

IN THE SUPREME COURT OF FLORIDA

CURTIS LEON HEGGS, :
Appellant, :
vs. : Case No. 93,851
STATE OF FLORIDA, :
Appellee. :
_____ :

CERTIFIED QUESTION FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

INITIAL BRIEF OF APPELLANT ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

RICHARD J. SANDERS
Assistant Public Defender
FLORIDA BAR NUMBER O394701

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33831
(941) 534-4200

ATTORNEYS FOR APPELLANT

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STATEMENT OF THE CASE AND FACTS

This appeal is before this Court because the Second District Court of Appeal certified a question requiring immediate resolution by the Court due to its great effect on the proper administration of justice throughout the state. The question is whether the 1995 version of the sentencing guidelines is invalid because the session law that created those guidelines -- Chapter 95-184, Laws of Florida -- violates Article III, Section 6 of the state constitution because it embraces more than one subject.

There are two cases on appeal here. In both cases, CF95-5675 and CF95-6007, Appellant was charged with a single count of armed robbery. (RI-2-3, 5-6) Following a jury trial, he was convicted as charged in CF95-6007. [RI-39 (verdict); RI-41 (judgment)]. He was sentenced pursuant to the guidelines to eleven years imprisonment. (RI-53-56) The judgment was entered on September 4, 1996 (RI-41-42), and the sentence on November 1, 1996. (RI-53-56) In CF95-5675, Appellant pled guilty as charged on September 6, 1996 (RI-40, 44-46), and he was sentenced on November 1, 1996 to a concurrent term of eleven years imprisonment. (RI-49-52) Notice of appeal was filed in both cases on November 18, 1996. (RI-61) The judgments and sentences are reproduced in the appendix at A1-14.

In his appeal to the district court, Appellant raised only the issue currently before this Court. In its opinion certifying the question to this Court, the district court noted:

Heggs's challenge to chapter 95-184 presents an issue very similar to that raised in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), review granted, Case No. 92,831 (Fla. May 26, 1998). In Thompson, we held that chapter 95-182, which addressed violent career criminal sentencing, was unconstitutional because the enactment embraced civil and criminal provisions that had no "natural or logical connection." That chapter's objectionable civil provisions addressing domestic violence injunctions also appear in chapter 95-184, at issue here. As we pointed out in Thompson, these three provisions began as bills in the Florida House of Representatives, failed to pass, and later were engrafted onto several Senate Bills: SB 168, which became chapter 95-182 (the subject of Thompson); SB 172, which became chapter 95-184 (the subject of this case); and SB 2216, which became chapter 95-195.

Following our own precedent in Thompson, we believe that chapter 95-184 violates the single subject rule because it, too, embraces civil and criminal provisions that are not logically connected. The two subjects "are designed to accomplish separate and dissociated objects of legislative effort." 708 So. 2d at 317 [citation omitted]. Likewise, as in Thompson, here there is no legislative statement of intent to implement comprehensive legislation to solve a crisis. See Thompson, 708 So. 2d at 315.

Heggs v. State, 23 Fla. Law Weekly, D2053, 2054 (Fla. 2d DCA, Sept. 4, 1998).

A copy of the full opinion is reproduced at A15-19.

SUMMARY OF THE ARGUMENT

Issue - Appellant's sentences are illegal because he was sentenced under the 1995 guidelines, and those guidelines are invalid because chapter 95-184 violates the state constitutional single subject provision. Chapter 95-184 contains provisions on several unrelated subjects, including sentencing, substantive crimes, private civil damages claims by crime victims, and civil remedies for the protection of victims of domestic violence.

ARGUMENT

ISSUE

APPELLANT'S SENTENCES ARE ILLEGAL BECAUSE HE WAS SENTENCED UNDER THE 1995 GUIDELINES, AND THOSE GUIDELINES ARE INVALID BECAUSE THE SESSION LAW THAT CREATED THEM VIOLATES THE STATE CONSTITUTIONAL SINGLE SUBJECT REQUIREMENT.

Appellant's offenses occurred on October 24 and November 2, 1995¹. (RI-2,5) Thus, the 1995 version of the guidelines were used to calculate Appellant's guidelines score. Sec. 921.001(4)(b)2, Fla. Stat. (1995); Fla. R. Crim. P. 3.703(a) (1995 guidelines apply "to offenses committed on or after October 1, 1995"). Pursuant to those guidelines, Appellant's guidelines range was correctly calculated as being 83.2 to 138.7 months. (RI-57-58)

The 1994 guidelines (which were superseded on October 1, 1995, by the 1995 guidelines) would have yielded a significantly lower guidelines score for Appellant. The undersigned counsel calculates that Appellant's guidelines range under the 1994 guidelines would be 44.8 to 93.5 months. See sec. 921.0014, Fla. Stat. (1993); Fla. R. Crim. P. 3.990.

Appellant's sentences are unlawful because chapter 95-184 is invalid. Chapter 95-184 violates Article III, Section 6 of the

¹Appellant thus falls within the applicable "window period". See Thompson, supra, 708 So. 2d at 317, f.n. 1.

Florida Constitution because it does not contain only a single subject, but rather embraces several distinct subjects: criminal sentencing, substantive crimes, private civil damages claims by crime victims, and civil remedies available to victims of domestic violence.

Although Appellant did not raise this issue at trial, the issue is one of fundamental error. Johnson v. State, 616 So. 2d 1 (Fla. 1993).

I. THE SINGLE SUBJECT REQUIREMENT

Article III, Section 6 of the Florida Constitution provides:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

This provision is designed "to prevent 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 particular, 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.

State v. Canova, 94 So. 2d 181, 184 (Fla. 1957).

