

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CAROL LEIGH THOMPSON,

Respondent.

CASE NO. 92,831

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the Second District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Carol Leigh Thompson, the Appellant in the Second District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record on appeal consists of two volumes. Pursuant to Rule 9.210(b), Fla. R. App. P. (1997), this brief will refer to a volume according to its respective designation within the Index to the Record on Appeal. A citation to a volume will be followed by any appropriate page number within the volume.

All emphasis through bold lettering is supplied unless the contrary is indicated.

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Counsel certifies that this brief was typed using Courier New
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STATEMENT OF THE CASE AND FACTS

The relevant facts are set out within the opinion of the lower tribunal.

In 1995, the legislature passed Chapter 95-182 Laws of Florida, the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995" (The Gort Act). The act applied to all

offenses committed after October 1, 1995. Chapter 95-182 was subsequently reenacted on May 24, 1997 as part of the biennial reenactment of Florida Statutes. See Chapter 97-97 Laws of Florida.

Ms. Thompson was charged with robbery with a firearm, aggravated battery on a person over the age of sixty-five, and possession of a firearm by a convicted felon. Thompson was charged with committing these offenses on November 16, 1995. (R I 14-16) The state filed a notice that asserted that Thompson should be treated as a habitual offender/ habitual violent offender/career violent criminal. (R I 19) Thompson countered with a motion to preclude such characterization and to declare unconstitutional Chapter 95-182 Laws of Florida, the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995" (The Gort Act). (R I 54-63) The trial court denied Thompson's motion (R II 135-136) and she entered a plea of no contest reserving the right to appeal the denial of her motion. (R II 118-119)

On appeal the district court found that Chapter 95-182 was unconstitutional as it violated the single subject provisions of Florida's Constitution, Article III Section 6. From this decision, the State seeks review.

SUMMARY OF ARGUMENT

Petitioner challenges the constitutionality of Chapter 95-182 of the Laws of Florida, entitled the "Officer Evelyn Gort and Other Fallen Officers Career Criminal Act of 1995" ("Gort Act"). Specifically, petitioner contends that the Gort Act violates the single subject provision of the Florida Constitution. The State respectfully disagrees. There is a reasonable and rational relationship among the sections of the Act. All the sections of the Act are all designed to control the criminal behavior of recidivist offenders. Part of the Act is designed to control violent career criminal offenders and the other part is designed to control continuing domestic violence offenders. The underlying theme of the legislation is criminal activity and its remedies whether those remedies are increased periods of incarceration or restitution measures. Thus, there is a natural and logical connection among the sections and therefore, the Gort Act does not violate the single subject provision.

ARGUMENT

ISSUE I

DOES CHAPTER 95-182 LAWS OF FLORIDA VIOLATE THE SINGLE SUBJECT REQUIREMENT OF FLORIDA'S CONSTITUTION?

The issue before this Court is whether the legislature violated the single subject provision of Article III Section 6 of the Florida Constitution when it passed Chapter 95-182 Laws of Florida.

Jurisdiction

This Court has jurisdiction over this issue pursuant to Article V § 3(b)(3) as there exists express and direct conflict between the decision of the lower tribunal and the decision of Higgs v. State, 695 So.2d 872 (Fla. 3rd DCA 1997) Additionally, this Court has jurisdiction pursuant to Article V § 3(b)(1) as the decision of the lower tribunal declared a state statute unconstitutional.

General Principles Applicable to the Case

Standing

Only a defendant who committed his offense prior to May 24, 1997 has standing to challenge the constitutionality of the Gort Act. The single subject provision applies only to chapter laws; Florida Statutes are not required to conform to the provision. State v. Combs, 388 So.2d 1029 (Fla. 1980). Once reenacted as a portion of the Florida Statutes, a chapter law is no longer subject to challenge on the grounds that it violates the single

subject provision of Article III, § 6, of the Florida Constitution. State v. Johnson, 616 So.2d 1, 2 (Fla. 1993). The reenactment of a statute cures any infirmity or defect. State v. Carswell, 557 So.2d 183, 184 (Fla. 3d DCA 1990); Honchell v. State, 257 So.2d 889 (Fla. 1972); Alterman Transport Lines, Inc. v. State, 405 So.2d 456 (Fla. 1st DCA 1981).

