

IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,437

**PERCY LEE HOLLOWAY,**

Petitioner,

-vs-

**THE STATE OF FLORIDA,**

Respondent.

**FILED**

SID J. WHITE

**AUG 18 1998**

CLERK, SUPREME COURT

By JRS  
Chief Deputy Clerk

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**ON PETITION FOR DISCRETIONARY REVIEW**

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**BRIEF OF PETITIONER ON THE MERITS**

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## INTRODUCTION

This is the initial brief on the merits of petitioner/defendant Percy Lee Holloway on conflict jurisdiction from the Third District Court of Appeal.

Citations to the record are abbreviated as follows:

(R.) - Clerk's Record on Appeal

(TR.) - Transcript of Proceedings

(A.) - Appendix with Third District's decision

## STATEMENT OF THE CASE AND FACTS

The petitioner/defendant was charged with burglary to an unoccupied conveyance (R. 2). Specifically, Mr. Holloway was accused of entering parked ice-cream truck on September 2, 1996, and stealing ice-cream, bags of potato chips, a box of soda, assorted candy, and a pair of sunglasses (TR. 186, 190-192).

A jury trial commenced on May 5, 1997 (TR. 1). Mr. Holloway was convicted of burglary to an ice-cream truck as charged (R. 23-24). A sentencing hearing took place on June 23, 1997 (R. 31). The state asked that Mr. Holloway be sentenced under the violent career criminal statute, the "Gort" statute, §775.084(4)(c) (R. 8, 42). Defense counsel filed a motion asserting that Mr. Holloway could not be sentenced under the violent career criminal statute because this law violated the single subject rule of the Florida Constitution (R. 34-35). Defense counsel's motion was denied (R.

39). Percy Holloway was sentenced to serve 15 years in state prison as a violent career criminal, with a 10 year minimum mandatory term (R. 28-29).

The defendant appealed his conviction and sentence and on June 10, 1998, the Third District Court of Appeal affirmed his conviction but certified direct conflict with the Second District Court of Appeal on the violent career criminal sentencing issue.

(A. 1-2)

## SUMMARY OF ARGUMENT

The Gort Act violent career criminal provisions of §775.084(4)(c), Fla. Stats. (1995), are unconstitutional because the session law that created it, chapter 95-182, Laws of Florida, violates the single subject provisions of the Florida Constitution because it addresses two distinct subjects: career criminal sentencing and civil remedies for victims of domestic violence. Since these two subjects are not reasonably related, chapter 95-182 addresses more than one subject and is therefore invalid.

Consequently, defendants whose offenses were committed between the date the Gort Act took effect on October 1, 1995, and May 24, 1997, when the legislature reenacted the Gort Act, are entitled to relief from such violent career criminal sentencing. Since the defendant in the present case committed the crime on September 2, 1996, during this window period, he is entitled to relief from his violent career criminal sentence. The decision of the Third District must be quashed, the defendant's sentence must be reversed, and this case remanded to the trial court for resentencing.

This precise issue is presently pending in this Court in State v. Thompson, Case No: 92,831, and the defendant fully adopts the defense brief filed in this Court in Thompson for the initial brief in this case.

ARGUMENT

THE GORT ACT VIOLENT CAREER CRIMINAL PROVISIONS OF §775.084(4)(c) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-187, VIOLATED THE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S 15 YEAR SENTENCE PURSUANT TO THE GORT ACT REVERSED FOR RESENTENCING.

The issue before this Court is whether the Gort Act, creating the violent career criminal sentencing enhancement in §775.084(4)(c), Florida Statutes (1995), is unconstitutional on the ground that the session law that enacted it, chapter 95-182, Laws of Florida, violated the single subject provision of the state constitution, so that the defendant's sentence as a violent career criminal pursuant to that act is illegal.

This precise issue is presently pending before this Court in State v. Thompson, Case No: 92,831. In Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), the Second District Court of Appeal held that chapter 95-182 was unconstitutional for violation of the single subject requirement of article III, section 6, of the Florida Constitution, and invalidated a violent career criminal sentence under the Gort Act on that basis. The effect of that ruling is to invalidate a violent career criminal disposition for crimes committed between the time the Gort Act was enacted on October 1, 1995, to the legislative reenactment of the Gort Act on May 24, 1997. As noted, the Thompson case is now pending before

this Court on this issue.

In the present case, the defendant committed the crime of burglarizing an unoccupied parked ice-cream truck on September 2, 1996 (R. 2), and thus he came within the window period during which the Gort Act was found unconstitutional in Thompson. The defendant was found to be a violent career criminal and was sentenced pursuant to the Gort Act to an enhanced sentence of 15 years in prison with a 10 year mandatory minimum before release. (R. 28-29).

In Linder v. State, 711 So. 2d 1340 (Fla. 3d DCA 1998), the Third District acknowledged that a defendant would be entitled to sentencing relief on this issue if his case were proceeding in the Second District. The Third District also acknowledged in Linder that it had previously rejected this identical single subject challenge to chapter 95-182 in Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997). However, in view of the Second District's later contrary decision in Thompson, the Third District certified conflict to this Court both in Linder and in the present case on the issue of whether the violent career criminal sentencing statute, §775.084(4)(c), Florida Statutes (1995), is unconstitutional in that it violates the single subject provision of the state constitution.

The defendant has reviewed the arguments made by the defense in the Thompson case and has determined they are fully applicable



to this case. In the interest of judicial economy, the defendant therefore fully adopts the arguments made in the defense answer brief filed in this Court in State v. Thompson for the initial brief in this case.

In conclusion, chapter 95-182 creating the Gort Act violates the single subject provision of the Florida Constitution. Since the crime the defendant committed in this case occurred during the window period during which the Gort Act was unconstitutional, the defendant's sentencing as a violent career criminal under the Gort Act was illegal and his enhanced violent career criminal sentence of 15 years in prison must be reversed.

**CONCLUSION**

Based upon the foregoing, the defendant requests that this Court quash the decision of the Third District and reverse his violent career criminal sentence with directions to remand the case to the lower court for a new sentencing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed to the Office of the Attorney General, Criminal Division, 444 Brickell Ave., #950, Miami, Florida 33131, this 17th day of August, 1998.

By: *Maria E. Lauredo*  
MARIA E. LAUREDO  
Assistant Public Defender

A P P E N D I X

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 1998

PERCY LEE HOLLOWAY,	**	
Appellant,	**	CASE NO. 97-2208
vs.	**	LOWER
THE STATE OF FLORIDA,	**	TRIBUNAL NO. 96-28199
Appellee.	**	

Opinion filed June 10, 1998.

An Appeal from the Circuit Court for Dade County, Jeffrey Rosinek, Judge.

Bennett H. Brummer, Public Defender, and Maria E. Lauredo, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Keith S. Kromash, Assistant Attorney General, for appellee.

Before NESBITT, JORGENSON, and GERSTEN, JJ.

PER CURIAM.

Defendant appeals from a judgment of conviction for burglary of an unoccupied conveyance, and a fifteen-year sentence entered pursuant to Chapter 95-182, Laws of Florida, known as the "Evelyn Gort and All Fallen Officers Career Criminal Act of 1995." We

affirm under the controlling authority of Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997). However, we certify conflict with Thompson v. State, 23 Fla. L. Weekly D713 (Fla. 2d DCA March 13, 1998).

AFFIRMED.