

IN THE SUPREME COURT OF FLORIDA

CASE NO. 93, 145
DCA No. 97-597

JOHN WESLEY LINDER

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

027
FILED

SID J. WHITE

SEP 8 1998

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The Respondent, the State of Florida, was the prosecution in the trial court and the Appellee in the Third District Court of Appeal, and the Petitioner, John Wesley Linder, was the Defendant and the Appellant, respectively. In this brief, the parties will be referred to as the Defendant and the State.

STATEMENT OF THE CASE AND FACTS

The State accepts the Defendant's statement of the case and facts.

QUESTION PRESENTED

I.

**WHETHER THE AMENDMENTS TO SECTION 775.084,
FLORIDA STATUTES (1995) CONTAINED IN CHAPTER
95-182, LAWS OF FLORIDA ARE UNCONSTITUTIONAL
IN VIOLATION OF THE SINGLE SUBJECT RULE OF THE
FLORIDA CONSTITUTION?**

SUMMARY OF THE ARGUMENT

The provisions of Chapter 95-182, Laws of Florida, do not violate the single subject requirement of the Florida Constitution.

This precise issue is presently pending in this Court in State v. Thompson, Case No. 92,831, and the State fully adopts the respondent's brief on the merits filed in this Court in Thompson for the answer brief in this case.

ARGUMENT

I.

THE GORT ACT VIOLENT CAREER CRIMINAL PROVISIONS OF §775.087(4)(c) ARE NOT UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-187, DID NOT VIOLATE THE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, BOTH THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL AND THE 40 YEAR SENTENCE ORDERED BY THE TRIAL COURT PURSUANT TO THE GORT ACT MUST BE AFFIRMED. (RESTATED)

The single subject requirement of article III, section 6 of the Florida Constitution simply requires that there be "a logical or natural connection" between the various portions of the legislative enactment. State v. Johnson, 616 So. 2d 1, 4 (Fla. 1993) (approving the lower court's pronouncement in Johnson v. State, 589 So. 2d 1370 (Fla. 1st DCA 1991)). The single subject requirement is satisfied if a "reasonable explanation exists as to why the legislature chose to join the two subjects within the same legislative act. . . ." Id. at 4. Similarly, the Supreme Court has

spoken of the need for a "cogent relationship" between the various sections of the enactment. Bunnell v. State, 453 So. 2d 808, 809 (Fla. 1984). Furthermore, ". . . wide latitude must be accorded the legislature in the enactment of laws" and a court should "strike down a statute only when there is a plain violation of the constitutional requirement that each enactment be limited to a single subject. . . ." State v. Lee, 356 So. 2d 276, 282 (Fla. 1978). "The act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection." Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991).

A careful reading of the provisions of Chapter 95-182, Laws of Florida, compels the conclusion that the requisite natural or logical connection between the various sections exists. Sections 1 through 7 of Chapter 95-182 deal with violent career criminal legislation, with sections 2 through 7 specifically being designated the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995". The heart of this legislation is contained in section 775.084(1)(c), Florida Statutes, which is set forth in section 2 of Chapter 95-182. Section 775.084(1)(c) defines the phrase "violent career criminal."

The interrelated nature of the different provisions of 95-182

presents a situation which is highly analogous to that which was addressed by the Supreme Court in Burch v. State, 558 So. 2d 1 (Fla. 1990). Chapter 87-243, Laws of Florida, dealt with many disparate areas of criminal law, which fell into three broad areas: 1) comprehensive criminal regulations and procedures; 2) money laundering; and 3) safe neighborhoods. 558 So. 2d at 3. Those provisions were deemed to all bear a "logical relationship to the single subject of controlling crime, whether by providing for imprisonment or through taking away the profits of crime and promoting education and safe neighborhoods." Id. The Court noted that "[t]here was nothing in this act to suggest the presence of log rolling, which is the evil that article III, section 6, is intended to prevent. In fact, it would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation." Id. If anything, the connection between the provisions of the act in the instant case is considerably clearer, without having to resort to such broad links as the regulation of crime.

Yet another case providing a strong analogy is Smith v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987), where numerous, disparate, legislative provisions regarding tort reform and insurance law were deemed not to violate the single subject requirement of the Constitution. The Court applied a common sense

test, rejecting claims that laws dealing with both tort and contractual causes of action could not be addressed in the same legislation.

By contrast, in one of the cases in which the single subject requirement was held to have been violated, Johnson, supra, there was no plausibly cogent connection between career criminal sentencing and the licensing laws for private investigators who repossess motor vehicles. 616 So. 2d at 4. Likewise, in Bunnell, supra, there was no connection between the creation of a new substantive offense - obstruction of law enforcement by false information - and the creation of the Florida Council on Criminal Justice. 453 So. 2d at 809.

The instant case must be governed by those cases in which a reasonable connection has been found, with deference given to the legislature. The common sense test applied by the Supreme Court in other cases is clearly satisfied in this case.

The respondent has reviewed the arguments made by the State in the Thompson case and has determined they are fully applicable to this case. In the interest of judicial economy, the State therefore fully adopts the arguments made in the respondent's initial brief filed in this Court in State v. Thompson for the

answer brief in this case.

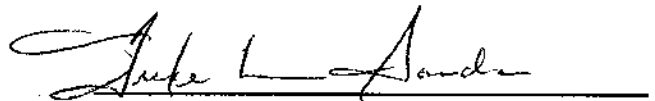
CONCLUSION

Based upon the foregoing arguments and cited authorities, the State respectfully requests that the decision of the defendant's judgment and sentence be affirmed.

Respectfully Submitted,

ROBERT A. BUTTERWORTH

Attorney General

A handwritten signature in cursive script, appearing to read "Fredericka Sands", is written over a horizontal line.

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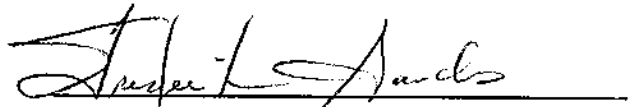
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON THE MERITS was mailed this 5th day of September 1998, to Marti Rothenberg, Assistant Public Defender, attorney for the Petitioner, 1320 N.W. 14th Street, Miami, Florida 33125.

A handwritten signature in cursive script, appearing to read "Fredericka Sands", is written over a horizontal line.

FREDERICKA SANDS
Assistant Attorney General