As the Thompson Court noted, the "window" period for challenging the Gort Act, chapter 95-182, LAWS OF FLORIDA, on the basis that it violates the single subject provision of the Florida Constitution is from the effective date of the law, which was October 1, 1995 until May 24, 1997, which was the date the Gort Act was reenacted. Thompson v. State, 708 So.2d 315, n.1 (Fla. 2d DCA 1998). The Gort Act was reenacted as part of the Florida Statutes' biennial adoption. See Chapter 97-97, Laws of Florida. Only those defendants who committed their offenses prior to May 24, 1997 have standing to challenge the constitutionality of the Gort Act on the basis that it violates the single subject provision. Respondent committed her offense within the window period and has standing to challenge the act.

Preservation

The issue was preserved by the filing of a motion in the trial court challenging the statute. § 924.051(1)(b), Fla. Stat. (1997); rule 9.140(d), Fla.R.App.P.

The Presumption of Constitutionality

Legislative acts are presumed constitutional. See State v. Kinner, 398 So.2d 1360, 1363 (Fla. 1981). Courts should resolve every reasonable doubt in favor of the constitutionality of a statute. Florida League of Cities, Inc. v. Administration Com'n, 586 So.2d 397, 412 (Fla. 1st DCA 1991). An act should not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt. Todd v. State, 643 So.2d 625, 627 (Fla. 1st DCA 1994). Single subject challenges like all constitutional challenges are governed by these principles. State v. Physical Therapy Rehabilitation Center of Coral Springs, Inc., 665 So.2d 1127, 1130 (Fla. 1st DCA 1996)(noting, in the context of a constitutional challenge to a statute alleging a defective title, a presumption exists in favor of the validity of the statute).

The Standard of Review

The constitutionality of statute is a question of law that an appellate court reviews *de novo*. See United States v. Cardoza, 129 F.3d 6, 10 (1st Cir. 1997); United States v. Bailey, 115 F.3d 1222, 1225 (5th Cir. 1997); United States v. Wilson, 73 F.3d 675, 678 (7th Cir.1995); United States v. Crawford, 115 F.3d 1397, 1400 (8th Cir. 1997); United States v. Michael R., 90 F.3d 340, 343 (9th Cir. 1996). An appellate court reviews the constitutionality of all statutes, including sentencing statutes, *de novo*. United States v. Quinn, 123 F.3d 1415, 1425 (11th Cir.

1997). Thus, the standard of review is *de novo*. Philip J. Padovano, Florida Appellate Practice § 9.4 (2d ed. 1997).

Merits

The single subject provision, Article III, Section 6 of the Florida Constitution provides:

"Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

The purpose of this constitutional prohibition against a plurality of subjects in a single legislative act is to prevent "logrolling", Martinez v. Scanlan, 582 So.2d 1167, 1172 (Fla. 1991); State v. Lee, 356 So.2d 276, 282 (Fla. 1978). Logrolling is a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336, 1339 (Fla. 1994).

An 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); Board of Pub. Instruction v. Doran, 224 So.2d 693, 699 (Fla. 1969). Broad and comprehensive legislative enactments are not in violation of the single subject provision. See Smith v. Department of Ins., 507 So.2d 1080 (Fla. 1987). The test to determine whether legislation meets the single subject provision is based on common sense. Smith, 507 So.2d at 1087.

