IN THE SUPREME COURT OF FLORIDA

CURTIS LEON HEGGS,	:	
Petitioner,	:	
vs.	:	Case No. 93,851
STATE OF FLORIDA,	:	
Respondent.	:	
	:	

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

RICHARD J. SANDERS
Assistant Public Defender
FLORIDA BAR NUMBER 0394701

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

(941) 534-4200

ATTORNEYS FOR PETITIONER

TOPICAL INDEX TO BRIEF

TABLE OF CITATIONS

SUMMARY OF ARGUMENT

"Updating interrelated components of the criminal justice system" and "the definition, punishment, and prevention of crime and the protection of crime victims" (answer brief, p. 1) are not legitimate single subjects for legislation because they are too broad and nebulous.If these were recognized as single subjects, there would be no practical limit on the number and variety of provisions in a session law that could be deemed a single subject.

Chapter 95-184 is not a "comprehensive law" as that term is used in this context. Chapter 95-184 is not a "cohesive well-planned approach [to a] crisis [that] demands urgent and creative remedial action." Burch v. State, 558 So. 2d 1, 2 (Fla. 1990) (quoting preamble to Chapter 87-243). There are no legislative findings of an existing crisis in Chapter 95-184, and the legislative history of that chapter clearly shows it was not enacted to be "urgent and creative remedial action . . . and a nonpartisan, nonpolitical, cohesive, well-planned approach . . . toward a unified attack on the common enemy, crime . . . ." Id. Rather, the legislative history shows that chapter 95-184 is simply a piecemeal conglomeration of marginally related provisions, some of which could not get out of legislative committees on their own merits.

The doctrine of severability does not apply in this context and, even if it did, the Court would have to sever out those

portions on chapter 95-184 that Appellant has standing to challenge (which, of course, are the 1995 sentencing guidelines).

ARGUMENT

The state first argues that chapter 95-184 "is a comprehensive piece of legislation updating interrelated components of the criminal justice system." (Answer brief, p.1) The state further argues that "the subject of the act . . . is the definition, punishment, and prevention of crime and the protection of crime victims." (Answer brief, p.1) However, the state's argument is fatally flawed.

At the outset, it is interesting to note that the state cannot state the "single" subject of chapter 95-184 in anything less than 13 words, two of which are the conjunction "and". If such a mouthful can be considered a single subject, then why wasn't chapter 82-150 upheld as addressing the single subject of "defining a new criminal offense and revising the Florida Council on Criminal Justice"? Why wasn't chapter 89-280 upheld as addressing the single subject of "protecting the public through harsher criminal sentencing and protecting personal property owners from the improper repossession of their property"? Why wasn't chapter 90-201 upheld as addressing the single subject of "making Florida competitive in the international marketplace by revising its antiquated workers' compensation laws and establishing a coordinated approach to the enticement of new business to the state"?

One could go on like this with respect to any session laws previously held invalid under the single subject provision. The

answer to these hypothetical questions -- and the answer to the state's argument in the present case -- is that the definition of legislative single subjects is not infinitely expansive. If the provisions in a session law can be linked together as a single subject by simply stringing them together with connecting conjunctions, the single subject requirement would be meaningless. As this Court has noted, the test for singleness of subject "is based on common sense." Smith v. Department of Insurance, 507 So. 2d 1080, 1087 (Fla. 1987). Common sense tells us that chapter 95-184 embraces several different subjects.

Similarly, "updating interrelated components of the criminal justice system" (answer brief, p.1) is not a valid single subject. See Johnson v. State, 616 So. 2d 1, 4 (Fla. 1993) (chapter 89-280 cannot be upheld as addressing "the single subject of controlling crime"); Williams v. State, 459 So. 2d 319, 321 (Fla. 5th DCA 1984) (chapter 82-150 cannot be upheld on the theory that it was designed "to improve the criminal justice system"; "the criminal justice system . . . is the object and not the subject of the provisions. Further, approving such a general subject for a noncomprehensive law would write completely out of the constitution the anti-logrolling provisions of Article III, section 6"). In Bunnell v. State, 453 So. 2d 808 (Fla. 1984), this Court implicitly adopted the logic of Williams in holding that chapter 82-150 was invalid. The district court in Bunnell had upheld chapter 82-150 on the