It has been said that "the subject of a law is that which is expressed in the title, . . . and may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection." State v. Lee, supra, 356 So. 2d at 282 (citation and internal quotes omitted). However, this statement cannot be read too literally. As will be discussed below, an enormously broad topic will not necessarily be considered a single subject merely because the legislature labels it so. Courts have some obligation to insure that legislative "subjects" do not become so abstract and amorphous that Article III, Section 6 is rendered nugatory. Thus, in recent cases (discussed below), such topics as "the criminal justice system" (Williams v. State, 459 So. 2d 319 (Fla. 5th DCA 1984)); "comprehensive economic development" (Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991)); and "environmental resources" (State v. Leavins, 599 So. 2d 1326 (Fla. 1st DCA 1992)) have been held to be too broad to be considered as single subjects. This, of course, is only common sense. If it were otherwise, the legislature could simply assert that the subject of a particular session law is something like "the public health, safety, and welfare" and then combine a wide variety of topics under this broad "subject".

"The test for duplicity of subject is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort." State v. Thompson,

163 So. 270, 283 (Fla. 1935). The test "is based on common sense [and it] 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) (citation and internal quotes omitted).

This Court has addressed the meaning of the single subject provision on several occasions in recent years. Three of those cases involved criminal laws: Bunnell v. State, 453 So. 2d 808 (Fla. 1984); Burch v. State, 558 So. 2d 1 (Fla. 1990); and Johnson v. State, 616 So. 2d 1 (Fla. 1993). Bunnell and Johnson held that the laws at issue violated the single subject provision; Burch rejected that challenge. These cases establish the framework for analysis in the present case; under that framework, chapter 95-184 is invalid.

A. Bunnell, Burch, and Johnson

In Bunnell, the Court considered the validity of Chapter 82-150, Laws of Florida. That chapter contained three substantive sections. Section one created a new offense of "obstruction by false information". Sections two and three made several amendments to sections 23.15-.154, Florida Statutes (1981). Those sections concerned the membership of the "Florida Council on Criminal

Justice", which, at the time, was an advisory board composed of various officials involved in the criminal justice system.

The Second District upheld chapter 82-150 against a single subject attack. State v. Bunnell, 447 So. 2d 228 (Fla. 2d DCA 1983), quashed, Bunnell, supra. That court found "the general subject of the act to be the `Criminal Justice System'". Id. at 230. The court then concluded that chapter 82-150 did not violate the single subject requirement because the sections of the law "have a natural and logical connection to the general subject and to each other":

The Florida Council on Criminal Justice is an executive branch advisory agency under the jurisdiction of the governor created to advise the governor, legislature, supreme court, and especially the Bureau of Criminal Justice Assistance in the performance of its Chapter 23 duties, as to the improvement of state law enforcement activities and the administration of criminal and juvenile justice systems....

Upon examination, it is readily apparent that the council and laws relating to the council are embraced by the admittedly broad subject "Criminal Justice System"....

Furthermore, it is clearly apparent that . . . the crime of obstruction of justice by giving false information, is also embraced within the same general subject impliedly set forth by the legislature....

Id. at 231 (citation and internal quotes omitted).

The Fifth District disagreed and held chapter 82-150 violated the single subject provision. Williams, supra. Although recognizing that provision should be "interpreted . . . liberally",

particularly when dealing with "very comprehensive law revisions", 459 So. 2d at 320, the court nonetheless found Chapter 82-150 to be invalid:

The bill in question in this case is not a comprehensive law or code type of statute. It is very simply a law that contains two different subjects or matters. One section creates a new crime and the other section amends the operation and membership of the Florida Criminal Justice Council. The general object of both may be to improve the criminal justice system, but that does not make them both related to the same subject matter.

The Bunnell court reasoned that although not expressed in the title, it could infer from the provisions of the bill, a general subject, the criminal justice system, which was germane to both sections. Even if that subject was expressed, for example, in a title reading "Bill to Improve Criminal Justice in Florida", we think this is the object and not the subject of the provisions. Further, approving such a general subject for a non-comprehensive law would write completely out of the constitution the anti-logrolling provision of article III, section 6.

. . . [T]he general objective of the legislative act should not serve as an umbrella subject for different substantive matters.

Id. at 321 (footnote omitted) (emphasis added).

Taking jurisdiction in Bunnell, this Court held that chapter 82-150 violated the single subject provision because "the subject of section 1 has no cogent relationship with the subject of sections 2 and 3 and . . . the object of section 1 is separate and disassociated from the object of sections 2 and 3." 453 So. 2d at 809.

In Burch, the Court upheld the validity of Chapter 87-243, Laws of Florida, against a single subject attack. The title to that law declared it was "an act relating to crime prevention and control" Its preamble provided as follows:

WHEREAS, Florida is facing a crisis of dramatic proportions due to a rapidly increasing crime rate, which crisis demands urgent and creative remedial action, and

WHEREAS, Florida's crime rate crisis affects, and is affected by, numerous social, educational, economic, demographic, and geographic factors, and

WHEREAS, the crime rate crisis throughout the state has ramifications which reach far beyond the confines of the traditional criminal justice system and cause deterioration and disintegration of businesses, schools, communities, and families, and

WHEREAS, the Joint Executive/Legislative Task Force on Drug Abuse and Prevention strongly recommends legislation to combat Florida's substance abuse and crime problems, and asserts that the crime rate crisis must be the highest priority of every department of government within the state whose functions touch upon the issue, so that a comprehensive battle can be waged against this most insidious enemy, and

WHEREAS, this crucial battle requires a major commitment of resources and a nonpartisan, nonpolitical, cohesive, well-planned approach, and

WHEREAS, it is imperative to utilize a proactive stance in order to provide comprehensive and systematic legislation to address Florida's crime rate crisis, focusing on crime prevention, throughout the social strata of the state, and

WHEREAS, in striving to eliminate the fragmentation, duplication, and poor planning which would doom this fight against crime, it is necessary to coordinate all efforts toward a unified attack on the common enemy, crime

Chapter 87-243 contained 76 sections. Section 1 asserted "This act may be cited as the `Crime Prevention and Control Act'". Section 76 contained the effective date. The remaining sections may be summarized as follows:

Sections 2-6 and 75 - amendments to the statutes outlawing narcotics.

