

IN THE SUPREME COURT OF FLORIDA,

FILED

827

SID J. WHITE

JUN 26 1997

ERIC ILKANIC,

CLERK, SUPREME COURT

Petitioner,

By _____
Chief Deputy Clerk

v.

CITY OF FORT LAUDERDALE, et al.,

Respondents.

Case No. 89,792
4th DCA Case No. 95-0169

RESPONDENTS' ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, the City of Fort Lauderdale, was the prosecution in the County Court of Broward County in the 17th Judicial Circuit of Florida, and the appellant in the Fourth District Court of Appeal. Petitioner was the defendant in the trial court and the appellee in the district court of appeal. The parties are referred to as they appear before this Honorable Court.

The following symbols are used within:

IB = Petitioner's Initial Brief

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

The State accepts Petitioner's Statement of the Case and Facts to the extent that it represents an accurate non-argumentative recitation of the procedural history and facts of this case.

SUMMARY OF ARGUMENT

The Civil Restitution Lien Act does not violate the homestead protection guaranteed by the Florida Constitution, because the lien created under this act is not a lien created pursuant to a judgment, decree or execution, and because under the act the lien cannot be foreclosed on homestead property.

The act does not violate equal protection, because the stated purpose of the act, that being fully compensating crime victims, the state and its local subdivisions, is a legitimate state interest. The act, which places a lien on presently owned or future acquired assets of convicted offenders, is reasonably related to the stated purpose of the act. Therefore, creating a class of convicted offenders and treating them differently is not a violation of equal protection. For these same reasons, the act does not violate substantive due process guarantees.

The act also does not violate procedural due process, because the act itself gives adequate notice and an opportunity to be heard, before imposition of the lien. Contrary to petitioner's argument, a determination of an offender's ability to pay is not necessary before imposition of the lien, since the mere imposition and recording of a lien does not amount to enforcement or collection of the liability, which the lien secures,

The act is not unconstitutionally vague about how a trial court should proceed, should no motion to enter a lien be forthcoming from the state, local subdivision, crime victim or aggrieved party. The act clearly states that the court is not obligated to do anything absent a proper motion or petition; however, the act does give the court the discretion to, on its own motion, enter a lien. There is nothing vague about these terms.

ARGUMENT

POINT I

THE ACT DOES NOT VIOLATE THE HOMESTEAD PROTECTION GUARANTEED BY SECTION 4, ARTICLE X OF THE FLORIDA CONSTITUTION.

This issue has not been preserved for appellate review, in that it was never raised or addressed below. For an argument to be cognizable on appeal, it must be the specific contention asserted as the legal ground for objection, exception, or motion below. *Terry v. State*, 668 So. 2d 954 (Fla. 1996). Therefore, petitioner can not now raise this issue for this court's review.

Be that as it may, petitioner's argument is that the Civil Restitution Lien Act is unconstitutional, because it allows liens to exist on homestead property violative of Section 4, Article X of the Florida Constitution, which provides in part:

There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person: (1) a homestead....

As was noted in *Miskin v. City of Fort Lauderdale*, 661 So. 2d 415 (Fla. 4th DCA 1995), this prohibition created by the Florida Constitution covers judgments, decrees and executions. The lien created by the Civil Restitution Lien Act is not created pursuant to any of these judicial dispositions. Furthermore, the *Miskin* court explained that the prohibition of the constitutional provision is a prohibition against the use of process to force the sale of homestead property and accordingly held that the Florida Constitution does not invalidate a lien, such as the one created in this case, but

merely renders this lien unenforceable. It should be noted that the Civil Restitution Lien Act has other similarities to the statute under consideration in *Miskin*, in that it:

1. distinguishes judgment liens from the liens created by its terms [Fla. Stat. § 960.294(2)]; and
2. does not permit foreclosure on homestead property [Fla. Stat. § 960.291(7)].