The Florida Supreme Court has accorded great deference to the legislature in the single subject area and the Court has held that the legislature has wide latitude in the enactment of acts. State v. Lee, 356 So.2d 276 (Fla. 1978); State v. Leavins, 599 So.2d 1326, 1334 (Fla. 1st DCA 1992). Examples abound where the Florida Supreme Court has held that Acts covering a broad range of topics does not violate the single subject provision. The single subject provision is not violated when an Act provides for the decriminalization of traffic infractions and also creates a criminal penalty for willful refusal to sign a traffic citation, State v. McDonald, 357 So.2d 405 (Fla. 1978); the provision is not violated where an Act covers both automobile insurance and tort law, State v. Lee, 356 So.2d 276 (Fla.1978); nor is the provision violated where an Act covers a broad range of topics dealing with medical malpractice and insurance because tort litigation and insurance reform have a natural or logical connection, Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981), Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987); nor is the provision violated where an Act establishes a tax on services and includes an allocation scheme for the use of the tax revenues. In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987). Finally, the Florida Supreme Court has found that an act which deals with (1) comprehensive criminal regulations, (2) money laundering, and (3) safe neighborhoods is valid since each of these areas bears a logical relationship to the single

subject of controlling crime. Burch v. State, 558 So.2d 1 (Fla. 1990).

THE SECTIONS OF THE GORT ACT

The Gort act contains ten sections. Section one is the title. Section two created and defined a new category of offender for sentencing purposes, *i.e.*, the violent career criminal. Section two also added aggravated stalking to the list of qualifying offenses for habitual violent felony offenders and the newly created list of qualifying offenses for violent career criminals. Sections three through seven then deal with the sentencing of, legislative findings regarding, enforcement policies concerning and prohibitions against the possession of firearms of the new created classification of violent career criminals. Section eight amended the husband and wife statute providing for restitution for the misdemeanor offense of violating an domestic violence injunction. Section nine amended the negligence statute providing for a private cause of action for domestic violence. Section ten amended the assault and battery statute, providing for clerk's duties; that only a law enforcement officer may serve an domestic violence injunction; requiring the reporting of the injunction to law enforcement agencies and restoring criminal contempt for a violation of an domestic violence injunction.

Caselaw Interpreting the Gort Act

In Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997), the Third District rejected a contention that the Gort Act violated the

single subject provision of the Florida Constitution and affirmed the defendant's sentence. The Higgs Court held that there is a reasonable and rational relationship among each of the sections of the Gort Act. See Holloway v. State 23 FLA. L. WEEKLY D1413 (Fla. 3d DCA June 10, 1998) (affirming under the controlling authority of Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997) and certifying conflict with the Second District's decision in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998)).

In the instant case, Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), the Second District held that the Gort Act violated the single subject provision of the Florida Constitution. The Second District reversed Thompson's sentence and remanded for imposition of a sentence in accordance with the valid laws in effect at the time of her sentencing. The Thompson Court noted that sections one through seven of the chapter create and define violent career criminal sentencing whereas section eight through ten deal with civil remedies for domestic violence. The Court recited a brief legislative history of the Gort Act noting that sections eight through ten began as three house bills which died in committee. When the three house bills were engrafted on to the original Senate bill creating violent career criminal sentencing, the three house bills became law. The Court stated: "[i]t is in circumstances such as these that problems with the single subject rule are most likely to occur". Furthermore, the Thompson Court reasoned that the two parts have no natural or logical connection because the Gort Act embraces both criminal

and civil provisions. The Court analogized the Gort Act to the cases of State v. Johnson, 616 so.2d 1 (Fla. 1993) and Bunnell v. State, 453 So. 2d 808 (Fla. 1984). The Court also expressed concern that nothing in sections two through seven addresses domestic violence and nothing in sections eight through ten addresses career criminals.

ANALYSIS OF THE DECISION

Civil and Criminal Matters

The Thompson Court stated that the two parts of the act have no natural or logical connection because the Gort Act embraces both criminal and civil provisions. Sections one through seven of the chapter create and define violent career criminal sentencing whereas section eight through ten deal with civil remedies for domestic violence. The Thompson Court concluded that the first part of the Act is criminal and the second part is civil and therefore, there was no natural or logical connection between criminal and civil matters. This is not an accurate description of the two parts. The second part is both civil and criminal. It deals with civil remedies for repeated criminal behavior. Thus, the characterization of the Thompson Court of these sections as civil is erroneous.