Sections 7-8 - gave local authorities the power to regulate places where illegal narcotics are sold by declaring such places to be public nuisances.

Section 9 - created a new criminal offense of fraudulently defeating urine tests for illegal narcotics.

Sections 10-11 - strengthened the authority of school administrators to deal with narcotics use by students.

Section 12 - provided for drivers' license suspension for convictions of illegal narcotics use.

Sections 13-19 - amended statutes regarding education and discipline for illegal narcotics use in schools.

Sections 20-23 and 28-29 - strengthened forfeiture laws regarding vehicles and airplanes.

Sections 24-27 - strengthened statutes regarding accidents causing injury or property damage while operating boats.

Sections 30-38 - created offense of money laundering.

Section 39 - created offense of planting hoax bomb.

Sections 40-41 - strengthened statutes regarding pawnbrokers and stolen property.

Sections 42-43 - redefined entrapment.

Section 44 - amended definition of burglary.

Section 45 - amended definition of witness tampering.

Section 46 - amended statute dealing with state's right to appeal in criminal cases.

Section 47 - amended statute dealing with imposition of costs on convicted criminal defendants.

Section 48 - amended definition of bookmaking.

Section 49 - created offense of operating a chop shop.

Sections 50-54 - provided for information gathering and training regarding crime prevention.

Sections 55-74 - provided for local government and neighborhood involvement in crime prevention.

Quoting at length from the preamble to chapter 87-243, this Court held that law did not violate the single subject provision, as follows:

To accomplish this purpose [set out in the preamble], chapter 87-243 deals with three basic areas: (1) comprehensive criminal regulations and procedures, (2) money laundering,

and (3) safe neighborhoods. Each of these areas 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. The fact that several different statutes are amended does not mean that more than one subject is involved. There is 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.

558 So. 2d at 2-3.

The Court further noted that "the subject matter of chapter 87-243 is not as diverse as that contained in the legislation approved in State v. Lee, [supra,] Chenoweth [v. Kemp, 396 So. 2d 1122 (Fla. 1981)] and Smith, [supra]." Id. at 2. These three cases will be discussed further below. The Court distinguished Bunnell:

In Bunnell, this Court addressed chapter 82-150, Laws of Florida, which contained two separate topics: the creation of a statute prohibiting the obstruction of justice by false information and the reduction in the membership of Florida Criminal Justice Council. The relationship between these two subjects was so tenuous that this Court concluded that the single-subject provision of the constitution had been violated. Unlike Bunnell, chapter 87-243 is a comprehensive law in which all of its parts are directed toward meeting the crisis of increased crime.

Id. at 3 (emphasis added).

Burch was a 4-3 decision. The three dissenters asserted:

The challenged act's title embraces eight pages of description. It contains seventy-six sections, including three separate titles (Crime Prevention and Control Act; Money Laundering Control Act; Safe Neighborhoods Act), and provisions on the following unrelated subjects: drug-abuse crimes, drug education, vehicle registration, vessel-operation crimes, money laundering, hoax bombs, pawn brokers, entrapment, attempted burglary, witness tampering, appeal by the state, judgment costs, chop shops, crime-prevention studies, and safe-neighborhood programs. The common thread that permeates the fabric of the legislation is crime prevention. However, an act in violation of the single-subject provision of the constitution cannot be saved or pass constitutional muster by virtue of the fact that improvement of the criminal justice system is the general object of the law -- it is the subject matter which is our focus. [Citations omitted]. . . .

* * *

[T]he matters included in an act must bear a logical and natural connection, and must be germane to one another. In my view, it will not suffice to say all of the act's provisions deal with crime prevention or control. By upholding the constitutionality of the act before us, the single-subject requirement of the constitution is rendered meaningless.

As noted in Bunnell [citation omitted], the constitution requires a "cogent relationship" among sections of an act in order to avoid unconstitutionality. I find that relationship lacking here. . . .

Id. at 4 (Shaw, J., dissenting).

Finally, in Johnson, the Court held that Chapter 89-280, Laws of Florida, violated the single subject requirement because it addressed two unrelated subjects: "the habitual offender statute, and . . . the licensing of private investigators and their

authority to repossess personal property." 616 So. 2d at 4. The Court adopted the district court's description of chapter 89-280:

The title of the act at issue designates it an act relating to criminal law and procedure. The first three sections of the act amend section 775.084, Florida Statutes, pertaining to habitual felony offenders; section 775.0842, Florida Statutes, pertaining to career criminal prosecutions; and section 775.0843, Florida Statutes, pertaining to policies for career criminal cases. Sections four through eleven of the act pertain to the Chapter 493 provisions governing private investigation and patrol services, specifically, repossession of motor vehicles and motorboats.

Id. (citation omitted).

The Court also agreed with the district court that "it is difficult to discern a logical or natural connection between career criminal sentencing and repossession of motor vehicles by private investigators." Id. (citation and internal quotes omitted). The Court found these to be "two very separate and distinct subjects" that had "absolutely no cogent connection [and were not] reasonably related to any crisis the legislature intended to address." Id. Noting "no reasonable explanation exists as to why the legislature chose to join these two subjects within the same legislative act", the Court "reject[ed] the State's contention that these two subjects relate to the single subject of controlling crime." Id.

Johnson -- like Bunnell -- was a unanimous decision. Concurring, Justice Grimes noted:

In Jamison v. State, 583 So. 2d 413 (Fla. 4th DCA), rev.denied, 591 So. 2d 182 (Fla. 1991), and McCall v. State, 583 So. 2d 411 (Fla. 4th DCA 1991), 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 5 (Grimes, J., concurring) (emphasis added).

