

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner,  
v.  
CAROL LEIGH THOMPSON,  
Respondent.

CASE NO. 92,831

PETITIONER'S SUPPLEMENTAL 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.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

This brief is submitted pursuant to this Court's order of July 6, 1999. Most of the relevant facts are set out within the State's initial brief. The state will set out the facts relevant

to the supplemental issue.

In 1995, the legislature passed Chapter 95-182 Laws of Florida, included in Chapter 95-182 was the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995" (The Gort Act). The Gort Act applied to all offenses committed after October 1, 1995.

In Chapter 96-388 Laws of Florida, the legislature amended and reenacted the Gort Act career criminal provisions. The effective date of Chapter 96-388 was October 1, 1996. On May 24, 1997, Chapter 97-97 Laws of Florida, the biennial reenactment of Florida Statutes became effective.

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. These offenses were committed 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. The court held that the window of unconstitutionality ended on May 24, 1997, the effective date of the biennial reenactment.

In Salters v. State, 24 Fla. L. Weekly D1116 (Fla. 4th DCA May 5, 1999) the Court held that the defendant did not have standing to challenge Chapter 95-182 Laws of Florida as it had been replaced by Chapter 96-388 Laws of Florida and the defendant's crime took place after the effective date of the new statute.

### SUMMARY OF ARGUMENT

The state acknowledges that the date of the offense here, November 16, 1995, is within the window of alleged unconstitutionality even if the window period of Salters v. State is adopted. Nevertheless, because the Court asked for briefing on the window period under Salters, the state provides the following.

If this Court holds that Chapter 95-182 violates the single subject provision of the Florida Constitution, it should also find that the legislature's reenactment of the "Gort Act" in Chapter 96-388 Laws of Florida cured, or mooted, any single subject problem of Chapter 95-182. This Court should adopt the position taken by the Fourth District in Salters v. State, 24 Fla. L. Weekly D1116 (Fla. 4th DCA May 5, 1999)

Alternatively stated, this Court should find that the significant amendments to the Gort Act by Chapter 96-388 Laws of Florida created a new statute which obviated any problems of Chapter 95-182 and makes the issue of the window period for the Gort Act irrelevant, because career criminal sentencing for all offenses committed after October 1, 1996 is controlled by Chapter 96-388 Laws of Florida.



ARGUMENT

ISSUE I

WHAT IS THE WINDOW PERIOD FOR RAISING A  
SINGLE SUBJECT CHALLENGE TO CHAPTER 95-182  
LAWS OF FLORIDA?

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, and, if it did when was the problem cured by legislative reenactment of the statute.

**Jurisdiction**

This Court has jurisdiction over this case 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 within the period of unconstitutionality has standing to challenge the constitutionality of the Gort Act. Because 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, 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). Thus, with single subject issues an important question is whether the incident being prosecuted arose prior to the constitutional problem being cured by reenactment.

### **Merits**

This Court's order asks for argument regarding the appropriate window period for filing a challenge to Chapter 95-182, Laws of Florida. In order to answer the question the history of the act must be reviewed.

In chapter 95-182, the legislature made significant changes to the habitual offender statute and created a category of offenders called violent career criminals. This provision was codified into § 775.084 Fla. Stat. (1995) and was referred to as the "Gort Act". In Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), the district court held the chapter law violated the single subject provision. It also stated that the "window"

period for defendants to challenge chapter 95-182, LAWS OF FLORIDA, on the basis that it violates the single subject provision of the Florida Constitution began on the effective date of the law, October 1, 1995, and ended on May 24, 1997. Thompson v. State, 708 So.2d 315, n.1 (Fla. 2d DCA 1998). On this later date, the Gort Act was reenacted as part of the Florida Statutes biennial reenactment. See Chapter 97-97, Laws of Florida. The state acknowledges that if no intervening action had occurred, Thompson would be correct and this biennial reenactment would end the window period. State v. Johnson, 616 so.2d 1 (Fla. 1993)

In Salters v. State, 24 Fla. L. Weekly D1116 (Fla. 4th DCA May 5, 1999), the Fourth District held that the window period closed on October 1, 1996, when chapter 96-388 *Laws of Florida* became effective. It held that in chapter 96-388, the Florida legislature readdressed the provisions of the habitual offender statutes and that this repassage of the provisions of the violent career criminal section (the Gort Act) without the arguably civil provisions identified in Thompson cured the single subject problem found in Chapter 95-182 Laws of Florida.