theory that its provisions "embraced . . . the admittedly broad subject 'Criminal Justice System' [and thus were] within the same general subject impliedly set forth by the legislature. . . ." State v. Bunnell, 447 So. 2d 228, 231 (Fla. 2d DCA 1984), quashed, Bunnell, supra. Although not specifically addressing the reasoning of the district court, this Court must have rejected it when it concluded that the provisions of chapter 82-150 had "no cogent relationship" and thus addressed "separate and disassociated" subjects. 453 So. 2d at 809.

Thus, while "updating interrelated components of the criminal justice system" (answer brief, p. 4) may be the object of chapter 95-184, that is not a proper single subject. If the state's position here is correct, the legislature could presumably have added a wide variety of other provisions to chapter 95-184, including: 1) provisions revising Chapter 61 regarding the manner in which trial courts are to consider instances of domestic violence that occur during marriages and their dissolution; 2) provisions revising Chapters 731 through 738 regarding the manner in which trial courts deal which criminal fraud perpetrated during probate or the administration of trusts or guardianships; 3) provisions revising the definitions and penalties for criminal violations of complex environmental statutes and allowing victims of such violations to sue violators for damages and injunctions; 4) provisions revising the definitions and penalties for construction

or real estate criminal fraud and allowing victims of such fraud to sue for damages, injunctions, or specific performance; 5) provisions revising the definitions and penalties for criminal fraud regarding such matters as credit cards, wire transfers, and other forms of commercial fraud and allowing victims of such fraud to sue for damages and injunctions, including the filing of massive class action suits; 6) provisions revising the definitions and penalties for criminal violations of statutes outlawing discrimination in housing, employment, public accommodations, and the like, and allowing victims of such discrimination to sue for damages and injunctions, including class action suits; 7) provisions revising the definitions and penalties for antitrust and similar complex business regulations violations and allowing victims of such violations to sue for damages, injunctions, and cease-and-desist orders; and 8) regulations of the procedures for handling such suits, including such things as the establishment of regulatory agencies, administrative procedures, and arbitration (as methods of allowing victims to obtain relief from such criminal violations). Of course, one could go on for hours thinking up similar examples; in the regulatory welfare state, "the criminal justice system" covers, at some point, virtually every form of activity known to modern man. For present purposes, there is no reason to treat that form of criminal activity known as "domestic violence" any different from all the other myriad forms of criminal activity

currently outlawed by the Florida Statutes; thus, if chapter 95-184 satisfies the single subject requirement, then a practically limitless number of unrelated provisions could be combined in a single session law, provided only that, at some point, all the provisions address activity that is, in some circumstances, to some degree, criminal. Indeed, if section 38 is properly included within this single subject, then wholesale revisions of the civil tort procedural and evidence rules could presumably have been included in chapter 95-184, on the theory that these rules apply to crime victims attempting to recover damages from the criminals who injured them. A famous Ivy League law professor of the late nineteenth century (whose name, embarrassingly enough, escapes the undersigned counsel at the moment) once noted that "the law is a seamless web"; using the "connect the dots" logic the state is suggesting here would effectively mean that practically any group of topics could be considered as a single subject (as, for example, "updating interrelated components of the Florida Statutes, in order to better promote the general public health, safety, and welfare"). Surely, "common sense", Smith, supra, 507 So. 2d at 1087, compels the conclusion that "updating interrelated components of the criminal justice system" (answer brief, p. 1) is not a valid single subject.

Similarly, chapter 95-184 cannot be considered a "comprehensive law", as that term is used in this context. See the discussion in the initial brief at pages 31 through 34.