Additionally, courts may impose equitable liens against homestead property, when fraud or otherwise egregious conduct on the part of the beneficiary of the homestead protection is established. *Fishhein v. Palm Beach Sav. & Loan Ass'n*, 585 So. 2d 1052, 1055 (Fla. 4th DCA 1991), *rev'd on other grounds*, 619 So. 2d 267 (Fla. 1993). What can be more egregious than a criminal act, which leaves a victim with an uncompensated loss? Using either the logic of *Miskin* or the rationale behind the imposition of an equitable lien, if this issue had been preserved, this court should find that the imposition of a lien under the Civil Restitution Lien act is not violative of Section 4, Article X of the Florida Constitution,

ARGUMENT

POINT II

THE ACT DOES NOT VIOLATE EQUAL PROTECTION.

Petitioner argues that the Civil Restitution Lien Act violates equal protection guarantees, because persons convicted of a crime are treated differently from those persons against whom a civil judgment is entered, in that aggrieved persons under the act do not have to prove damages and may not have even incurred actual damages. However, this is not an accurate statement. In regard to crime victims, the act provides for damages in an amount equal to the actual damage award from a civil suit. Fla. Stat. § 960.293. Of course, the damages emanating from a civil suit would have been proven to the satisfaction of the trier of fact. In regard to liability to state and local subdivisions for their costs of incarceration, the act establishes a liquidated damages amount of \$50 per day of the convicted offender's sentence. Fla. Stat. § 960.293(2)(b). Granted, this subsection does not indicate that liability is based on days actually incarcerated, but the legislature clearly indicated that the purpose of the statute was to alleviate the burden caused by the expenses of incarcerating convicted offenders. Fla. Stat. § 960.29. The legislature also defined damage or loss to a state or local subdivision as the costs of incarceration and other correctional costs in connection with the implementation of a state court's sentence, Fla. Stat. § 960.291(5)(b)1. Clearly the intent of the legislature is to base the damage or loss to a state or local subdivision on the number of days to be served by the convicted offender. In determining the constitutionality of legislation, the courts must give it a construction which will uphold it rather than invalidate it, if there is any reasonable basis for doing so. *State v. Keaton*, 371 So. 2d 86 (Fla. 1979). Therefore, an act of the legislature should

never be stricken down if there is any reasonable theory on which it can be upheld. **Rabin v. Conner**, 174 So. 2d 721 (Fla. 1965). Consequently, if this court finds that the act is not sufficiently clear as to this matter, it should construe the act to impose these damages based on the actual number of days a defendant is expected to serve.

Petitioner also indicates that there is no reasonable relationship between the \$50 per day liquidated damages and the actual costs of incarceration, but petitioner has not made any effort to support this naked allegation. On the contrary, the \$50 per day amount is not arbitrary and has a very reasonable relationship to the actual costs of incarceration. The average daily cost per inmate experienced by the Department of Corrections during the 1993-94 fiscal year was \$42.23 (See the excerpt from the Florida Department of Corrections' 1993-94 Annual Report, which is part of the record and which is attached hereto as an appendix). The \$250,000 amount for those convicted of a capital or life felony is likewise reasonable, in that it only represents slightly more than thirteen and one-half years of incarceration. Granted, although these amounts are based on historical fact, they are also estimates based on these historical facts. However as petitioner points out (IB 17), damages need not be based on mathematical precision. **John Hancock Mutual Life Insurance Company v. Murk-A, Inc.**, 324 So. 2d 674 (Fla. 2d DCA 1975). So to, mathematical precision is not a requirement under equal protection analysis. **Carr v. Central Florida Aluminum Products, Inc.**, 402 So. 2d 565 (Fla. 1 st DCA 198 1). Further, courts have repeatedly accepted official estimates of costs, when ordering reimbursement to the government. Such was the case in **U.S. v. Doyan**, 909 F. 2d 412 (10th Cir. 1990), where the court imposed a fine for costs of incarceration and found no equal protection violation. Also, the Fourth District Court of appeal expressly found no basis for invalidity where reasonable estimates were used, both in this matter at **City of Fort Lauderdale v.**

Ilkanic, 683 So. 2d 563 (Fla. 4th DCA 1996), and in *Rosero v. State*, 668 So. 2d 1114 (Fla. 4th DCA 1996).