These cases establish the following principles: provisions in a session law will be considered as covering a single subject if they have a cogent, logical, or natural connection or relation to each other. The legislature will be given some latitude to enact a broad comprehensive law, provided that law is intended to be a comprehensive approach to a complex and difficult problem that is currently troubling the citizenry. However, separate subjects cannot be artificially connected by the use of broad labels like "the criminal justice system" or "crime control".

B. State v. Lee, Chenoweth, and Smith

These same principles are found in the recent case law addressing single subject challenges to non-criminal laws as well. The three cases relied upon in Burch illustrate how this Court is

willing to give the legislature some latitude to tackle major, complex problems with broad measures, particularly in response to a crisis or emergency.

Thus, in State v. Lee, supra, the Court upheld Chapter 77-468, Laws of Florida, because it "dealt comprehensively with a broad subject": it was "an attempt by the legislature to deal comprehensively with tort claims and particularly with the problem of a substantial increase in automobile insurance rates and related insurance problems." 356 So. 2d at 242. Three dissenters found that chapter 77-468 "relates to at least three distinct and separate subjects . . . : (i) insurance and matters related therein; (ii) tort law; and (iii) enhanced penalties for moving traffic violations." Id. at 287 (Sundberg, J., dissenting).

Lee was followed in Chenoweth, supra, in which the Court rejected a single subject attack on Chapter 76-260, Laws of Florida. The Court asserted:

While chapter 76-260 covers a broad range of statutory provisions dealing with medical malpractice and insurance, these provisions do relate to tort litigation and insurance reform, which have a natural or logical connection.

396 So. 2d at 1124.

There were two dissenters in Chenoweth. They distinguished State v. Lee and asserted "chapter 76-260 is a paradigm example of a law embracing more than one subject":

[In Lee,] the Court took a rather permissive view of the one subject requirement of article III, section 6. The majority in Lee characterized the chapter there under attack as dealing comprehensively with "automobile insurance rates and related insurance problems." Id. at 282 (emphasis supplied). Here, chapter 76-260 ranges over almost the entire insurance field, incorporating wholly unrelated matters from medical malpractice insurance to life insurance to a policyholder's "bill of rights." Indeed, it strays from the insurance arena altogether in its inclusion of provisions on expert medical testimony and standards of tort recovery.

Id. at 1126-27 (Sundberg, J., dissenting).

Finally, in Smith, supra, the Court upheld Chapter 86-160, Laws of Florida. Following Lee and Chenoweth, the Court said chapter 86-160 was enacted in "respon[se] to public pressure brought about by a liability insurance crisis, [and] each of the challenged sections is an integral part of the statutory scheme enacted by the legislature to advance one primary goal: The availability of affordable liability insurance." 507 So. 2d at 1086.

Three justices dissented in Smith. They argued that Lee and Chenoweth were wrongly decided and should be overruled:

[Lee and Chenoweth] confused the subject of the act with its object, "The subject is the matter to which an act relates; the object, the purpose to be accomplished." [Citations omitted]. The distinction between the subject of an act and its object is critical here.

As recognized by the majority, the object of 86-160 is to increase the affordability and availability of liability insurance. However, by the Court's own reckoning, included in this

one act are at least four different subjects. This is precisely the type of legislation prohibited by article III, section 6. In short, 86-106 is arguably the most gargantuan logroll in the history of Florida legislation.

The majority has come up with a new constitutional test to determine whether legislation meets the single subject requirement: "common sense." However, the majority has exercised none of that seemingly rare and precious commodity by its interpretation of article III, section 6. Its confusion lies in applying an incorrect analysis to the single subject requirement. Inquiring into the "germanity" required for testing whether a statute's provisions are properly connected to the subject of the act only arises if, in fact, there is one subject. The threshold question is based on common sense: does the act itself contain a single subject? If it does then the act's elements are examined to see whether they are in fact properly connected with, i.e., germane to, that single subject. If the act contains more than one subject, it is unconstitutional.

Id. at 1097 (Ehrlich, J., concurring in part and dissenting in part)(footnote omitted)(emphasis in original).

The similarities between these three cases (Lee, Chenoweth, and Smith) and Burch are obvious. All are close decisions in which seemingly disparate topics are considered to be a single subject because they are arguably related to a broad and comprehensive subject that links them all together; and, even then, the law will be valid only if there is a perceived public crisis that requires the passing of such a broad and comprehensive law.

C. Martinez, Alachua County, and State v. Leavins

However, the mere labeling of a law with a broad title will not insulate it from a single subject attack. Three recent cases illustrate the point: Martinez, supra; Alachua County v. Florida Petroleum Marketers, 589 So. 2d 240 (Fla. 1991); and State v. Leavins, supra.

In Martinez, the Court addressed the validity of Chapter 90-201, Laws of Florida. The title to that law began "an act relating to economic development" The act contained 120 sections, the first of which provided that chapter 90-201 "may be cited as the `Comprehensive Economic Development Act of 1990'". Id., §1.

The act was prefaced with 29 legislative "Whereas" clauses. These clauses laid out broad legislative "findings" and "intent", the thrust of which was: 1) Florida's continuing economic health depends upon its ability to compete successfully in an international marketplace; 2) Florida's then-existing workers' compensation laws were outdated, inefficient, and expensive, thus putting Florida at a competitive disadvantage with respect to attracting new business; and 3) Florida needs "comprehensive governmental action to protect the state's economy." Sections 2 through 58 of the statute overhauled Florida's workers' compensation laws in a major way. Section 59 announced more "legislative findings and intent", the thrust of which was that Florida needs to "articulate a clear policy for international economic development. . . ." Section 60 through 119 aimed to

accomplish this purpose through the formation of various advisory and planning agencies that included representatives from both the public and private sectors.

