw, J., dissenting).

In the instant case, as in Martinez, Bunnell, and Leavins, there is no natural and logical connection between repeat felons and repossessors of cars and boats. Part of Chapter 89-280 addresses the prosecution and sentencing of recidivists, while the balance primarily addresses the administrative regulation of a state-licensed occupation. The law covers more than one subject, the subjects have no cogent relationship, the subjects are designed to accomplish separate legislative goals, and the subjects have no common object.

Based on the foregoing, Chapter 89-280 violates the single subject rule and is unconstituional. There was no constitutionally valid habitual offender statute at the time of Petitioner's crime that allowed the use of out-of-state convictions to qualify as prior convictions for habitual offender treatment. Because Petitioner did not have the required number of prior convictions, his habitual offender sentence must be reversed.

CONCLUSION

In light of the foregoing reasons, arguments, and authorities, Petitioner respectfully asks this Honorable Court to reverse the judgment and sentence *of* the lower court and remand the case for resentencing under the guidelines.

APPENDIX

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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

WILLIAM DAVID ALBRECHT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 91-02861

Opinion filed August 5, 1992.

Appeal from the Circuit Court for Collier County: Charles T. Carlton, Judge.

James Marion Moorman, Public Defender, and Jennifer Y. Fogle, Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Davis G. Anderson, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

We affirm the defendant's conviction and habitual offender sentence. See McCall v. State, 583 So. 2d 411 (Fla. 4th DCA 1991). We direct the court to correct the judgment to

reflect the defendant was adjudicated guilty under sections 893.13(1)(a) and 777.04(1), Florida Statutes (1987).

LEHAN, C.J., RYDER and DANAHY, JJ., Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Carl R. Hayes, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 5th day of January, 1993.

Respectfully submitted,

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