The above issues aside, equal protection does not require that a statute apply equally to all persons within the state; it is sufficient if the statute applies uniformly to all persons who are similarly situated. *De Ayala v. Florida Farm Bureau Casualty Ins. Co.*, 543 So. 2d 204 (Fla. 1989). Reasonable classifications are permissible under equal protection, so long as the classifications are not arbitrary and are based on some difference in the classes having a substantial relation to the purpose of the legislation. *Greater Miami Financial Corp. v. Dickinson*, 214 So. 2d 874 (Fla. 1968). The Civil Restitution Lien Act applies to persons similarly situated, those being “convicted offenders.”

In considering an alleged equal protection violation of a legislative classification, the court must initially determine the appropriate level of judicial scrutiny to apply. *Florida High School Activities Assoc. V. Thomas*, 434 So. 2d 306 (Fla. 1983). If the statute does not implicate a suspect class or a fundamental right protected by the state or federal constitutions, the court may apply the rational basis test, *Lite v. State*, 617 So. 2d 1058 (Fla. 1993). If, however, the statute involves a suspect classification or abridges a fundamental right, the court must apply the strict scrutiny test. *Id; Vildibill v. Johnson*, 492 So. 2d 1047 (Fla. 1986).

Petitioner argues that the strict scrutiny test should be applied in this matter, because a lien imposed under the Civil Restitution Lien Act infringes on the convicted person’s property rights, which are fundamental rights under both the state and federal constitutions. However, these rights alluded to by petitioner are protection from the deprivation of life, liberty or property without due process of law. U.S. Const. amend. V; Art. I, § 9, Fla. Const. As long as petitioner is accorded due

process, which is discussed below, a fundamental property right is not implicated by imposition of a lien under this act. Furthermore, the fundamental rights to which the strict scrutiny test applies in equal protection analysis have been carefully and narrowly defined by the Supreme Court of the United States and have included rights of a uniquely private nature, such as abortions, the right to vote, the right of interstate travel, first amendment rights and procreation. *In re Estate of Greenberg*, 390 So. 2d 40 (Fla. 1980). In a matter exactly on point, the U.S. Court of Appeals for the 10th Circuit found that the rational basis test should be used in analyzing equal protection in regard to a sentencing statute that imposed a fine for estimated costs of incarceration, because the court found that no suspect class or fundamental right was implicated. *U.S. v. Doyan*, 909 F. 2d 412 (10th Cir. 1990). Additionally, in the context of analyzing an Illinois statute, which required the retainage of 1% of the bail amount to cover bail bond costs, the United States Supreme Court again indicated that the proper test to be used was the rational basis test, since no fundamental right or suspect class was implicated. *Schilb v. Kuebel*, 404 U.S. 357, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971). Certainly, imposing a lien to compensate victims of crime and government for the costs of incarceration is comparable. Further, this Court has used the rational basis test, when analyzing the constitutionality, and more specifically the equal protection issues of Fla. Stat, § 960.25, which imposed a surcharge on fines and bail bonds. *State v. Beasley*, 580 So. 2d 139 (Fla. 1991). As this court pointed out, it is only when the state seeks to enforce the collection of costs that a defendant could suffer some loss of liberty or property. *Id.* Therefore, mere imposition of a lien does not implicate a property right, Additionally, the Florida Constitution explicitly permits the assessment for costs against a criminal defendant, after a judgment of conviction becomes final. Fla. Const. Art. I § 19. Therefore, neither the federal nor state constitutions consider this property right a fundamental right for equal

protection analysis, and the proper test to be used is the rational basis test.

The rational basis test merely requires that the statutory classification bear some reasonable relationship to the achievement of a legitimate state interest or purpose. *Gluesenkamp v. State*, 39 1 So. 2d 192 (Fla. 1980), **cert. denied**, 454 U.S. 818, 102 S. Ct. 98, 70 L. Ed. 2d 88 (1980). In regard to identification of the state's interest and a determination of its legitimacy, this court should give great weight to both the statement of legislative findings and declarations of public purpose contained within the act, presuming both to be correct, unless patently erroneous. *State v. Division of Bond Finance*, 495 So. 2d 183 (Fla. 1986); *Moore v. Thompson*, 126 So. 2d 543 (Fla. 1960); *Hatzfeld v. Prince*, 23 So. 2d 48 1 (Fla. 1945). The legislature has indicated that the purpose for enactment of the Civil Restitution Lien Act is to fully compensate crime victims, the state, and its local subdivisions for damages and losses incurred as a result of criminal conduct. Fla. Stat. § 960.29(3)(a). The legislature also specifically found that this act is rationally related to this goal. **Id.** Not only are these statements presumptively correct, it is very apparent that compensating victims of crime is a legitimate state interest. Compensating the victims of crime is certainly encompassed within the police powers of the state, which protect the lives, health, morals, comfort and general welfare of the people. *Burnsed v. Seaboard C.R. Co.*, 290 So. 2d 13 (Fla. 1974). There can be no doubt that the stated purpose of this act is a legitimate state interest. Petitioner even conceded this by stating, "The petitioner recognizes that the restitution is a valid legislative goal" (IB 14).