The state further argues that, assuming chapter 95-184 violates the single subject provision, "the civil provisions addressing domestic violence injunctions could easily be excised leaving the interrelated criminal justice legislation intact." (Answer brief, p. 10) However, the doctrine of severability does not apply to single subject challenges and, even if it did, we would have to sever out those portions of chapter 95-184 that Appellant has standing to challenge (i.e., the amendments to the 1995 guidelines, which are the only part of chapter 95-184 that apply to Appellant).

"[T]he question of whether the taint of an illegal provision has infected the entire enactment, requiring the whole unit to fail", Schmidt v. State, 590 So. 2d 404, 414-15 (Fla. 1991), is answered with a four-part test:

> When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provision can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Id. at 415 (citation omitted).

The mere existence of a severability clause does not guarantee that severance can properly occur; "severability can occur whether or not the enactment contains a severability clause [,and] inclusion of [such a] clause will not save a statute if the unconstitutional portions clearly cannot be severed." Id. at f.n.12.

The doctrine of severability does not apply in this context. Challenges to statutes alleged to violate the single subject requirement are not challenges to an "illegal provision" or "a part of a statute", id.; they are challenges the method by which the whole statute was enacted. Severability is generally applied to statutes that violate some substantive limitation on legislative authority, such as substantive due process, equal protection, or the first amendment. In that context, the statute under attack is procedurally valid; that is, the statute was enacted with due regard to the applicable procedural requirements. Rather, the statute is invalid (at least partially) because its substance is (at least partially) beyond the legislature's reach. In that context, it makes sense to talk of severance: the tree may be saved by clipping its rotten limbs, provided the trunk and roots are healthy.

This logic does not apply to procedural attacks on statutes, such as a single subject attack. In this context, there is no

question that the legislature has the substantive authority to enact the statute at issue; it is just that they failed to follow proper procedure. See City of Winter Haven v. A.M. Klemm & Son, 181 So. 153, 155 (Fla. 1938) (recognizing distinction between statutes that are invalid because they violate "a prohibition of the Constitution which relates . . . to the form of the exercise of the legislative power in enacting statutes, as does [the single subject provision]", and statutes that are invalid due to "the nature of character of the subject matter").

Failure to follow proper procedure invalidates the whole statute because the statute itself never properly came into existence; to extend the analogy, we are not dealing with a healthy tree with a rotten limb, but a healthy tree that was erroneously planted in the wrong place and thus must be wholly uprooted and relocated. In terms of the four-part test in Schmidt, "the unconstitutional provisions can[not] be separated from [any] remaining valid provisions", 590 So. 2d at 415, because there are no "remaining valid portions": each part of the statute is equally invalid, for the same reason. This Court has recognized this. Sawyer v. State, 132 So. 188, 192 (Fla. 1931) (law that violates single subject provision "must be held unconstitutional and void, in toto")[1]; Colonial Investment Co., supra, 131 So. at 183 ("The

[1]Although the opinions are somewhat cryptic, it appears that Sawyer partially overruled (on this precise point) the case that appears right before it in the Southern Reporter, Williams v.

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").

Even if severability applies here, Appellant must be given his relief because the Court would have to invalidate those parts of Chapter 95-184 that he has standing to challenge. See cases collected at 10 Fla. Jur. 2d, Constitutional Law, Secs. 63, 73-74 (courts will go no farther than they have to in declaring a statute invalid, and litigants can challenge the constitutionality of statutes only to the extent they are adversely affected by them). Thus, the question of severability may be of some interest to others, but it does not affect Appellant's remedy.

State, 132 So. 186 (Fla. 1930). Williams addressed the same issue that Sawyer did (i.e., whether chapter 11812, Acts of 1927, violated the single subject provision). However, Williams, over a dissent, seemed to apply the severability doctrine. Sawyer seemed to say the Williams dissenters were correct in their assertion that severability did not apply to single subject challenges. Cf. Williams, supra, 132 So. at 187-88, with the dissenting opinions at 132 So. at 188 and Sawyer, supra, 132 So. at 192.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Dale E. Tarpley, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 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 0394701
P. O. Box 9000 - Drawer PD
Bartow, FL 33831

RJS/ddv