

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA

Petitioner,
vs.

DWAYNE JONES,

Respondent.

APPELLATE CASE NO.: 93,119

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ANSWER BRIEF OF RESPONDENT 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 referred to in this brief as Petitioner, the prosecution, or the State. Respondent, Dwayne Jones, the Appellant in the Second District Court of Appeal and the defendant in the trial court, will be referred to in this brief as Respondent or Mr. Jones.

The record on appeal consists of Four 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.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's statement of the case and facts.

SUMMARY OF THE ARGUMENT

The Respondent challenged the constitutionality of Chapter 95-182 of the Laws of Florida, which act was entitled the "Officer Evelyn Gort and Other Fallen Officers Career Criminal Act of 1995" ("Gort Act"). At the trial level, the Respondent argued that the Gort Act violated the single subject provision of the Florida Constitution. Upon denial of the motion at the trial level, the Respondent filed a timely notice of appeal. After first affirming the Respondent's conviction and sentence on January 28, 1998, the Second District Court of Appeal, upon further consideration, reversed its earlier decision on Jones' sentence and remanded his case for re-sentencing in accordance with the valid laws in effect at the time of his sentencing, based upon its further decision in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998).

The Respondent contends that the violent career criminal provisions under which Jones was sentenced are invalid, as the session law which created said provisions violates the single subject requirement, as set forth in the Florida Constitution. Chapter 95-182, Laws of Florida addresses two distinct and unrelated subjects, to wit: career criminal sentencing as well as civil remedies for the protection of victims of domestic violence. The Respondent contends that these two subjects are not reasonably related, and the laws are unconstitutional. As such, the decision of the Second District Court of Appeal should be upheld, and the respondent should be remanded to the trial court for re-sentencing with the valid laws in effect at the time of his sentencing.

ARGUMENT

ISSUE

WHETHER CHAPTER 95-182, LAWS OF FLORIDA VIOLATE THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION.

The issue before this Court is whether the Florida legislature violated the Single Subject rule of Article III, Section 6 of the Florida Constitution when it passed Chapter 95-182 Laws of Florida.

Article III, Section 6 of the Florida Constitution defines the Single Subject rule as follows:

"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 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), 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). As this Court has stated, the Single Subject rule of the Florida Constitution prevents "a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter." State v. Lee, 356 So. 2d 276, 282 (Fla. 1978).

In State v. Canova, 94 So. 2d 181, 184 (Fla. 1957), this Court has agreed that the 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."

The Respondent acknowledges that this Court has given great deference to the legislature in the Single Subject area, giving the legislature wide latitude in the enactment of laws, and that it will only strike down a statute when there is a plain violation of the "constitutional requirement that each enactment be limited to a single subject which is briefly express in the title." State v. Lee, supra, 356 So. 2d at 282; Farabee v. Board of Trustees, 254 So. 2d 1 (Fla. 1971); Rouleau v. Avrach, 233 So. 2d 1 (Fla. 1969). Such "wide latitude" has been limited more recently, as such topics as "the criminal justice system", in Williams v. State, 459 So. 2d 319 (Fla. 5th DCA 1984), "comprehensive economic development", in Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991) and "environmental resources", in State v. Leavins, 599 So. 2d 1326 (Fla. 1st DCA 1992) have been determined to be too broad to be considered single subjects.

Common sense is the basis used to determine whether a law is violative of the Single Subject rule of the Florida Constitution. "The test for duplicity of subject is whether or not the provisions of the bill are designed to accomplish separate and disassociated object of legislative effort." State v. Thompson, 163 So. 270, 283 (Fla. 1935). As such, "common sense requires examining the act to determine if the provisions are fairly and naturally germane to the

subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the subject" Smith v. Department of Insurance, 507 So. 2d 1080, 1087 (Fla. 1987).

On at least three occasions in recent years, this Court has reviewed the meaning of the single subject provision, in dealing with criminal laws. In two of those cases, this Court has ruled that the Single Subject rule was violated by the legislature, while in one case, the challenge was rejected. Each of these cases establish the guidelines for analyzing the instant cause of action. The Respondent contends that upon analysis of those cases and comparison with the instant case, that the Single Subject rule was violated, that the Second District's ruling should be upheld, and that he should be remanded to the Trial Court to be re-sentenced in accord with the valid laws in effect at the time of his sentencing.