The Civil Restitution Lien Act is also reasonably related to this legitimate state interest. In equal protection terms, treating convicted offenders differently under this act is certainly reasonably related to the accomplishment of this stated purpose. The legislature indicated that former

approaches to compensating crime victims have proven inadequate, and that their intent, in part, was to prevent convicted offenders from increasing their assets while the victims remain uncompensated. Clearly, placement of a lien on the offender's assets is a reasonable way to accomplish this purpose. Contrary to petitioner's allegations, this act was not intended to and does not provide for a lien when no actual damages have been suffered, and the liquidated damages are reasonably related to the historic costs of incarceration. Allowing victims a lien in the amount of an actual damages award in a civil suit, and allowing state and local subdivisions a lien for liquidated damages in the amounts provided are both reasonably related to compensating them for their actual and estimated loss. Again, in a case raising the same issue, that being whether requiring reimbursement from a convicted felon for costs of incarceration bears some rational relationship to a legitimate state purpose, the court found that it did. U.S. v. *Doyan*, 909 F. 2d 4 12 (10th Cir. 1990).

Petitioner also argues that the additional distinction the statute makes, by imposing a lien for \$250,000 against offenders convicted of a capital or life felony, is improper. However, this is not so, All persons similarly situated should be included in one class, unless there are differences sufficient to warrant further or special classification. *Eslin v. Collins*, 108 So. 2d 889 (Fla. 1959); *State ex rel. Israel v. Canova*, 123 So. 2d 672 (Fla. 1960). Further, a person is not denied equal protection because a permissible classification is under inclusive, that is, it does not embrace all persons who might have been included in a broader classification, provided those within the class are accorded equal treatment. *State v. White*, 194 So. 2d 601 (Fla. 1967). Essentially, this act makes three distinctions: convicted offenders, convicted offenders who are sentenced to incarceration, and convicted offenders convicted of a capital or life felony. Clearly, these persons or groups of persons are sufficiently different to warrant special classification or sub-classification. Persons who are

incarcerated cause the state or local subdivision to incur a significant additional financial burden. Persons convicted of capital and life felonies are normally incarcerated for an indeterminate length of time, grounded in part on their own longevity. Based on the \$50 per day estimated cost of incarceration, the \$250,000 represents a little over 13½ years of incarceration. Certainly, this is a reasonable estimate of the additional burden incurred for housing such criminals. Furthermore, waiting to establish and record a lien until after the duration of actual incarceration can be determined would totally undermine the purpose of the act, which includes preventing convicted offenders from increasing their assets, either by normal growth or by windfall such as winning the lottery, while victims remain uncompensated. Fla. Stat. § 960.29(1)(b).

Finally, the equal protection clause does not restrain the normal exercise of state authority, but only the abuse of such authority. *West Flagler Kennel Club, Inc. v. Florida State Racing Corn.*, 153 So. 2d 5 (Fla. 1963). A classification will therefore be overturned only if it causes different treatments so disparate as to be wholly arbitrary, where the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that a court can only conclude that the government actions were irrational. *In re Estate of Greenberg*, 390 So 2d 40 (Fla. 1980); *Florida League of Cities, Inc. v. Department of Environmental Regulation*, 603 So. 2d 1363 (Fla. 1st DCA 1992). Such is not the case with the Civil Restitution Lien Act.

ARGUMENT

POINT III

THE ACT DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS.

