

Supreme Court of Florida

No. SC93719

BOOKER T. ELLIARD,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[March 23, 2000]

PER CURIAM.

We have for review Elliard v. State, 714 So. 2d 1218 (Fla. 3d DCA 1998), in which the Third District Court of Appeal affirmed Booker T. Elliard's violent career criminal sentence based on its prior decision in Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997). In so affirming, the Elliard court certified conflict with the Second District Court of Appeal's decision in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998). We have jurisdiction. See Art. V, § 3(b)(4), Fla. Const. Based on our decision in State v. Thompson, 25 Fla. L. Weekly S1 (Fla. Dec. 22,

1999), we quash the decision below and remand for resentencing in accordance with the valid laws in effect on February 28, 1996, the date on which Elliard committed the underlying offense in this case.¹ See Thompson, 25 Fla. L. Weekly at S3 (remanding for resentencing in accordance with the valid laws in effect at the time the defendant committed her offenses).

It is so ordered.

HARDING, C.J., and SHAW, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

WELLS, J., dissents.

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

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

Third District - Case No. 3D97-2402

(Dade County)

Bennet H. Brummer, Public Defender, and Louis Campbell, Assistant Public Defender, Eleventh Judicial Circuit, Miami, Florida,

¹ We note that Elliard has standing to raise a single subject rule challenge to chapter 95-182, Laws of Florida, even assuming the window period for raising such a challenge closed on October 1, 1996, as determined by the Fourth District Court of Appeal in Salters v. State, 731 So. 2d 826, 826 (Fla. 4th DCA), review granted, No. 95,663 (Fla. Dec. 3, 1999). Further, even though Elliard failed to raise a single subject rule challenge in the trial court, we find that such challenge may be properly addressed in this case for the first time on appeal. Cf. Heggs v. State, 25 Fla. L. Weekly S137, S138, S140 n.4 (Fla. Feb. 17, 2000); Nelson v. State, 24 Fla. L. Weekly S250, S251 (Fla. May 27, 1999), cert. denied, 120 S. Ct. 950 (2000); State v. Johnson, 616 So. 2d 1, 3-4 (Fla. 1993).

for Petitioner

Robert A. Butterworth, Attorney General, and Christine E. Zahralban, Assistant
Attorney General, Fort Lauderdale, Florida,

for Respondent