

93,071 ovs

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

MICHAEL DAVIS,  
a/k/a ANTHONY LEE THOMAS,

Respondent.

Case No.

**FILED**

SID J. WHITE

MAY 28 1998

CLERK, SUPREME COURT  
By Chief Deputy Clerk

ON PETITION FOR REVIEW FROM  
THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

**JURISDICTIONAL BRIEF OF PETITIONER**

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STATEMENT OF THE CASE AND FACTS

The opinions of the Second District Court of Appeal in this case and in *Thompson v. State*, 23 Fla. L. Weekly D713 (Fla. 2d DCA Mar. 13, 1998), copies of which are appended hereto, outline the relevant facts at this stage of the proceedings.

SUMMARY OF THE ARGUMENT

The opinion of the Second District Court of Appeal holding unconstitutional as violative of the one subject rule Chapter 95-182, Laws of Florida, Sections 1 through 7 of which are entitled the Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995, is in conflict with a decision of the Third District Court of Appeal holding that statute constitutional. Whether the amendments made by this Act to Sections 775.084, 775.08401, 775.0841-775.0843, and 790.235 of the Florida Statutes are applicable to offenders who would qualify as violent career criminals under the amended statutes for offenses committed during the "window period" prior to the reenactment of these statutes on May 24, 1997 is of grave significance to crime victims and potential crime victims in the State of Florida, and this Court should therefore grant review of this case.

ARGUMENT

WHETHER CONFLICT EXISTS BETWEEN THE INSTANT  
DECISION AND A DECISION OF THIS COURT OR OTHER  
DISTRICT COURTS ON THE ISSUE OF WHETHER CHAP-  
TER 95-182, LAWS OF FLORIDA, IS UNCONSTITU-  
TIONAL AS VIOLATIVE OF THE ONE SUBJECT RULE.

The opinion of the Second District Court of Appeal in the instant case is in conflict with the earlier decision of the Third District Court of Appeal in *Higgs v. State*, 695 So. 2d 872, 873 (Fla. 3d DCA 1997), which held that "there is a reasonable and rational relationship between each of the sections of the said Act." The Second District acknowledged the conflict in its opinion.

The window period within which Chapter 95-182 is subject to challenge as violative of the single subject requirement of Article III, Section 6, of the Florida Constitution covers a time span of nearly 20 months, and the applicability of the amendments made by Sections 1 through 7 of this Act, also known as the Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995, to Sections 775.084, 775.08401, 775.0841-775.0843, and 790.235 of the Florida Statutes to offenders who would qualify as violent career criminals under the amended statutes for offenses committed during this window period is of great significance both to the offenders themselves and to crime victims and potential crime victims in the State of Florida. This Court should therefore grant review of this case.

CONCLUSION

Based on the foregoing facts, argument, and citations of authority, Petitioner respectfully requests that this Honorable Court exercise its discretion to review the instant case and resolve the existent conflict.

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 Robert D. Rosen, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33830, this 26th day of May, 1998.



COUNSEL FOR PETITIONER

23 Fla. L. Weekly D1061a

**Criminal law--Sentencing--Violent career criminal--Trial court to resentence defendant in accordance with valid laws in effect at time of sentencing, where act creating violent career criminal sentencing was declared unconstitutional as violation of single subject rule**

MICHAEL DAVIS a/k/a ANTHONY LEE THOMAS, Appellant, v. STATE OF FLORIDA, Appellee. 2nd District. Case No. 96-02597. Opinion filed April 24, 1998. Appeal from the Circuit Court for Hillsborough County; Claudia R. Isom, Judge. Counsel: James Marion Moorman, Public Defender, and Robert D. Rosen, Assistant Public Defender, Bartow, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Susan D. Dunlevy, Assistant Attorney General, Tampa, for Appellee.

(PATTERSON, Acting Chief Judge.) Michael Davis appeals from his sentence as a violent career criminal for offenses occurring on January 22, 1996. In *Thompson v. State*, 23 Fla. L. Weekly D713 (Fla. 2d DCA Mar. 13, 1998), this court held that chapter 95-182, Laws of Florida, which created violent career criminal sentencing, is unconstitutional as a violation of the single subject rule. Thus, based on *Thompson*, we reverse Davis's violent career criminal sentence and remand for resentencing in accordance with the valid laws in effect at the time of Davis's sentencing on May 7, 1996.

Reversed and remanded. (QUINCE and WHATLEY, JJ., Concur.)

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23 Fla. L. Weekly D713a

**Criminal law--Sentencing--Violent career criminal--Constitutional law--Single subject requirement-- Legislation known as "Gort Act" unconstitutional where it embraces criminal and civil provisions having no "natural or logical connection"--Where part of legislation addressed subject of career criminals and sentences to be imposed upon them, and part of legislation addressed domestic violence, including civil aspects of that subject, it was designed to accomplish separate and dissociated objectives--Harsh sentencing for violent career criminals and civil remedies for victims of domestic violence are two distinct subjects--Conflict acknowledged--Defendant to be resentenced in accordance with valid laws in effect at time of sentencing**

CAROL LEIGH THOMPSON, Appellant, v. STATE OF FLORIDA, Appellee. 2nd District. Case No. 96-02517. Opinion filed March 13, 1998. Appeal from the Circuit Court for Hillsborough County; Claudia R. Isom, Judge. Counsel: James Marion Moorman, Public Defender, and Richard J. Sanders, Assistant Public Defender, Bartow, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Susan D. Dunlevy, Assistant Attorney General, Tampa, for Appellee.