The domestic violence statute, § 741.28(1), Florida Statutes (1997), defines domestic violence as:

"Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnaping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by

another who is or was residing in the same single dwelling unit.

It is clear from the definition of domestic violence that it is a crime. The legislature has expressly declared its intention that "domestic violence be treated as a criminal act." § 741. 2901(2), Fla. Stat. (1997). Thus, it is incorrect to suggest that the measures dealing with domestic violence are purely civil. Both section eight and nine are more properly viewed as restitutional in nature. Restitution is viewed as part of the criminal law process. Strickland v. State, 681 So.2d 929 (Fla. 3d DCA 1996)(holding that a trial court's imposition of additional restitution after sentencing was an increased sentence and therefore, violated double jeopardy). The purpose of restitution is to compensate the victim and to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system. Glaubius v. State, 688 So.2d 913, 915 (Fla. 1997).

Moreover, the Crime Control Act of 1995, Chapter 95-184 Laws of Florida, placed the same language that is in sections eight through ten of the final Gort Act as part of numerous restitution measures. § 28 - 38, ch. 95-184. The legislature clearly viewed section eight through ten of the Gort Act as restitution measures.

Section eight of the Gort Act amends § 741.31(1), Fla. Stat. (Supp 1994),¹ by creating subsection (2). The already existing

¹ The current version of the statute is significantly modified but the version at the time of the amendment had only a short paragraph in subsection one declaring the violation to be a

subsection (1) provided that a violation of an injunction for protection against domestic violence is a misdemeanor. The new subsection allows a victim of domestic violence to recover damages and attorneys fees for that misdemeanor. § 741.31(2), Fla, Stat. (1995). This is clearly a prototypical restitution statute.

Section nine amends the negligence statute and creates a private cause of action for repeated instances of domestic violence. Given that domestic violence is a crime, this measure should be viewed as both civil and criminal. The purpose is to compensate the victim and to punish the offender because it includes both compensatory and punitive damages. Therefore, this section is also a type of restitution. Glaubius v. State, 688 So.2d 913, 915 (Fla. 1997).

Section ten, while dealing with clerk's and law enforcement duties, amended the assault and battery statute. Section ten also restores the power of trial courts to enforce domestic violence injunctions with criminal contempt. This is clearly a criminal matter. Thus, contrary to the Thompson Court's reasoning, even the "civil" parts of the final Gort Act are criminal in nature.

Legislative History

The Thompson Court's brief legislative history of the Gort Act is overly simplified. While the three original House bills that

misdemeanor.

comprise section eight, nine and ten of the Gort Act died in committee, the substance of one of these bills was not in fact engrafted onto the Senate Bill 168. Only minor, limited portions of the original House bill actually became part of the final Gort Act. HB 1251, which became section ten of the final Gort Act, originally provided that a trial court must consider requiring a perpetrator to participate in a certified batters program, provided for a statement of legislative intent that every victim of domestic violence shall have access to shelter and counseling and expanded the conduct that constituted a violation of an injunction. None of these measure were engrafted onto the final Gort Act. Only the measures relating to the clerk's and law enforcement officer duties were engrafted onto the final Gort Act. These were the most minor measures of the original House Bill. While significant portions of the other two house bills were engrafted onto the final Gort Act, as discussed below, this engrafting was natural and logical.

This is not evidence of logrolling; rather, it is the normal legislative process. Bills that die in one form are resurrected in another form and thereafter become law. The legislative process is messy and the average statute is the product of compromise. L. H. LaRue, STATUTORY INTERPRETATION: LORD COKE REVISITED, Special Issue on Legislation: Statutory and Constitutional Interpretation, 48 U. Pitt. L. Rev. 733 (1987).

Analysis of Sections of the Act

The Thompson Court expressed concern that nothing in sections two through seven addresses domestic violence and nothing in sections eight through ten addresses career criminals. This is not correct. Section two addresses a form of domestic violence, *i.e.*, aggravated stalking. Section two added aggravated stalking to the list of qualifying offenses for habitual violent felony offenders and to the newly created list of qualifying offenses for violent career criminals.