This Court (without dissent) had no trouble concluding that this law violated the single subject requirement:

Chapter 90-201 essentially consists of two separate subjects, i.e., workers' compensation and international trade. While Martinez contends that these subjects are logically related to the topic of comprehensive economic development, we can find only a tangential relationship at best to exist. . . . [W]e have held that, despite the disparate subjects contained within a comprehensive act, the act did not violate the single subject requirement because the subjects were reasonably related to the crisis the legislature intended to address. [Citing Burch and Smith]. In the instant cast, however, the subjects of workers' compensation and international trade are simply too dissimilar and lack the necessary logical and rational relationship to the legislature's stated purpose of comprehensive economic development to pass constitutional muster. See Bunnell

582 So. 2d at 1172 (emphasis added).

Similarly, in Alachua County, the Court addressed the validity of Chapter 88-156, Laws of Florida. The title to that law said it was "an act relating to the construction industry. . . ." Most of its 24 sections modified various statutes in chapter 489 of the Florida Statutes, including 1) expansion of the types of contractors covered by chapter 489 (ch. 88-156, §3); 2) modifications of the membership and procedures of the Construction Industry Licensing Board (id., §§4-6); 3) strengthening of the

oversight and enforcement powers of this board (id., §§7-15); and 4) providing for other remedies (id., §§19-22).

Interwoven into these provisions were several provisions regarding storage tanks. The definitions of "pollutant storage systems specialty contractor", "pollutant storage tank", "tank", and "registered precision tank tester", and the licensing board's authority to promulgate rules and regulations regarding pollutant storage tanks, were moved from existing statutes to new section 489.133. Id., §§3, 7, and 16. The state Department of Environmental Regulation was given regulatory responsibilities regarding "pollutant storage tank[s], as defined in s. 489.133" Id., §17. This section also directed the department to coordinate its efforts with local governments. Id. Finally, section 376.317, Florida Statutes (1987) was amended to allow county governments to adopt their own (more stringent than state law) regulations regarding underground petroleum storage tanks. Id., §18.

On direct appeal, the First District first noted that section 18 had been added to chapter 88-156 after an Alachua County ordinance regulating underground storage tanks had been declared unenforceable by the courts. Alachua County v. Florida Petroleum Marketers, 553 So. 2d 327, 328 (Fla. 1st DCA 1989), affirmed, Alachua County, supra. The court then held that chapter 88-156 violated the single subject provision:

In this case the pending bill containing some 16 sections amending Chapter 489, relating to the regulation of the construction industry, was amended by adding Section 18 to amend Chapter 376, relating to pollutant discharge prevention and removal, a subject totally distinct and different from the subject matter of the act before the amendment. The provisions of Section 18 are not germane to the construction industry, the subject of the pending act it amended, nor are its provisions such as are necessary incidents to, or which tend to make effective or promote, the objects and purposes of the pending construction industry legislation. . .

Id. at 329.

In this Court, a five member majority adopted the opinion of the district court. Alachua County, supra, 589 So. 2d at 240. Two justices dissented:

[C]hapter 489 and chapter 376 have sections other than the section at issue in this proceeding that are interrelated. I find that the provisions of chapter 88-156, Laws of Florida, amending chapter 489 . . . and the provisions amending chapter 376 . . . have a logical connection and that the legislation on its face shows that it is not "a `cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter." . . . The relationship is clear. Three sections of chapter 88-156 have provisions relating to both chapter 489 and chapter 376

. . . . First, section 16 of chapter 88-156 creates section 489.133 . . . entitled "pollutant storage systems specialty contractors; definitions; certification; restrictions." Section 489.133(1)(b) . . . expressly refers to a pollutant storage tank "as defined in s. 376.301." Second, section 17 of chapter 88-156 adds a new subsection (3) to section 376.303 Section

376.303(3)(a) . . . reads, in part: "Any person installing a pollutant storage tank, as defined in s. 489.133, shall certify that such installation is in accordance with the standards adopted pursuant to this section." Section 376.303(3)(c) also provides that "[t]he department may enjoin the installation or use of any pollutant storage tank that has been or is being installed in violation of this section or of s. 489.133." Third, section 376.317 . . . which is amended by section 18 of chapter 88-156, the section in issue, allows certain governmental entities to have more stringent regulations for these pollutant storage tanks. There is clearly a logical connection between chapters 489 and 376 . . . since each chapter refers to the other chapter in its respective sections.

Id. at 244-45 (Overton, J., dissenting).

Finally, in State v. Leavins, the court struck down Chapter 89-175, Laws of Florida. The title of that law declared it was "an act relating to environmental resources" In 48 sections, the law addressed a range of topics, including regulation of gas and oil exploration and development, littering, oil spills, protection of coastal reefs and fishing areas, dredging, and hunting. 599 So. 2d at 1333-34. The court noted that, although this Court has "applied a somewhat relaxed rule in cases where it found that the subjects of an act were reasonably related to an identifiable crisis the legislature intended to address[, in chapter 89-175] the legislature has not ostensibly addressed any crisis, but has attempted to bundle together the various matters encompassed by Chapter 89-175 under the rubric `an act relating to

environmental resources.'" Id. at 1334. The court held chapter 89-175 was invalid:

This phrase ["an act relating to environmental resources"] is so broad, and potentially encompasses so many topics, that it lends little support to the State's attempt to fend off a single subject challenge. . . .

* * *

Although each individual subject addressed [in chapter 89-175] might be said to bear some relationship to the general topic of environmental resources, such a finding would not, and should not, satisfy the test under Article III, Section 6. If a purpose of the constitutional prohibition [is] to insure, as nearly as possible, that a member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic, the reviewing court must examine each subject in light of the various other matters affected by the act, and not simply compare each isolated subject to the stated topic of the act.

Id. (footnote omitted).