(PATTERSON, Acting Chief Judge.) Carol Leigh Thompson challenges her sentences as a violent career criminal, contending that chapter 95-182, Laws of Florida, is in violation of the single subject requirement of article III, section 6, of the Florida Constitution and is unconstitutional. We agree and reverse Thompson's sentences.

Thompson was charged with robbery with a firearm, a first-degree felony punishable by life, aggravated battery of a victim over the age of sixty-five, a first-degree felony, and felon in possession of a firearm, a second-degree felony. These offenses occurred on November 16, 1995. The State filed its notice that Thompson be treated as a "habitual felony/habitual violent felony offender/violent career criminal." Thompson countered with a motion to preclude her sentencing as a "violent career criminal" 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). The trial court denied Thompson's motion, and she entered pleas of no contest to each offense, reserving her right to appeal that denial. The court then found Thompson to be a violent career criminal and, on May 21, 1996, sentenced her pursuant to section 775.084, Florida Statutes (1995) (as amended by chapter 95-182), to life imprisonment on counts one and two and to forty years with a thirty-year-minimum mandatory on count three.

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." This provision serves three purposes:

- (1) to prevent hodge podge or "log rolling" legislation, i.e., putting two unrelated matters in one act; (2) to prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (3) to fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.



*State v. Canova*, 94 So. 2d 181, 184 (Fla. 1957). Within this context, we look to the legislative history of this act.

Sections 1 through 7 of chapter 95-182, known as the Gort Act, create and define the violent career criminal sentencing category and provide sentencing procedures and penalties. Sections 8 through 10 of chapter 95-182 deal with civil aspects of domestic violence. Section 8 creates a civil cause of action for damages for injuries inflicted in violation of a domestic violence injunction. Section 9 creates substantive and procedural rules regulating private damages actions brought by victims of domestic abuse. Section 10 imposes procedural duties on the court clerk and the sheriff regarding the filing and enforcement of domestic violence injunctions.

The legislative history shows that sections 8 through 10 of chapter 95-182 began as three bills in the House of Representatives. Proposed committee substitute for House Bill 1251 dealt principally with the duties of the clerk and the sheriff in the processing and execution of injunctions for protection. Proposed committee substitute for House Bill 1789, filed on behalf of the Governor's Task Force on Domestic Violence, encompassed a laundry list of the recommendations found in the January 1994 report of the Task Force, including matters relating to the duties of the clerk. House Bill 2513 provided for civil remedies for victims of domestic violence. Each of these bills died in committee. See Fla. H.R. Comm. on the Judiciary, PCS/HB 1251 (1995) Bill Analysis 6 (final July 10, 1995) (on file at State Archives); Fla. H.R. Comm. on the Judiciary, PCS/HB 1789 (1995) Bill Analysis 7 (final July 11, 1995) (on file at State Archives); Fla. H.R. Comm. on Aging & Human Serv., HB 2513 (1995) Bill Analysis 6 (final July 13, 1995) (on file at State Archives). The substance of these failed bills was grafted on several Senate bills, including committee substitute for Senate Bill 168 (the Gort Act), and thereby became law. It is in circumstances such as these that problems with the single subject rule are most likely to occur.

Chapter 95-182 joins together criminal and civil subjects. Such a joinder has confronted our supreme court in *State v. Johnson*, 616 So. 2d 1 (Fla. 1993), and *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984). In *Johnson*, the court held that chapter 89-280, Laws of Florida, 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" and were not "reasonably related to any crisis the legislature intended to address." *Id.* Similarly, in *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984), the court held that a session law violated the single subject requirement 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 (a noncriminal provision dealing with an executive branch function).

Likewise, chapter 95-182 embraces criminal and civil provisions that have no "natural or logical connection." See *Johnson*, 616 So. 2d at 4 (quoting *Martinez v. Scanlan*, 582 So. 2d 1167, 1172 (Fla. 1991)). Nothing in sections 2 through 7 addresses any facet of domestic violence and, more particularly, any civil aspect of that subject. Nothing in sections 8 through 10 addresses the subject of career criminals or the sentences to be imposed upon them. It is fair to say that these two subjects "are designed to accomplish separate and dissociated objects of legislative effort." *State v. Thompson*, 120 Fla. 860, 892-93, 163 So. 270, 283

(1935). Neither did the legislature state an intent to implement comprehensive legislation to solve a crisis. *Cf. Burch v. State*, 558 So. 2d 1 (Fla. 1990) (upholding comprehensive legislation to combat stated crisis of increased crime rate). Harsh sentencing for violent career criminals and providing civil remedies for victims of domestic violence, however laudable, are nonetheless two distinct subjects. The joinder of these two subjects in one act violates article III, section 6, of the Florida Constitution; thus, we hold that chapter 95-182, Laws of Florida, is unconstitutional. In so holding, we acknowledge conflict with the Third District's opinion in *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997). We reverse Thompson's sentences and remand for resentencing in accordance with the valid laws in effect at the time of her sentencing on May 21, 1996. *See Johnson*, 616 So. 2d at 5.<sup>1</sup>

Reversed and remanded. (BLUE and FULMER, JJ., Concur.)

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<sup>1</sup>We note that the date of Thompson's offenses falls within the window period to challenge chapter 95-182, Laws of Florida, on the basis that it violates the single subject provision. "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 requirement of article III, section 6, of the Florida Constitution." *State v. Johnson*, 616 So. 2d 1, 2 (Fla. 1993). For the purpose of future challenges, the window period begins on the effective date of chapter 95-182, which is October 1, 1995. The window closes on May 24, 1997, when chapter 97-97, Laws of Florida, reenacted the 1995 amendments contained in chapter 95-182 as part of the Florida Statutes' biennial adoption. *See id.*

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