When no fundamental rights are at stake, as in this case, the standard for evaluating substantive due process challenges is virtually identical to the rational basis test for evaluating equal protection claims. *United Yacht Brokers, Inc. v. Gillespie*, 377 So. 2d 668 (Fla. 1979). Therefore, respondents incorporate the above equal protection argument herein to support their position that the Civil Restitution Lien Act bears a reasonable and rational relationship to its legitimate and stated purpose. Alternatively **stated**, a court may overturn a statute on substantive due process grounds only when it is clear that the statute is not in any way designed to promote the people's health, safety or welfare, or that the statute has no reasonable relationship to the statute's avowed purpose. *Department of Ins. v. Dade County Consumer Advocate's Office*, 492 So. 2d 1032 (Fla. 1986). In making this determination, courts consider factors such as:

1. the propriety of the state's purpose;
2. the nature of the party being subjected to the state action;
3. the substance of the individual's right that has been infringed;
4. the nexus between the means chosen by the state and the goal it intended to achieve;
5. whether less restrictive alternatives were available; and
6. whether individuals are ultimately being treated in a fundamentally unfair manner in derogation of their substantive rights.

Department of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991).

Applying these factors to the Civil Restitution Lien Act, the legislature has indicated that they found that former approaches to compensating crime victims through restitution have been inadequate, and that there is also an urgent need to alleviate the financial burdens placed on the state and its local subdivisions caused by the expenses of incarcerating convicted offenders. Fla. Stat. § 960.29. The legislature has also indicated that the goal of this legislation is to fully compensate crime victims, the state, and its local subdivisions for damages and losses incurred as a result of criminal conduct. Fla. Stat. § 960.29(3)(a). Certainly, one cannot question the propriety of the stated purpose. The parties being subjected to the act are persons convicted of committing criminal acts against others, and the only right that is being infringed upon is their ability to be enriched themselves from assets currently held or later acquired, when the victims of their criminal acts remain uncompensated. Undoubtedly, the Civil Restitution Lien Act was designed to promote the health, safety or welfare of the people of this state, and the act is reasonably related to its avowed purpose; therefore, it should not be overturned on substantive due process grounds. It should be noted, however, that petitioner has the burden' of showing that this act has no reasonable relationship to the statute's avowed purpose, and he has failed to do so.

'Petitioner's burden and other general considerations are discussed below.

ARGUMENT

POINT IV

THE ACT DOES NOT VIOLATE PROCEDURAL DUE PROCESS.

Petitioner argues that the Civil Restitution Lien Act also violates procedural due process, because the act allows imposition of a lien prior to a determination of the convicted offender's ability to pay. Petitioner concedes, however, that statutorily mandated costs may be imposed on an indigent defendant without a determination of his or her ability to pay, citing to *State v. Vamper*, 579 So. 2d 730 (Fla. 1 991).² Petitioner argues that the imposition of a lien, as distinguished from the imposition of costs, is more than an assessment of financial liability and is essentially an effort to enforce the collection of that liability. This is an incorrect conclusion.

Vamper necessarily distinguishes between the assessment of costs and the enforcement of those costs against a criminal defendant. An assessment is a determination of the value of the costs. Black's Law Dictionary 116 (6th ed. 1990). Enforcement, on the other hand, is the collection of the debt, Black's Law Dictionary 528 (6th ed. 1990). Collection of a debt means to obtain payment or liquidation of it. Black's Law Dictionary 263 (6th ed. 1990).

Imposition of a lien to secure repayment of a debt therefore does not amount to the collection or enforcement of the debt, because it does not involve its liquidation. It merely provides collateral supporting the eventual collection of the debt. Consequently, petitioner's argument is fatally flawed.

More importantly, petitioner has provided no legal authority which holds that procedural due process is implicated, even if the state were in fact seeking to enforce the collection of costs before

²See also *State v. Beasley*, 580 So. 2d 139 (Fla. 1991).

a determination of ability to pay. Petitioner cites to *State v. Beasley*, 580 So. 2d 139 (Fla. 1991) and *Mays v. State*, 519 So. 2d 618 (Fla. 1988), both of which hold that procedural due process requires notice and an opportunity to be heard, before costs can be assessed. These opinions also hold that before enforcement of the collection of these costs, there must be a determination of ability to pay, but this rule does not implicate procedural due process. Although the *Beasley* opinion suggests that compliance with this rule is necessary to comport with procedural due process, citing to *Jenkins v. State*, 444 So. 2d 947 (Fla. 1988), the *Jenkins* opinion and the cases cited therein clearly show that this rule does not implicate procedural due process.