In Bunnell v. State, 453 So. 2d 808 (Fla. 1984), This Court reviewed the validity of Chapter 82-150, Laws of Florida, which addressed three substantive sections. The first section created the new offense of "Obstruction by False Information." Sections two and three amended portions of the statute dealing with membership of the "Florida Council on Criminal Justice", an advisory board, whose members were various officials involved with the criminal justice system. The Second District had previously upheld Chapter 82-150 and found that the law did not violate the Single Subject rule. State v. Bunnell, 447 So. 2d 228 (Fla. 2d DCA 1983), quashed, Bunnell, supra.

The Second District held that Chapter 82-150 did not violate the Single Subject rule because the sections of the law in question had a "natural and logical connection to the general subject and to each other." The Second District found that "it is readily apparent that the council (Florida Council on Criminal Justice) and laws relating to the council are embraced by the admittedly broad subject 'Criminal Justice System.'" id. at 231. This Court, upon review, found that Chapter 82-150 was invalid because it dealt with more than one subject. . . "the subject of section 1 has no cogent relationship with the subject of sections 2 and 3." Further, this Court stated that ". . . the object of section 1 is separate and disassociated from the object of sections 2 and 3." Bunnell v. State, 453 So. 2d 808, at 809 (Fla. 1984).

Likewise, in Johnson v. State, 616 So. 2d 1 (Fla. 1993), this Court found that Chapter 89-280, Laws of Florida, violated the Single Subject rule, again because it addressed two unrelated subjects, the habitual offender statute, and the licensing of private investigators as well as their authority to repossess personal property. The first three sections of Chapter 89-280, Laws of Florida, amended section 775.084, Florida Statutes, regarding habitual felony offenders, amended section 775.0842, Florida Statutes, regarding career criminal prosecutions, and amended section 775.0843, regarding policies for career criminal cases. On the other hand, sections four through eleven dealt with chapter 493, Florida Statutes, governing private investigation and patrol services, and repossession of motor vehicles and motorboats.

This Court agreed with the First District Court of Appeal when that court stated that "it is difficult to discern a logical or natural connection between career criminal sentencing and repossession of motor vehicles by private investigators." Id. at pg.4.

Finally, in Burch v. State, 558 So. 2d 1, (Fla. 1990), this Court upheld the constitutionality of Chapter 87-243, Laws of Florida, holding that this chapter did not violate the Single Subject rule. The Burch court upheld Chapter 87-243, Laws of Florida, because it was a comprehensive law in which all of the parts were arguably related to its overall objective of crime control.

From these three cases, the following guidelines appear to have been established. First, provisions in a session law will be considered as complying with the Single Subject rule if the sections have a cogent, logical, or natural connection or relation to each other. Second, the legislature will be given some latitude to enact a broad law, as long as it is intended to be a comprehensive approach to a specific problem facing the citizens of the State of Florida. Third, artificial connection of separate subjects by use of broad terms will not be allowed. As Justice Grimes stated in his concurring opinion to Johnson:

In Jamison v. State and McCall v. State, (citations omitted), the court relied upon this Court's decision in Burch [citation omitted] in concluding that chapter 89-280 did not violate the single subject rule. As the author of the Burch opinion, I find that case to be substantially different. The Burch legislation was upheld because it was a comprehensive law in which all of the parts were at least arguably related to its overall

objective of crime control. Here, however, chapter 89-280 is directed only to two subjects -- habitual offenders and repossession of motor vehicles and motor boats -- which have no relationship to each other whatsoever. Thus, I conclude that this case is controlled by the principle of Bunnell [citation omitted] rather than Burch.

Id. at pg. 5 (Grimes, J., concurring).

The legislation that established the Gort Act is comprised of ten sections. The first is the title. Section two created and defined a new category of offender for sentencing purposes, the violent career criminal, while also adding aggravated stalking to the list of those offenses that are qualifying offenses for sentencing as an habitual violent felony offender. Sections three through seven dealt with the sentencing of, legislative findings regarding, enforcement policies concerning and the prohibitions against the possession of firearms of the newly created classification of violent career criminals.