The legislative history of the House bill reveals the natural and logical connection among the sections of the Gort Act. The major connection is aggravated stalking. One of the House bills that died in committee contained a measure that added aggravated stalking to the list of qualifying offenses for habitual violent offender sentencing. HB 1789. The original Senate bill, SB 168, did not provide for the addition of aggravated stalking as a qualifying offense for habitual violent offender sentencing. However, a separate Senate bill, SB 118, did provide for the addition of aggravated stalking to the list of qualifying offense for habitual violent offender sentencing. Thus, in both houses the issue of whether aggravated stalking should be a qualifying offense for habitual violent offender sentencing was being considered. Naturally and logically, once the new sentencing category of violent career criminal was being proposed, the issue of whether aggravated stalking should be a qualifying offense for new category arose also. It was natural and logical for the

legislature to combine the addition of aggravated stalking to both sentencing categories in the same bill.

The Staff Analysis of this house bills also noted that the current definition of domestic violence did not include aggravated stalking. HB 1789. The house bill was designed to address this situation by adding aggravated stalking to the definition. HB 1789. Thus, both the House bill and the final Gort Act concern controlling the criminal offense of aggravated stalking.

Aggravated stalking is a form of domestic violence. Aggravated stalking² is defined as repeatedly following or harassing another person in violation of an injunction for protection against domestic violence entered pursuant to § 741.30. Thus, contrary to the Thompson Court's reasoning, section two through seven do address domestic violence in its most virulent form.

Additionally, another connection among the sections ignored by the Thompson Court is that several of the crimes that constitute domestic violence are also qualifying forcible felonies for the career criminal classification. These offenses include aggravated assault, aggravated battery, sexual battery, kidnaping.³ Thus, there are numerous connections between the

² § 784.048(4), Fla. Stat.(1997). There are additional court orders that a person may violate and then violate the aggravated stalking statute but this is the crucial definition for this analysis.

³ See § 776.08, Fla. Stat. (1997).

career criminal section of the Act and the domestic violence section of the Act.

Finally, another connection is all sections of the final Gort Act concern controlling and punishing the criminal behavior of recidivist offenders. The first part deals with sentencing of domestic violence in its most virulent form and the second part deals with additional remedies for this conduct. Thus, all the sections have a cogent relationship.

LOGROLLING

The Thompson Court implied that there was logrolling in the addition of sections eight, nine and ten to the final Gort Act. Logrolling is the joining of separate issues into a single proposal which results in the passage of an unpopular measure simply because it is paired with a widely supported one. Advisory Opinion to the Atty. Gen. re Fish and Wildlife Conservation Com'n, 705 So.2d 1351, 1353 (Fla. 1998). The problem with this implication is that sections eight, nine and ten of the final Gort Act were passed twice by the same legislature. Once as part of the final Gort Act and again as part of the Criminal Control Act of 1995. Chapter 95-182, Laws of Florida; Chapter 95-184, Laws of Florida. The exact language was used in both bills. CS/SB 168; CS/SB 172. Measures that passed the legislature twice can hardly be viewed as unpopular riders. Moreover, while the Gort Act may be viewed as widely popular given the incident that provoked the Act and the mandatory lengthy sentencing, the Crime

Control Act of 1995 was the prototypical crime control measure. The Crime Control Act of 1995 was an ordinary, routine measure that mainly tinkered with existing statutes. There was nothing in Crime Control Act of 1995 to arouse passions or to make the Act widely popular. Therefore, the amendments at issue here could not have passed based on the popularity of the other parts of the Crime Control Act of 1995.

Given that the same legislature voted twice for the exact same amendments, logrolling is not a viable concern. The harm sought to be prevented by the single subject provision did not occur in light of the fact that sections eight through ten passed the legislature twice as part of two separate Acts.