Procedural due process merely contemplates fair notice and a meaningful opportunity to be heard, before assessment of the costs. *Hadley v. Department of Admin.* 411 So. 2d 184 (Fla. 1982); *State v. Beasley*, 580 So. 2d 139 (Fla. 1991). However, publication in the Laws of Florida or the Florida Statutes gives all citizens constructive notice of the consequences of their actions and is adequate notice of liability for costs, *State v. Beasley*, 580 So. 2d 139 (Fla. 1991). Based on the notice provided by this act and the facts established by the record, the Fourth District Court of Appeal found that petitioner had both constructive and actual notice of the state's intent to seek costs. *City of Fort Lauderdale v. Ilkanic*, 683 So. 2d 563 (Fla. 4th DCA 1996). Therefore, the Civil Restitution Lien Act does not violate procedural due process requirements.

ARGUMENT

POINT

THE ACT IS NOT UNCONSTITUTIONALLY VAGUE.

Petitioner finally argues that the Civil Restitution Lien Act is unconstitutionally vague, because the procedure for seeking recovery under its terms is not clear. More specifically, petitioner argues that if no petition or motion seeking a lien is filed by the state, a local subdivision, crime victim or aggrieved party, the act is vague as to whether the trial court is nonetheless still required to enter an civil restitution lien order (IB 20).

However, clearly the facts of this case do not involve a situation, where the trial court was left with a decision in the face of no forthcoming motion or petition from the state, a local subdivision, crime victim or other aggrieved party. Furthermore, vagueness challenges to statutes which do not involve First Amendment freedoms, such as the one now at issue, must be examined in the light of the facts of the case at hand, *United States v. Mazurie*, 419 U.S. 544, 550, 95 S. Ct. 710, 714, 42 L. Ed. 2d 706 (1975); *State v. Kahles*, 644 So. 2d 512 (Fla. 4th DCA 1994), *approved*, 657 So. 2d 897 (Fla. 1995). Therefore, this court should not reach the merits of this issue, since the argument made by petitioner is not at all related to the facts of this case.

Nonetheless, the pertinent section of this act, Fla. Stat. § 960.292, states that the appropriate court shall enter a civil restitution lien order upon motion or petition by the state, local subdivision, crime victim, aggrieved party or on its own motion. Clearly, the act requires no action by the court without a condition precedent, that being the filing of a petition or motion. The act does not require the trial court to make its own motion, but merely permits the trial court to do so at its discretion.

A statute is unconstitutionally vague when people of common intelligence must necessarily guess at its meaning and differ as to its application. *Falco v. State*, 407 So. 2d 203 (Fla. 1981). The Civil Restitution Lien Act does not nearly reach this threshold.

ARGUMENT

POINT VI

GENERAL CONSIDERATIONS APPLICABLE TO ALL ISSUES.

Statutes come before the court clothed with a presumption of being constitutional. *Florida Dep 't of Educ. v. Glasser*, 622 So. 2d 944 (Fla. 1993); *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879 (Fla. 1983). The court has a duty, if reasonably possible and consistent with constitutional rights, to resolve all doubts as to the validity of a statute in favor of its constitutionality. *Falco v. State*, 407 So. 2d 203 (Fla. 1981); *Florida Dept. of Education v. Glasser*, 622 So. 2d 944 (Fla. 1993). In determining the constitutionality of legislation the courts must give it a construction which will uphold it rather than invalidate it, if there is any reasonable basis for doing so. *State v. Keaton*, 371 So. 2d 86 (Fla. 1979). Therefore, the language of a statute will not be given its broadest meaning if to do so would render the statute of doubtful constitutionality. *Olds v. State*, 101 Fla. 218, 133 So. 641 (1931).