The Respondent contends that the remaining sections in Chapter 95-182, Laws of Florida, deal with different subjects, which bear no cogent, logical or natural connection between the remaining sections and the sentencing of violent career criminals. Section eight amended the statute providing for restitution for the misdemeanor offense of violating a domestic violence injunction. While restitution may be a condition of sentencing, restitution is a different subject. Of a more troublesome note, section nine of the Gort Act establishes a civil, rather than criminal, remedy, amending the negligence statute providing for a private cause of action for domestic violence. Likewise, section ten deals with a

variety of subjects, including amending the assault and battery statute; providing that only a law enforcement officer may serve a domestic violence injunction (again a civil action); requiring the reporting of the injunction to law enforcement agencies (again civil) and restoring criminal contempt for a violation of a domestic violence injunction.

In the instant case, the Second District reversed based on Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), as a citation reversal. Thompson is concurrently before this Court with the instant cause of action, although not consolidated. In Thompson, the Second District found that sections one through seven of the Gort Act create and define violent career criminal sentencing, whereas sections eight through ten deal with basically civil remedies for domestic violence. That Court set forth a legislative history of the Gort Act noting that sections eight through ten began as three different House bills that died in committee. When those three house bills were added to the original Senate bill creating violent career criminal sentencing, the three House bills became law. The Second District found that it "is in circumstances such as these that problems with the single subject rule are most likely to occur." The Second District found that nothing in sections two through seven address domestic violence and that nothing in sections eight through ten address career criminals. The Second District could find no cogent, logical or natural connection between the competing sections of the Gort Act. The

Respondent agrees, and would urge this Court to declare the Gort Act invalid as violative of the Single Subject rule.

The Respondent respectfully disagrees with the contention of the Petitioner that the Second District's characterization of the Gort Act is erroneous. While there is a definition of "domestic violence" that encompasses a number of crimes, the sections in the Gort Act dealing with domestic violence provide for changes in the laws concerning creation of a purely civil remedy in the negligence statute for domestic violence, concerning the service and reporting of a civil injunction against further domestic violence and the duties of the clerk and various other agencies when dealing with these civil laws. Again, the Respondent contends that there is no cogent, logical or natural connection or relation between these civil remedies and the sentencing of violent career criminals. The Second District is entirely correct in holding that problems with the Single Subject rule are most likely to occur when laws of such divergent nature are passed in the manner that the Gort Act was passed.

In addition, the Respondent respectfully suggests that the Petitioner is trying to oversimplify the process that occurred in the legislature, by stating that aggravated stalking is a form of domestic violence. The Petitioner fails to recognize that aggravated stalking can be perpetrated upon a victim, by an individual who is neither a family nor household member, nor one who is or was residing in the same single dwelling unit, as defined in Sec. 741.28(1), Florida Statutes (1997). Such actions can be

perpetrated by such a family or household member, but can also be perpetrated by complete strangers. As such, its contention that aggravated stalking is "domestic violence" and that therefore sections two through seven bear a cogent, logical or natural to sections eight through ten is not accurate and is rendered inconsistent. As such, the Petitioner's contention that the major connection between sections two through seven and sections seven through ten is incorrect.

SUMMARY

There is an insufficient or even no cogent, logical nor natural connection among sections of the Gort Act. The first part pertains to sentencing for violent career criminals, while the second part pertains to civil remedies to those aggrieved and the duties and reporting of various agencies in civil situations. Any alleged connections between the two parts of the Gort Act are tenuous, at best.

CONCLUSION

Based on the foregoing, the Respondent respectfully submits that the decision of the Second District Court of Appeal, reported as Jones v. State, 23 Fla. L. Weekly D1266 (Fla. 2d DCA May 22, 1998) should be approved, and that the Respondent be remanded for re-sentencing in accordance with the valid laws in effect at the time of his sentencing.

Respectfully submitted,

Thomas E. Cunningham, Jr., Esq.
Pro bono attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER BRIEF OF RESPONDENT ON THE MERITS has been furnished by U.S. Mail to Robert A. Butterworth, Attorney General, c/o Edward C. Hill, Jr. Assistant Attorney General, Office of the Attorney General, The Capitol, Tallahassee, Fl 32399-1050 this ____ day of September, 1998.

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