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JAN 22 1993
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

EARL JOHNSON CREWS,

Petitioner,

v.

Case No. 80,458

STATE OF FLORIDA,

Respondent.

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

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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TABLE OF CASES

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OTHER AUTHORITY

Article III, Section 6, Florida Constitution 1, 2
Chapter 89-280, Laws of Florida 1, 2
Section 775.084, Florida Statutes (1991) 2

STATEMENT OF THE CASE AND FACTS

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

SUMMARY OF THE ARGUMENT

Respondent acknowledges the authority of *State v. Johnson*, Nos. 79,150 and 79,204 (Fla. Jan. 14, 1993), which holds that Chapter 89-280, Laws of Florida, violates Article 111, Section 6, of the Florida Constitution and that the issue of the constitutionality vel non of this act constitutes fundamental error. However, because *State v. Johnson* also holds that only defendants sentenced during the window period between October 1, 1989 and May 2, 1991 may raise this issue and because Petitioner was sentenced on August 28, 1991, after the window had closed, Petitioner is entitled to no relief from this Court.

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ARGUMENT

ISSUE I: WHETHER THE UNCONSTITUTIONALITY OF AN ACT OF THE LEGISLATURE AMENDING A STATUTE THAT AFFECTS THE LENGTH OF THE SENTENCE THAT A CRIMINAL DEFENDANT MAY RECEIVE CONSTITUTES FUNDAMENTAL ERROR.

Respondent acknowledges the authority of *State v. Johnson*, Nos. 79,150 and 79,204 (Fla. Jan. 14, 1993), which holds that the issue of the constitutionality vel non of such an act constitutes fundamental error.

ISSUE II: WHETHER CHAPTER 89-280, LAWS OF FLORIDA, VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE 111, SECTION 6, OF THE FLORIDA CONSTITUTION.

Respondent again acknowledges the authority of *State v.*

Johnson, which holds that Chapter 89-280, Laws of Florida, does violate Article 111, Section 6, of the Florida Constitution.

ISSUE 111: WHETHER RESPONDENT WAS PROPERLY SENTENCED AS A HABITUAL FELONY OFFENDER.

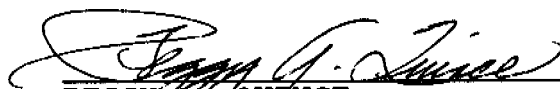
Because Petitioner was sentenced on on August 28, 1991, after the May 2, 1991 effective date of the reenactment of Chapter 89-280, he cannot challenge Chapter 89-280 on the ground that it violated the single subject requirement of Article 111, Section 6, of the Florida Constitution and was properly sentenced as a habitual offender under Section 775.084, Florida Statutes (1991). *State v. Johnson*.


CONCLUSION

Based on the foregoing facts, argument, and citations of authority, Respondent respectfully requests that Petitioner's convictions and sentences be affirmed.

Respectfully submitted,

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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 Cynthia J. Dodge, Assistant Public Defender, P.O. Box 9000--Drawer PD, Bartow, Florida 33830, this 20th day of January 1993.


OF COUNSEL FOR RESPONDENT