ANALYSIS RELEVANT SINGLE SUBJECT CASES

Johnson and Bunnell

The Thompson Court's reliance on State v. Johnson, 616 So.2d 1 (Fla. 1993) and Bunnell v. State, 453 So.2d 808 (Fla. 1984) is misplaced. In Johnson, 616 So.2d 1 (Fla. 1993), the Florida Supreme Court held that a chapter law violated the single subject provision because it addressed two subjects: "the first being the habitual offender statute, and the second being the licensing of private investigators and their authority to repossess personal property." 616 So. 2d at 4. The court stated that the two matters had absolutely no cogent connection. Sentencing for repeat offenders and licensing private investigator have no common core.

Similarly, in Bunnell v. State, 453 So.2d 808 (Fla. 1984), the Florida Supreme Court held that a session law violated the single subject provision when the law created the criminal offense of obstruction of justice by false information and made amendments concerning membership of the Florida Council on Criminal Justice. The Thompson Court characterized these amendments as noncriminal and dealing with an executive branch function.

By contrast to Johnson, the instant amendments do have a common core. They concern repeated criminal offenders and the various remedies for dealing with such offenders. Moreover, in contrast to Bunnell, which dealt with amendments that involved both legislative and executive functions, these amendments both concern traditionally legislative matter. Recidivist offenders sentencing and compensating victims are both legislative matters. Additionally, these amendments all have significant criminal aspects.

Burch

In Burch v. State, 558 So.2d 1 (Fla. 1990), the Florida Supreme Court held that the Crime Prevention and Control Act did not violate the single subject provision of the Florida Constitution. The Act dealt with (1) comprehensive criminal regulations, (2) money laundering, (3) drug abuse education, (4) forfeiture of conveyances, (5) crime prevention studies, and (6) safe neighborhoods. The Court held that there was a logical and natural connection among these subject because all of the parts were related to its overall objective of crime control. The

Court noted that the sections were intended to control crime, whether by providing for imprisonment or through taking away the profits of crime. The taking away profits language is a reference to the forfeiture section of the Act. A forfeiture proceeding is civil and independent of any criminal action. Kern v. State, 706 So.2d 1366 (Fla. 5th DCA 1998). All civil forfeiture cases are heard before a circuit judge of the civil division and the rules of civil procedure govern. § 932.704(2), Fla. Stat. (1997). Thus, the legislature may combine criminal sentencing and civil remedies for crimes without violating the single subject provision.

Here, as in Burch, the legislature has combined criminal sentencing and civil remedies for criminal conduct in one Act. In Burch, the legislature controlled crime both by incarceration and by taking away the profits of crime. Here, the legislature provided for a private cause of action to control crime. The legislature may control crime by providing for imprisonment and civil remedies. When the legislature does so, the sections have a natural and logical connection and do not violate the single subject provision.

Remedy

If the Gort Act is found to be unconstitutional, the correct remedy is to resentence the defendant in accordance with the sentencing law in effect at the time the offense was committed, not at sentencing. *But see* Johnson, 616 So.2d at 5 (remanding for

resentencing in accordance with the valid laws in effect at the time of the original sentencing); Thompson, 708 So.2d 315 (same).

SUMMARY

There is a natural and logical connection among sections of the Gort Act. The first part concerns sentencing for aggravated stalking and other forms of violent conduct. The second provides a remedy for the victims of this conduct when the conduct occurs in a relationship. These provision have a cogent relationship to each other. Thus, the Gort Act does not violate the single subject provision of Florida's Constitution.

CONCLUSION

Based on the foregoing, the State respectfully submits the decision of the District Court of Appeal reported as Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998) should be disapproved, and the judgement and sentence entered in the trial court should be affirmed.

Respectfully submitted,

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[AGO# L98-1-4577]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S INITIAL BRIEF ON THE MERITS has been furnished by U.S. Mail to Richard J. Saunders, Esquire, Assistant Public Defender, Post Office Box 9000-Drawer PD, Bartow, Florida 33831 this ____ day of July, 1998.

Edward C. Hill, Jr.
Attorney for the State of Florida

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