

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. 93,526

**MICHAEL DUPREE**

Petitioner,

-vs-

**HARRY K. SINGLETARY, SECRETARY,  
FLORIDA DEPARTMENT OF CORRECTIONS,**

Respondent.

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**ON PETITION FOR DISCRETIONARY REVIEW**

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**BRIEF OF PETITIONER ON MERITS**

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TABLE OF CONTENTS

	PAGE(s)
INTRODUCTION.....	1
STATEMENT OF THE CASE AND FACTS.....	2
SUMMARY OF ARGUMENT.....	4
ARGUMENT	
<b>THE THIRD DISTRICT COURT OF APPEAL'S     DECISION AFFIRMING MICHAEL DUPREE'S     SENTENCE AS A VIOLENT CAREER CRIMINAL     IS ERRONEOUS, SINCE SECTION 775.084, AS     ADDED BY CHAPTER 95-182 OF THE LAW OF     FLORIDA IS UNCONSTITUTIONAL BECAUSE     CHAPTER 95-182 CLEARLY VIOLATES THE     SINGLE SUBJECT PROVISION OF THE     FLORIDA CONSTITUTION.....</b>	5
CONCLUSION.....	10
CERTIFICATE OF SERVICE.....	11
CERTIFICATE OF TYPE SIZE.....	11

## TABLE OF CITATIONS

<b>CASES</b>	<b>PAGE(s)</b>
<u>Bunnell v. State</u> , 453 So.2d 808 (Fla. 1984).....	6
<u>Higgs v. State</u> , 695 So.2d 872 (Fla. 3d DCA 1997).....	3,9
<u>Martinez v. Scanlan</u> , 582 So.2d 1167 (Fla. 1991).....	9
<u>Santoo v. State</u> , 380 So.2d 1284 (Fla. 1980).....	6
<u>State v. Johnson</u> , 616 So.2d 1 (Fla. 1993).....	6,8,9
<u>Thompson v. State</u> , 708 So.2d 315 (Fla. 2d DCA 1998).....	3,4,8,9
 <b>OTHER AUTHORITIES</b>	
Article III, sec.6 of the Florida Constitution.....	3,4,5,9
Chapter 95-182 of the Laws of Florida.....	2,4,6,8
Fla.stat.sec. 775.084.....	2,5,6
Fla.stat.sec. 741.31.....	8
House Bill 1251.....	7
House Bill 1789.....	7
House Bill 2513 .....	8
Senate Bill 168.....	7,8

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**BRIEF OF PETITIONER ON THE MERITS**

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**INTRODUCTION**

This case is here on a petition for discretionary review from a decision of the Third District Court of Appeal, which that court certified to be in direct conflict with a decision from the Second District Court of Appeal. In this brief, the symbol "R." will indicate the record on appeal and "A." will indicate the appendix to this brief.

## STATEMENT OF THE CASE AND FACTS

Michael Dupree was charged by information on October 31, 1996 with burglary of an unoccupied vehicle (Fla. Stat. Sec. 810.02(3)), and with a misdemeanor count of resisting an officer without violence (Fla. Stat. Sec. 843.02).(R.1-4) The State filed a notice to seek an enhanced penalty pursuant to Fla.stat.sec. 775.084.(R.10). After a jury trial, Michael Dupree was convicted on both counts of the information.(R.56,57).

Prior to sentencing, counsel for Dupree filed a motion to strike the state's notice of enhancement, and to declare Chapter 95-182 of the Laws of Florida unconstitutional.(R.140-143). The Court denied the defense motion. The Court sentenced Michael Dupree to a term of imprisonment of fifteen (15) years, but, after service of thirteen (13) years, the Court agreed that the balance of his sentence could be suspended and the remaining two(2) years would be served on "drug offender probation".(R.149-151) The Court further adjudged Mr. Dupree a *violent career criminal* pursuant to Fla.stat.sec. 775.084, and imposed a minimum mandatory term of ten (10) years imprisonment.(R.149-151).

Dupree appealed his conviction and sentence, particularly raising the issue that his sentence as a violent career criminal under Fla.stat.sec. 775.084 should be vacated, and he be re-sentenced, since Chapter 95-182 of the Laws of Florida is

unconstitutional because it violates the “single subject rule” of Article III, sec.6 of the Florida Constitution.

In an opinion filed June 24, 1998, the Third District Court of Appeal affirmed Mr. Dupree’s convictions and sentence, and specifically found that his sentence as a violent career criminal was proper.(R.202-203) As support for its decision, the Third District Court of Appeal cited its decision in Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997).