As these cases make clear, Florida courts will not to strain to invent relationships and connections between different provisions in a law; rather, there must be a "natural, logical, or intrinsic connection" between the provisions before they will be considered as a single subject. Colonial Investment Co. v. Nolan, 131 So. 178, 181 (Fla. 1930). Tangential connections, tenuous relationships, or coincidental overlap will not convert two subjects into one. Seemingly unrelated subjects may be tied together as part of a "comprehensive law" that attempts a major

overhaul of a large topic, provided that connection or relation to the large topic can be found in all its parts and there is a genuine crisis that needs to be addressed; nevertheless, such comprehensive laws, given their inherently sprawling nature, must be closely examined. The mere fact that the legislature declares a crisis, or perceives some need to deal with a broad topic in a comprehensive manner, is not controlling; courts retain the oversight responsibility of insuring that legislative subjects do not become too broad or nebulous.

II. THE THOMPSON DECISION AND CHAPTER 95-182

As noted above, the district court in Heggs felt that the validity of chapter 95-184 was to be determined by its recent Thompson decision, in which the court held that chapter 95-182 violated the single subject provision. Thus, a review of chapter 95-182 and Thompson is in order.

Chapter 95-182 is titled "Crimes - Career Criminals". It contains 12 sections. Section one provides that "Sections 2 through 7 of this act may be cited as the ` . . . Gort . . . Act" Sections 8 through 10 address civil and procedural aspects of domestic violence. Section 11 contains a severability clause and section 12 contains the effective date (October 1, 1995).

Sections 2 through 7 may be summarized as follows:

Section 2 - This section creates and defines a sentencing category of "violent career criminal", and sets out procedures and

penalties for such sentencings. Section 2 also 1) adds aggravated stalking to the list of predicate offenses for qualification as a habitual violent felony offender, and 2) provides that qualifying offenders may be sentenced as habitual offenders or habitual violent offenders when the offense of conviction is a life felony.

Section 3 through 6 - These sections amend various Florida statutes regarding other procedural matters concerning habitual offender sentencing (primarily to include the new violent career criminal category in those statutes).

Section 7 - This section creates and defines a new offense of "possession of a firearm by violent career criminal," and establishes procedures and penalties for this offense.

Sections 8 through 10 all address various aspects of domestic violence and the civil remedies available to its victims. These sections may be summarized as follows:

Section 8 - This amends section 741.31, Florida Statutes (1994 Supp.). Chapter 741 is found in Title XLIII of the Florida Statutes, which is titled "Domestic Relations"; chapter 741 is titled "Husband and Wife." Section 8 creates a civil cause of action for damages (including costs and attorney's fees) for injuries inflicted in violation of a domestic violence injunction, to be enforced by the court that issued the injunction.

Section 9 -This creates a new section in chapter 768 of the Florida Statutes: section 768.35, which lays out substantive and

procedural rules regulating private damages actions brought by victims of continuing domestic violence. Chapter 768 is titled "Negligence; General Provisions"; it is found in Title XLV, which is titled "Torts."

Section 10 - This amends section 784.046, Florida Statutes (1994 Supp.) by imposing certain procedural duties on court clerks and law enforcement officers regarding the filing and enforcement of domestic violence injunctions. The clerk is made "responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required" The amendment further provides that only "law enforcement officer[s] as defined in chapter 943" may serve domestic violence injunctions, and imposes on such officers the duty to "make information relating to the service available to other law enforcement agencies" within 24 hours of the service of the injunction. Finally, this section authorizes courts to enforce such injunctions by criminal contempt.

The legislative history of chapter 95-182 may be summarized as follows:

"The Gort Act", as eventually enacted in sections 2 through 7 of chapter 95-182, began as two bills in the Florida Senate: 1) SB 118, which added lewd assault on a child and aggravated stalking to the list of felony offenses which may qualify a defendant for classification as a violent habitual felony offender; and 2) SB 168, which was called "The Gort Act" and contained most of the

basic provisions that were later enacted as sections 2 through 7 of chapter 95-182. It was the committee substitute for SB 168 (CS/SB 168, as amended) that was eventually passed as chapter 95-182.

Sections 8 through 10 of chapter 95-182 began as sections in two bills introduced in the House of Representatives: PCS/HB 1251 and HB 2513². The "Bill Analysis and Economic Impact Statement[s]" produced for both of these bills assert that the bills "Relat[e] to: Domestic Violence." House of Representatives Committee on the Judiciary, Final Bill Analysis and Economic Impact Statement for PCS/HB 1251, p. 1; House of Representatives Committee on Aging and Human Services, Final Bill Analysis and Economic Impact Statement for HB 2513, p.1. "PCS/HB 1251 . . . declares legislative intent with respect to services for victims of domestic violence." House of Representatives Committee on the Judiciary, Final Bill Analysis and Economic Impact Statement for PCS/HB 1251, p. 1. The summaries of both of these House bills clearly show these bills were designed to provide greater protection for domestic violence victims. House of Representatives Committee on the Judiciary, Final Bill Analysis and Economic Impact Statement for PCS/HB 1251, p. 1-4; House of Representatives Committee on Aging and Human Services, Final Bill Analysis and Economic Impact Statement for HB 2513, p.1-4.

² Parts of sections 8 and 9 of chapter 95-182 can be found in sections 1 and 3 of HB 2513. Section 10 of chapter 95-182 originated in sections 3 and 5 of PCS/HB 1251.

PCS/HB 1251 "was reported favorably as a proposed committee substitute to the full committee [,but] was never heard by the full committee and died there on May 11, 1995." House of Representatives Committee on the Judiciary, Final Bill Analysis and Economic Impact Statement for PCS/HB 1251, p. 1. HB 2513 passed the House, but died in committee in the Senate. House of Representatives Committee on Aging and Human Services, Final Bill Analysis and Economic Impact Statement for HB 2513, p.1.

Sections 8 through 10 of chapter 95-182 were added to CS\SB 168 by the House on May 4, 1995; the bill passed the Senate the next day. Journal of the House, May 4, 1995, p. 1207-12; Journal of the Senate, May 5, 1995, p. 1083.

In Thompson, supra, the district court held that chapter 95-182 violated the single subject provision. After discussing the legislative history, the court reasoned as follows:

It is in circumstances such as these that problems with the single subject rule are most likely to occur.

