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FILED

SID. WHITE

FEB 8 1993

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

WILLIAM DAVID ALBRECHT,

Appellant,

v.

Case No. 80,427

STATE OF FLORIDA,

'93 FEB -4 '93

Appellee.

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

BRIEF OF RESPONDENT ON THE MERITS

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/ahp

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SUMMARY OF THE ARGUMENT

Chapter 89-280, Laws of Florida, as interpreted by this Honorable Court, does **violate Article 3 §6** of the **Florida** Constitution. The applicable window of unconstitutionality is October 1, 1989 to May 2, 1991, the date on which Chapter **89-280** was reenacted. In **order** for Petitioner to fall within the window of unconstitutionality, he must **have** been sentenced within this window. Because Petitioner was in fact sentenced on August 19, 1991, outside the window of unconstitutionality, he was legally sentenced. The sentence of the trial court should be affirmed.

ARGUMENT

ISSUE

WHETHER CHAPTER 89-280, LAWS OF FLORIDA, WHICH AMENDED §775.084, FLA. STAT. (1989), VIOLATES THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION? (As Stated by Petitioner)

This Honorable Court, in State v. Johnson, 18 FLW **S55** (Fla., January 14, 1993), answered the above question in the affirmative. This Honorable Court however indicated that upon reenactment of Chapter **89-280**, Laws of Florida, the period of unconstitutionality had been cured.

In reviewing this issue, this Honorable Court found that a "window" existed, wherein a defendant sentenced pursuant to **§775.084, Fla. Stat. (1989)** as amended by **89-280**, Laws of Florida was sentenced unconstitutionally. This Honorable Court noted that defendants sentenced during this window period would require resentencing. This Court however indicated **that** the resentencing requirement will apply only to those defendants affected by the amendments to **§775.084** contained in **Chapter 89-280** such as the addition of the aggravated battery conviction category. Johnson.

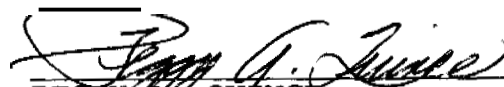
In the instant case, no portion of the amended statute was applicable to Petitioner. In addition, Petitioner was sentenced outside the window of unconstitutionality. A habitual offender sentence was therefore lawfully imposed upon Petitioner.

CONCLUSION

In light of the foregoing reasons, arguments, and authorities, Respondent respectfully asks this Honorable Court to affirm the judgment and sentence of the lower court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

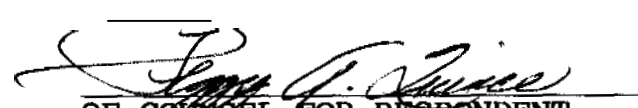


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to JENNIFER Y. FOGLE, Assistant Public Defender, P. O. Box 9000--Drawer PD, Bartow, Florida 33830, this 31st day of February, 1993.



OF COUNSEL FOR RESPONDENT