The Third District Court of Appeal certified conflict with the Second District’s opinion in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998)

## SUMMARY OF THE ARGUMENT

The provisions of Florida Statutes section 775.084 pertaining to violent career criminals was added by Chapter 95-182 of the Laws of Florida. However, an examination of this Chapter of the Florida Laws reveals that it violates the “single subject rule” of Article III section 6 of the Florida Constitution.

The Third District Court of Appeal has erroneously followed the decision set forth by the Court in , holding that there is a “reasonable and rational relationship” between each of the sections of Chapter 95-182, thus meeting the constitutional requirement of the single subject rule.

However, the approach and finding of the Second District Court of Appeal in Thompson v. State is correct. The Second District analyzed the legislative history of Chapter 95-182, and correctly recognized that Chapter of the Laws of Florida clearly “embraces criminal and civil provisions” having no natural or logical connection to one other, thus violating Article III, section 6 of the Florida Constitution.

This Court should resolve the conflict between the Second and Third District Court's of Appeal by adopting the analysis and conclusions of the Second District that, indeed, Chapter 95-182 is unconstitutional as violative of the single subject act of the Florida constitution.

## ARGUMENT

**THE THIRD DISTRICT COURT OF APPEAL'S DECISION AFFIRMING MICHAEL DUPREE'S SENTENCE AS A VIOLENT CAREER CRIMINAL IS ERRONEOUS, SINCE SECTION 775.084, AS ADDED BY CHAPTER 95-182 OF THE LAW OF FLORIDA IS UNCONSTITUTIONAL BECAUSE CHAPTER 95-182 CLEARLY VIOLATES THE SINGLE SUBJECT PROVISION OF THE FLORIDA CONSTITUTION.**

Michael Dupree was erroneously sentenced as a violent career criminal.

Florida Statute section 775.084. His prior felony convictions include a lewd and lascivious assault (F90-34502), an attempted burglary (F91-849), grand theft auto (F93-8201), possession of a firearm by a convicted felon and carrying a concealed firearm (F93-16627), resisting an officer with violence and threatening a public servant (F94-611) and aggravated battery with a deadly weapon, to wit, a Menu Stand (F95-13715).

The Constitution provides at Article III section 6 that "Every law shall embrace but one subject and matter properly connected therewith and the subject shall be briefly expressed in the title..." Also referred to as the "single subject law", a Constitution violation of this single subject rule is found where the provisions are separate and distinct, and where the provisions of the bill are



designed to accomplish separate and disassociated objects of the legislative effort. State v. Johnson, 616 So.2d 1 (Fla. 1993); Bunnell v. State, 453 So.2d 808 (Fla. 1984). See also Santoo v. State, 380 So.2d 1284 (Fla. 1980). In both Johnson and Bunnell this Court held that the law violated the single subject provision of the Constitution because they addressed two separate subjects. In Johnson the two distinct subjects were the habitual offender statute and the licensing of private investigators and their authority to repossess property. In Bunnell the two distinct subjects created by the session law were the criminal offense of obstruction and made amendments addressing membership of the Florida Council on Criminal Justice.

Michael Dupree was sentenced as a violent career criminal pursuant to Florida Statute section 775.084. The provisions of section 775.084 of the Florida Statutes pertaining to “violent career criminals” were added by Chapter 95-182 of the Laws of Florida. Chapter 775 of the Florida Statutes appears specifically as Title XLVI of the Statutes, entitled “crimes”, which includes “definitions; general penalties; and registration of criminals”. The provisions in Chapter 95-182 appearing as sections 1 through 7 of the Act, also known as the “Gort Act”, set forth and define the violent career criminal sentencing category and further provides sentencing procedures and penalties. Specifically, these sections provide

for enhanced sentencing and mandatory minimum term of imprisonment for violent career criminals sentenced on primary offenses committed on or after October 1, 1995. The legislative history of Chapter 95-182 shows that sections 1 through 7 was initiated through Senate Bill no. 168 (the Gort Act) which again deals with the violent career criminal, certain qualifying offenses, and sentencing provisions. Importantly, this Senate Bill specifically was related to “Violent Career Criminals”.