Chapter 95-182 joins together criminal and civil subjects. Such a joinder has confronted our supreme court in Johnson, [supra] and Bunnell, [supra]. . . .

[C]hapter 95-182 embraces criminal and civil provisions that have no "natural or logical connection." [Citations omitted] Nothing in sections 2 through 7 addresses any facet of domestic violence and, more particularly, any civil aspect of that subject. Nothing in sections 8 through 10 addresses the subject of career criminals or the sentences to be imposed upon them. It is fair to say that these two subjects "are designed to accomplish separate and

dissociated objects of legislative effort." [Citation omitted]. Neither did the legislature state an intent to implement comprehensive legislation to solve a crisis. Cf. Burch, [supra] (upholding comprehensive legislation to combat stated crisis of increased crime rate). Harsh sentencing for violent career criminals and providing civil remedies for victims of domestic violence, however laudable, are nonetheless two distinct subjects.

Id. at 316-17.

III. ANALYSIS OF CHAPTER 95-184

The title of Chapter 95-184 declares it is "an act relating to criminal justice". Chapter 95-184 contains 40 sections. Section one provides "Sections 2 through 36 of this act may be cited as the `Crime Control Act of 1995'". Section 39 is a severability clause and Section 40 provides an effective date ("upon becoming a law").

Several sections of chapter 95-184 amend various sentencing statutes. Sections 2 through 7, 13, and 14 significantly amend the sentencing guidelines. Section 15 increases the punishment for certain drug trafficking offenses. Section 16 modifies the possible sentences for life felonies. Sections 17 through 24 amend other specific sentencing statutes: sections 775.0823, 775.0825, 775.087, 784.07, 775.0845, 775.0875, 874.04, and 794.023. Sections 25 through 27 amend the general sentencing statutes (sections 921.187, 944.275, and 947.146) to include the changes wrought by the sections just discussed.

Several sections of chapter 95-184 amend the definitions of substantive crimes. Section 8 amends the definition of burglary; sections 9 through 12 amend the definition of theft.

Section 28 through 35 amend several sections in Chapter 960 regarding the imposition and enforcement of civil damages actions by victims of crime.

Finally, sections 36 through 38 of chapter 95-184 are identical to sections 8 through 10 of chapter 95-182.

Chapter 95-184 began as a bill in the Senate, SB 172. SB 172 was originally a three section bill of relatively modest scope: sections 1 and 2 amended the sentencing guidelines and section 3 provided for an effective date. A committee substitute for SB 172 (CS/SB 172) made further changes to the 1994 guidelines, primarily by increasing the potential sentences for the more serious offenders; however, CS/SB 172 remained a three section bill.

On April 27, 1995, the Senate passed an amendment to CS/SB 172; at this point, an earlier version of the Gort Act was added as new sections 3 through 5 of CS/SB 172. Journal of the Senate, April 27, 1995, p. 545-47.

On May 4, 1995, the House considered this version of CS/SB 172. At that time, the House significantly amended the bill. Everything after the enacting clause was stricken and a 41 section bill was substituted in its place. The Gort Act sections were eliminated; the 40 sections that eventually passed as chapter 95-184 were included. Journal of the House, May 4, 1995, p. 1214-32.

The next day, the Senate struck one section from this bill and passed it, thus putting chapter 95-184 in its final form. Journal of the Senate, May 5, 1995, p. 1083-1101.

Thus, sections 36 through 38 were added to chapter 95-184 on the same day that sections 8 through 10 were added to chapter 95-182.³

³As just noted, when CS/SB 172 left the House on May 4, it contained 41 sections; sections 37-39 of that bill were identical to sections 8-10 of chapter 95-182. Journal of the House, May 4, 1995, p. 1214-32. When the Senate eliminated one section of the House bill on May 5, the three sections at issue were relocated to their final place as sections 36-38 of chapter 95-184. Journal of the Senate, May 5, 1995, p. 1083-1101.

IV. CHAPTER 95-184 VIOLATES THE SINGLE SUBJECT PROVISION

Application of the principles discussed in section I above to chapter 95-184 compels the conclusion that chapter 95-184 violates the single subject provision. As the legislative history establishes, chapter 95-184 is a combination of unrelated provisions that have no logical or natural connection, and "no reasonable explanation exists as to why the legislature chose to join these . . . subjects within the same legislative act." Johnson, supra, 616 So. 2d at 4. Chapter 95-184 contains "separate and distinct subjects [that have] absolutely no cogent connection [, are not] reasonably related to any crisis the legislature intended to address", id., and "are designed to accomplish separate and dissociated objects of legislative effort." State v. Thompson, supra, 163 So. at 283.

Chapter 95-184 contains at least four subjects: criminal sentencing, the definitions of substantive crimes, monetary compensation for crime victims, and civil remedies for victims of domestic violence. As the cases discussed above establish, these four subjects cannot be considered as a single subject under such headings as "crime control" or "the criminal justice system". Johnson, supra; Bunnell, supra; Williams, supra.

The legislative history also shows that chapter 95-184 is not a "comprehensive law", as that term is used in this context. As discussed above, on four occasions this Court has rejected a single

subject attack against an admittedly broad law because the law at issue "was a comprehensive law in which all of the parts were at least arguably related to its overall objective" Johnson, supra, 616 So. 2d at 5 (Grimes, J., concurring). However, the laws at issue in those cases are distinguishable from chapter 95-184.

