FILED
SID J. WHITE
JAN 7 1993
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

EARL JOHNSON CREWS,

Petitioner,

vs. Case No. 80,458

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

CYNTHIA J. DODGE
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ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

On March 7, 1991, the State Attorney for the Tenth Judicial Circuit in and for Polk County, Florida, filed an information charging the Petitioner, EARL JOHNSON CREWS, with discharge of a firearm in public in violation of section 790.15, Florida Statutes (1989); two counts of aggravated assault in violation of section 784.021; possession of a firearm by a convicted felon in violation of section 790.23; and resisting an officer without violence in violation of section 843.02. The date of the alleged offenses was January 1, 1991. (R205-208) On April 22, 1991, the State filed an amended information adding the charge of carrying a concealed firearm in violation of section 790.01, Florida Statutes (1989). (R211-216)

On April 5, 1991, the State filed a habitual offender notice. (R210) The State severed Count IV of the information and the Petitioner was tried by a jury on the charge of possession of a firearm by a convicted felon before the Honorable Helio Gomez on July 31, 1991, (R4, 3-203) The jury found the Petitioner guilty. (R199, 219) On August 28, 1991, the court found the Petitioner to be a habitual violent felony offender and sentenced him to 20 years imprisonment with a ten year minimum mandatory. (R233, 237) The guidelines recommended community control to 12 to 30 months. (R239) The Petitioner timely filed his notice of appeal on September 26, 1991. (R255)

On August 19, 1992, the Second District Court of Appeal affirmed Petitioner's convictions. The court noted contrary

authority. Crews v. State, 603 So. 2d 690 (Fla. 2d DCA 1992). This Court accepted jurisdiction on December 23, 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 January 1, 1991. 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 the 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 the 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 Johnson court deemed invalid certain habitual offender sentences based on convictions for crimes during the narrow time period between October 1, 1989,

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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,

the effective date of the 1989 amendment, and May 2, 1991, the effective date of Chapter 91-44, which re-enacted the 1989 amendments as part of the Florida Statutes. The title of the act at issue designates it 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 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 offender 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. Therefore, a habitual offender sentence which relies on a previous aggravated battery is invalid.

In this case the court found the Petitioner to be a habitual violent felony offender on the basis of a prior aggravated battery for which the Appellant was sentenced in 1977. Therefore, 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 chapter 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 to provide 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

EARL JOHNSON CREWS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 91-03212

Opinion filed August 19, 1992.

Appeal from the Circuit Court for Polk County; Helio Gomez, (Senior) Judge.

James Marion Moorman, Public Defender, Bartow, and Cynthia J. Dodge, Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Susan D. Dunlevy, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

We agree with the Fourth District Court of Appeal that the 1989 amendments to the habitual offender statute were not invalid as violative of the one subject provision of the Florida

Constitution. McCall v. State, 583 So. 2d 411 (Fla. 4th DCA 1991). Contra, Johnson v. State, 589 So. 2d 1370 (Fla. 1st DCA 1991). That disposes of appellant's first point.

Appellant's only other point is that his classification as a habitual violent felony offender was a violation of due process and double jeopardy principles because the instant crime of which he was convicted (possession of a firearm by a convicted felon) was not a violent felony although several of his past felony convictions were for violent felonies. This issue has been decided contrary to appellant's position in Ross v. State, 17 F.L.W. S367 (Fla. June 18, 1992).

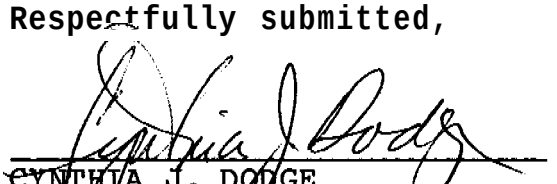
Affirmed.

PARKER, A.C.J., and ALTENBERND and BLUE, JJ., Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Susan D. Dunlevy, 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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