To the contrary, Sections 8 through 10 of Chapter 95-182 began as three separate House Bills from the House of Representatives. All three bills related specifically to “Domestic Violence”, specifically affecting Chapter 741 of the Florida Statutes.<sup>1</sup> House Bill 1251, dealt with services for victims of domestic violence, access to shelters and counseling services for these victims, and the procedure for obtaining injunctions for protection against domestic violence, and the duties of the clerk and sheriff in processing such injunctions. Proposed House bill 1789, which was filed on behalf of the Governor’s Task Force on Domestic Violence, presented a “laundry list” of recommendations by the Task Force to enhance the already existing domestic violence laws, including increasing the duties of the Clerk, providing limited immunity for police officers,

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<sup>1</sup>Chapter 741 of the Florida Statutes, which is title XLIII, is entitled “domestic relations”, addressing the category “husband and wife.”

broadening the definition of domestic violence, providing criminal sanctions for a violation of an injunction, and a variety of other “civil-like” recommendations. Finally, House Bill 2513, which amends section 741.31 of the Florida Statutes, was proposed to provide civil remedies to victims of violations of an injunction for protection against domestic violence caused by persons violating the injunction. Notably, none of these three bills passed the Committee. However, the joint substance of these three bills were included and incorporated into Senate Bill 168 (and other unrelated Senate Bills), which, indeed, eventually became the law as we know it now. Unfortunately, in joining the unrelated domestic violence legislation with the violent career criminal legislation in Senate Bill 168, which eventually became the law, the Legislature has connected civil and criminal provisions that have no “natural or logical connection.” State v. Johnson, 616 So.2d 1 (Fla. 1993)

The joinder of these two distinct subjects (domestic violence and violent career criminal) violates the “single subject law” of Article III, section 6 of the Florida Constitution.

Recently, the Second District Court of Appeal in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998) correctly recognized that Chapter 95-182 of the Laws of Florida is unconstitutional, since it combines these two distinct subjects, harsh sentencing for violent career criminals and civil remedies for victims of


domestic violence, into one act. The Thompson Court noted the conflict with the Third District Court of Appeal's earlier decision in Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997). The Thompson set forth the same analysis of Chapter 95-182 and the legislative history of the Act as repeated in this petition. The Thompson Court correctly engaged in this thorough analysis of the Legislative History of the Act, unlike the Third District in Higgs. Finally, the Second District in Thompson recognized that the defendant's sentence was affected particularly because she was sentenced for an offense in accordance with the invalid laws in affect at the time of her sentencing. Id. at 317, citing to Johnson at 5, fn.1. Notably, as the Petition contends, Chapter 95-182 permits an improper "logrolling" of two dissimilar subjects, which is precisely what the Constitution prohibits via Article III section 6. See Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991).

## CONCLUSION

The petition urges this Court to adopt the analysis and reasoning set forth in Thompson, and recognize the Constitutional violation that has occurred with the enactment of Florida Statute section 775.084 through Chapter 95-182 of the Laws of Florida. This Chapter is unconstitutional as violative of the single subject rule of the Florida Constitution. Michael Dupree's enhanced sentenced as a habitual career criminal cannot stand.

RESPECTFULLY SUBMITTED,

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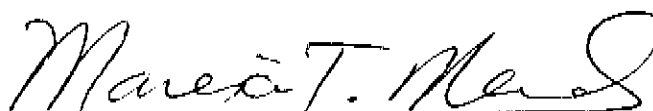
By   
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing brief was delivered by mail to Wendy Benner-Leon, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, 444 Brickell Avenue, Suite 950, Miami, Florida 33131 this 24th day of August, 1998.

### **CERTIFICATE OF TYPE SIZE**

I hereby certify that this brief is printed in 14 point Times New Roman.

A handwritten signature in cursive script, reading "Marisa T. Mendez". The signature is written in black ink and is positioned above a horizontal line.

MARISA TINKLER MENDEZ, ESQ.

# APPENDIX

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, 1998

MICHAEL DUPREE,

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Appellant,

\*\*

vs.

\*\*

CASE NO. 97-3183

THE STATE OF FLORIDA,

\*\*

LOWER

Appellee.

\*\*

TRIBUNAL NO. 96-32582

Opinion filed June 24, 1998.

An Appeal from the Circuit Court of Dade County, Stanford  
Blake, Judge.

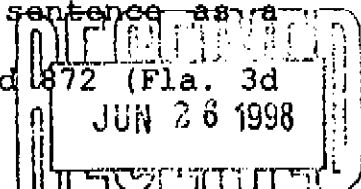
Bennett H. Brummer, Public Defender, and Marisa Tinkler  
Mendez, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Wendy Benner-  
León, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and GODERICH and SORONDO, JJ.

PER CURIAM.

We affirm the defendant's convictions finding no reversible  
error. Additionally, we affirm the defendant's sentence as a  
violent career criminal, Higgs v. State, 695 So. 2d 872 (Fla. 3d





DCA 1997), and certify conflict with the Second District's opinion in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998).

Affirmed; conflict certified.