Thus, in State v. Lee, supra, the Court upheld the validity of chapter 76-260. In the preamble to that law, the legislature found that medical malpractice insurance rates were out of control, thus causing an "insurance crisis [that] threatens the quality of health care services in Florida as physicians become increasingly wary of high-risk procedures and are forced to downgrade their specialties to obtain relief from oppressive insurance rates" Ch. 76-260, preamble. Similarly, in Chenoweth, supra, the Court upheld chapter 77-468, which was a comprehensive attempt to deal with the similar problem of skyrocketing automobile insurance rates. In Smith v. Department of Insurance, supra, the Court upheld chapter 86-160, which addressed "a financial crisis in the liability insuring industry, causing a serious lack of availability of many lines of commercial liability insurance" Ch.86-160, preamble. Finally, in Burch, supra, the Court upheld chapter 87-243, which was a response to "a crisis of dramatic proportions due to a rapidly rising crime rate, which crisis demands urgent and creative remedial action [that] requires a major commitment of

resources and a nonpartisan, nonpolitical, cohesive, well-planned approach" Ch. 87-243, preamble.

There are no such legislative findings of a crisis in chapter 95-184; nor can chapter 95-184 be called a "cohesive well-planned approach [to a] crisis [that] demands urgent and creative remedial action." Id.

These four "comprehensive law" cases mark the outer limits of legislative authority to enact complex and multi-faceted laws without violating the single subject provision. As discussed above, all four of these cases were close decisions with strong dissents. In effect, these cases may be seen as an accommodation to the realities of the legislative process. There are some subjects that are so complex, so compelling, and so controversial that effective legislation on the subject is invariably going to be wide-ranging; such legislation will invariably include a certain degree of logrolling. The subject of insurance reform -- the subject of three of the four comprehensive law cases -- is a perfect example. To deal with the subject of, say, medical malpractice, is to deal with large and powerful special interests (e.g., trial lawyers, doctors, insurance companies, hospitals), interests that often sharply conflict. Given the inevitable legislative clash of such powerful interests, it is clear that significant legislation will not pass in this area unless and until each special interest is given some prize in return for the

concessions it makes. The resulting legislative sausage is bound to look like chapter 76-260 (or 77-468, or 86-160).

Similarly, Burch dealt with a true comprehensive law that embraced a coordinated, multi-faceted approach to the then-alarming burgeoning crime rates (fueled in large part by the exploding crack cocaine epidemic). It is beyond question that this epidemic had many perceived causes, including the weakness of existing drug laws, the quick and easy profits of the drug trade, the lack of effective methods of seizing those profits from the dealers, and the breakdown of local neighborhoods and parental control. Such a complex epidemic requires a comprehensive treatment plan, such as provided by chapter 87-243.

Chapter 95-184 is not such a comprehensive law. Chapter 95-184 addresses no perceived crisis, and it was not designed to be a coordinated, multi-faceted approach to a complex problem. Rather, the substance of chapter 95-184 is exactly what its legislative history suggests it would be: several unrelated provisions -- some of which could not get out of committee on their own merits -- mixed together in a legislative stew. As Thompson so cogently noted, "it is in circumstance such as these that problems with the single subject rule are most likely to occur". 708 So. 2d at 317. See also Alachua County, supra (chapter 88-156 violates single subject provision because a subsection regarding the regulation of petroleum storage tanks by local counties was added to a pending

construction industry regulation bill after Alachua County ordinance regulating storage tanks was declared unenforceable by court).

Clearly, if chapter 95-184 embraces only a single subject, that subject would have to have something to do with protecting victims of domestic violence; after all, sections 36 to 38 are specifically designed to do precisely (and only) that. Thus, for chapter 95-184 to survive a single subject challenge, sections 2 to 35 must be "fairly and naturally germane to [that] subject . . . or are necessary incidents to or tend to make effective or promote the objects and purposes of [that subject]". Smith, supra, 507 So. 2d at 1087.

Whatever "tangential relationship", Martinez, supra, 582 So. 2d at 1172, sections 2 to 35 may have to the subject of protecting victims of domestic violence, it is clear that sections 2 to 35 were not enacted with domestic violence victims in mind.

Similarly, it cannot be said that sections 36 through 38 are fairly and naturally germane to the subject(s) of sections 2 through 35. Viewed with the common sense that Smith demands, allowing domestic violence victims to sue their tormentors is, at best, only tangentially related to the subjects of protecting the general public by increasing terms of imprisonment for serious offenders and the redefining of criminal offenses such as burglary and theft.

Unlike in Burch, in the present case it cannot be said that "there is nothing in this act to suggest the presence of logrolling", and it "would [not] have been awkward and unreasonable to attempt to enact many of the provisions of [chapter 95-184] in separate legislation." Id. Chapter 95-184 is a classic example of the type of legislative logrolling the single subject provision prohibits.

Chapter 95-184 thus violates the single subject provision.

V. SEVERABILITY

As noted earlier, chapter 95-184 contains a severability clause. Ch. 95-184, §39. However, this clause is irrelevant to the issue here; the doctrine of severability does not apply in this context. Sawyer v. State, 132 So. 188, 192 (Fla. 1931) (law that violates single subject rule "must be held unconstitutional and void, in toto"); Colonial Investment Co., supra, 131 So. at 183 ("The act deals with two separate and distinct subjects . . . , thus rendering the entire act unconstitutional and void"); Ex Parte Winn, 130 So. 621 (Fla. 1930) ("The act . . . dealt with more than one subject . . . , and for this reason the entire act must fall").

CONCLUSION

The 1995 version of the sentencing guidelines is invalid because chapter 95-184 violates the single subject provision. Since Appellant falls within the applicable window period, his sentences must be vacated and the cause remanded for resentencing under the 1994 guidelines.

APPENDIX

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CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Asst. Attorney General Dale E. Tarpley of the Attorney General's Office, 2002 N. Lois Ave., Tampa, FL 33607, (727) 873-4739, on this _____ day of February, 2000.

Respectfully submitted,

JAMES MARION MOORMAN
Public Defender
Tenth Judicial Circuit
(941) 534-4200

RICHARD J. SANDERS
Assistant Public Defender
Florida Bar Number O394701
P. O. Box 9000 - Drawer PD
Bartow, FL 33831

RJS/ddv