The burden of proving the unconstitutionality of a statute is upon the one challenging its validity. *In re Estate of Gainer*, 466 So. 2d 1055 (Fla. 1985). The courts are without authority to declare a statute unconstitutional, unless it appears beyond all reasonable doubt that under any rational view taken it is in positive conflict with the constitution. *Biscayne Kennel Club, Inc. v. Florida State Racing Com.*, 165 So. 2d 762 (Fla. 1964); *State ex rel. Davis v. Rose*, 97 Fla. 710, 122 So. 225 (1929); *Ex parte Messer*, 87 Fla. 92, 99 So. 330 (1924).

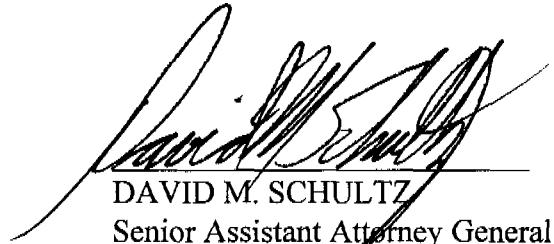
In regard to the Civil Restitution Lien Act, the issues presented to this court, and the above argument, petitioner has failed to prove beyond a reasonable doubt that this act is unconstitutional for any of the reasons alleged.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities cited herein, respondents respectfully request that this Honorable Court AFFIRM the opinion of the Fourth District Court of Appeal and uphold the constitutional validity of the Civil Restitution Lien Act.

Respectfully submitted,

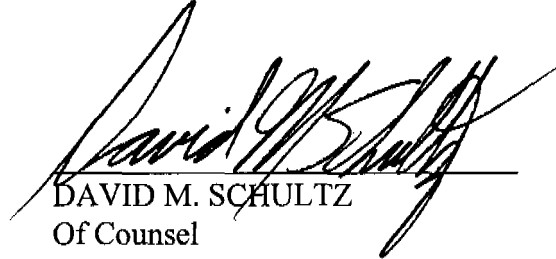
ROBERT BUTTERWORTH
ATTORNEYGENERAL
Tallahassee, Florida

A handwritten signature in black ink, appearing to read "David M. Schultz", is written over a horizontal line. The signature is fluid and cursive.

DAVID M. SCHULTZ
Senior Assistant Attorney General
Florida Bar No. 0874523
1655 Palm Beach Lakes Blvd
Suite 300
West Palm Beach, FL 33401
(561) 688-7759

CERTIFICATE OF SERVICE

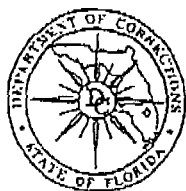
I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail to Diane M. Cuddihy, Esq., Assistant Public Defender, Office of the Public Defender, 201 S.E. 6th Street, Fort Lauderdale, Florida 33301 this 24th day of June, 1997.



DAVID M. SCHULTZ
Of Counsel

APPENDIX

1993-94 ANNUAL REPORT:
**THE GUIDEBOOK TO
CORRECTIONS**
IN * F L O R I D A



FLORIDA DEPARTMENT OF CORRECTIONS
HARRY K. SINGLETARY, JR., SECRETARY

BUDGET**Inmate Cost Per Day by Facility
(FY1993-94)****Summary of Average Inmate Costs (FY 1993-1994)**