The position of the Fourth District is supported by both case law and logic. In Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991), this Court found a single subject violation occurred when the legislature combined workers compensation legislation with international trade legislation. In determining the effective

dates, this Court held that the problem was cured by the legislature in a special session reenacting the legislation in a manner which separated these two distinct concepts. Id. at 1169 Thus, this Court has recognized that the biennial reenactment of the statutes is not the only way to close the window. The state asserts that what happened in this case is analogous to what transpired in Scanlan. In the 1996 legislative session, the legislature reenacted the career criminal portions of chapter 95-182 without including the objectionable civil damage provisions. Applying Scanlan, the legislative action should be held to have cured the problem. Therefore, the state maintains that this Court should follow the decision of the Fourth District and hold the window period ended on October 1, 1996.

Approving this cure would be an appropriate resolution of the problems presented by this single subject violation. This Court has long held that the purpose of the single subject provision is to prevent logrolling. Martinez v. Scanlan, 582 So.2d 1167, 1172 (Fla. 1991); State v. Lee, 356 So.2d 276, 282 (Fla. 1978) The evil that the single subject provision protects against is the attaching of unrelated legislation onto popular measures, thereby, bootstrapping the passage of the unrelated legislation upon the popularity of the primary legislation. Advisory Opinion to the Atty. Gen. re Fish and Wildlife Conservation Com'n, 705 So.2d 1351, 1353 (Fla. 1998)

When a statutory section created in this manner is ratified by subsequent legislative reenactment, any prior "logrolling" has been mooted.

It is also appropriate to hold that the subsequent modification and readoption cures a single subject problem because of other Constitutional requirements placed on the passage of legislative bills. Article III Section 6 Fla. Const. requires when a bill is passed which amends a law in existence, that the sections being amended must be set out in full. Additionally, the enacting clause of the legislation must state, Be it enacted. By complying with the constitutional requirements, the legislature reenacts the statutory provision when it makes modifications. In this case, the legislature reenacted the provisions of the Gort Act by passage of chapter 96-388 Laws of Florida. Thus, the state maintains that the date of October 1, 1996, closes the window period for the purposes of a single subject challenge to the "Gort Act" provisions found in chapter 95-182 Laws of Florida

The other reason that the problem is cured by subsequent legislative is obvious. A criminal defendant must be sentenced in accordance with the law in effect when he committed the crime. When a statutory section is modified, a defendant is not prosecuted or sentenced under the original statute, but, under the version in effect at the time of the commission of the crime.

Thus for those individuals who committed their crimes after October 1, 1996, the governing law is Chapter 96-388 Laws of Florida. As to them, Chapter 95-182 Laws of Florida and its manner of passage is irrelevant.

### **Application**

As to this particular case, the State recognizes that Respondent committed her offense within the window period and has standing to challenge the act.

### **SUMMARY**

Should this Court determine that Chapter 95-182 violates the single subject provision of the Florida Constitution, this Court should find that the legislature's reenactment of the "Gort Act" in Chapter 96-388 cured the single subject problem. Thus, this Court should adopt the position taken by the Fourth District in Salters v. State, 24 Fla. L. Weekly D1116 (Fla. 4th DCA May 5, 1999)

Alternatively, this Court should find that the significant amendments to the Gort Act by Chapter 96-388 makes the issue of the window period for the Gort Act irrelevant. For, career criminal sentencing for all offenses committed after October 1, 1996, is controlled by Chapter 96-388 Laws of Florida.

CONCLUSION

Based on the foregoing, the State respectfully submits that the window period suggested in Salters v. State, 24 Fla. L. Weekly D1116 (Fla. 4th DCA May 5, 1999) be approved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S SUPPLEMENTAL 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, 1999.

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A P P E N D I X

Chapter 96-388 Laws of Florida