Category	Average Population	Total Per Diem	Operations	Health Services	Education Service
Total All Department Facilities	53,512	42.23	33.41	8.25	0.57
Total Major Institutions	47,703	43.75	33.98	9.13	0.64
Adult Male	36,507	40.15	32.76	6.83	0.57
Female Institutions	2,341	50.49	35.28	13.95	1.26
Reception Centers	6,139	57.42	36.74	20.64	0.04
Specialty Institutions	410	107.71	68.64	38.93	0.14
Youthful Offender	2,306	45.95	38.56	4.66	2.73
MAJOR INSTITUTIONS					
Residential Facility	Average Population	Total Per Diem	Operations	Health Services	Education Service
ADULT MALE					
Apalachee CI	1,604	41.40	32.44	7.53	1.41
Avon Park CI	1,073	43.38	36.87	6.11	1.40
Baker CI	1,128	36.71	30.67	5.09	0.95
Calhoun CI	860	39.68	33.43	4.82	1.43
Century CI	860	33.50	28.91	4.54	0.05
Charlotte CI	1,021	45.50	31.05	14.19	0.26
Columbia CI	949	38.84	33.04	5.40	0.00
Cross City CI	1,080	37.87	32.69	4.02	1.16
Dade CI	931	49.50	37.99	11.34	0.17
DeSoto CI	1,095	36.05	29.87	5.41	0.77
Florida State Prison	1,432	45.58	38.19	7.39	0.00
Glades CI	1,448	42.62	35.11	7.10	0.41
Gulf CI	820	36.43	30.94	5.48	0.01
Hamilton CI	1,033	37.24	31.60	4.65	0.99
Hanges CI	1,105	35.00	29.18	4.63	0.09
Hendry CI	1,116	41.53	34.84	6.57	0.12
Holmes CI	874	38.87	31.78	5.88	1.21
Jackson CI	999	35.53	30.54	4.97	0.02
Lake CI	549	43.28	35.60	6.26	1.42
Lawley CI	763	41.52	32.04	9.23	0.25
Liberty CI	997	34.59	30.30	4.17	0.12
Madison CI	1,154	34.05	28.73	5.21	0.11
Marion CI	1,305	37.51	29.71	6.66	1.14
Martin CI	1,437	42.06	34.53	7.21	0.32
Mayo CI	706	39.35	32.38	5.41	0.16
New River CI	1,494	34.87	28.85	5.13	0.89
Okaloosa CI	858	38.18	33.00	5.03	0.15
Polk CI	1,169	35.79	29.34	5.47	0.98
Putnam CI	399	49.20	42.54	6.66	0.00
River Junction CI	464	40.75	35.42	4.95	0.38

continued on next page

BUDGET**Inmate Cost Per Day by Facility (cont'd.)
(FY1993-94)**

Residential Facility	Average Population	Total Per Diem	Operations	Health Services	Education Service
ADULT MALE					
Sumter CI	1,119	45.23	37.66	6.32	1.25
Tomoka CI	1,289	36.83	29.37	7.34	0.12
Union CI	1,805	50.01	38.77	10.89	0.35
Walton CI	880	34.18	29.33	4.72	0.13
Zephyrhills CI	659	60.35	35.29	23.82	1.24
Total Adult Male	36,807	40.16	32.76	6.83	0.57
YOUTHFUL OFFENDER					
Brevard CI	1,209	40.03	34.44	3.66	1.93
Indian River CI	258	71.82	57.05	9.01	5.76
Lancaster CI	840	46.55	38.82	4.77	2.96
Total Youthful Offender	2,306	45.95	38.56	4.66	2.73
RECEPTION CENTERS (MALE)					
Central Florida Reception Center	2,197	46.60	33.98	12.58	0.04
North Florida Reception Center	2,048	66.18	36.61	29.54	0.03
South Florida Reception Center	1,894	60.52	40.09	20.37	0.06
Total Reception Centers	6,139	57.42	36.74	20.64	0.04
FEMALE INSTITUTIONS					
Broward CI*	591	70.88	46.04	22.95	1.09
Florida CI*	1,033	45.79	30.12	14.05	1.62
Jefferson CI	718	40.43	35.18	6.38	0.89
Total Female Institutions	2,341	50.49	36.28	13.06	1.26
SPECIALTY INSTITUTIONS					
Corrections Mental Health Institution	96	245.67	139.59	106.08	0.00
Hillsborough CI	314	65.67	47.01	18.47	0.19
Total Specialty Institutions	410	107.71	68.64	38.93	0.14
Total Institutions	47,703	43.75	33.98	9.18	0.64
COMMUNITY FACILITIES					
Community Correctional Centers**	2,232	26.49	36.95	0.24	0.00
Contracted Facilities	132	31.80	31.80	0.00	0.00
Drug Treatment Centers	828	34.97	30.59	4.38	0.00
Probation & Reentry Centers	333	42.30	42.30	0.00	0.00
Road Prisons	382	43.97	42.80	1.17	0.00
Work Camps	1,903	26.02	25.27	0.75	0.00
Total Community Facilities	5,809	29.74	28.48	1.04	0.00

* Also serve as reception centers for female inmates.

** Amounts shown are net of inmate subsistence payments of \$5/day for inmates on work release, which contractors are allowed to retain and treat as a credit to their billings.