# ORIGINAL



**IN THE SUPREME COURT OF FLORIDA**

**CURTIS LEON HEGGS,**

Petitioner,

v. **CASE NO. 93,851**

**STATE OF FLORIDA,**

Respondent.
_____/

**MERITS BRIEF OF RESPONDENT**

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## SUMMARY OF THE ARGUMENT

The fact that the scope of legislation is broad and comprehensive is not fatal under the single subject rule so long as the matters included in the enactment have a natural or logical connection. The enactment under attack in the instant case, Chapter 95-184, Laws of Florida, can and should be held constitutional since it is a comprehensive piece of legislation updating interrelated components of the criminal justice system. The fact that several statutes are amended does not mean more than one subject is involved. The subject of the act in question is the definition, punishment, and prevention of crime and the protection of the rights of crime victims. The act does not violate the single subject rule and it should be upheld. Alternatively, the Court should sever the offending portion of the enactment.

## ARGUMENT

**THE LEGISLATIVE VEHICLE WHICH AMENDED THE 1994 SENTENCING GUIDELINES DID NOT VIOLATE THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION SINCE THE PROVISIONS OF THE ACT WERE COGENT AND INTERRELATED AND DIRECTED TOWARD THE DEFINITION, PUNISHMENT AND PREVENTION OF CRIME AND THE ANCILLARY RIGHTS OF CRIME VICTIMS.**

The petitioner challenges the constitutionality of the 1995 sentencing guidelines as enacted by chapter 95-184, Laws of Florida arguing that the bill which ultimately became law violated the single subject requirement of article III, section 6 of the Florida Constitution.[1] He argues that the bill violated the single subject requirement because it embraced, not one, but several different subjects, e.g., criminal sentencing and private civil damages. The state responds that the matters addressed by chapter 95-184 are naturally and logically connected such that the single subject requirement is not violated.

The rule that every legislative act is presumed to be constitutional, and that every intendment must be indulged by the courts in favor of its validity is applicable to statutes claimed to be unconstitutional for violating the single subject rule. A legislative enactment should be stricken only when there is a

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[1]The amendment provides: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

plain violation of the requirement that an enactment be limited to a single subject expressed in the title. However, every doubt should be resolved in favor of the validity of the provision, since it must be presumed the legislature intended to enact a valid law. 49 *Fla. Jur.* 2d, *Statutes*, §70 (1984 ed.).

In reference to the statute challenged here, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal under the single subject rule so long as the matters included in the enactment have a natural or logical connection. *In re Advisory Opinion to the Governor*, 509 So. 2d 292, 313 (Fla. 1987). *See also Smith v. Dept. of Insurance*, 507 So. 2d 1080, 1085 (Fla. 1987); *Chenoweth v. State*, 396 So. 2d 1122, 1124 (Fla. 1981). The test for determining duplicity of subject "is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort." *Burch v. State*, 558 So. 2d 1, 2 (Fla. 1990) (quoting *State v. Thompson*, 120 Fla. 860, 163 So. 270 (1935).

However, a statute will not be unconstitutional for embracing more than one subject if the title is sufficiently broad to connect it with the general subject matter of the enactment. *State v. McDonald*, 357 So. 2d 405, 407 (Fla. 1978). In *Smith v. City of St. Petersburg*, 302 So. 2d 756 (Fla. 1974) the supreme court reasoned:

> For a legislative enactment to fail, the conflict between it and the Constitution must

> be palpable, however, where by reasonable intent the title can be determined to be sufficiently broad as to include a provision that can be deemed to reasonably connect it with the subject matter of an enactment, then it should not be declared inoperative and unconstitutional. In other words, the title should reasonably and fairly give notice of what one may expect to find in the body of the enactment.

302 So. 2d at 758. This comports with the purpose of article III, section 6 in requiring that legislative acts embrace one subject, which is to give adequate notice to the legislature and to the public of what the law encompasses. *McDonald*, 357 So. 2d at 407.

It must be recognized that this provision is not designed to deter or impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation. *State ex rel. X-Cel Stores, Inc. v. Lee*, 122 Fla. 685, 166 So. 568 (1936). The key appears to be palpable conflict between the bill in question and the single-subject requirement. The state submits that the enactment under attack, chapter 95-184, can and should be held constitutional since it is a comprehensive piece of legislation updating interrelated components of the criminal justice system. The provisions of the bill are not designed to accomplish separate and disassociated objects of legislative effort.

The state is aware of the Second District's recent opinion in *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1997) in which chapter 95-182, Laws of Florida, was held unconstitutional as

violating the single subject rule. According to this opinion, harsh sentencing for violent career criminals and the providing of civil remedies for victims of domestic violence comprise two distinct subjects. *Id.* at 317. *Compare Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997) (finding reasonable and rational relationship between each section of Act); *Holloway v. State*, 712 So. 2d 439 (Fla. 3d DCA 1998) (following *Higgs* and certifying conflict); *Linder v. State*, 711 So. 2d 1340 (Fla. 3d DCA 1998) (same).

As a consequence, the question is whether the court, in evaluating the single subject challenge to chapter 95-184, will follow the line of cases outlined in *Burch v. State*, 558 So. 2d 1 (Fla. 1990) or the view which prevailed in *State v. Johnson*, 616 So. 2d 1 (Fla. 1993) and *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984) cited by the Second District in *Thompson*.

In entertaining a challenge to chapter 87-243 as violative of the single subject rule the *Burch* court reviewed,the case law:

> In State v. Lee, 356 So. 2d 276 (Fla. 1978), we considered whether chapter 77-468, Laws of Florida, violated article III, section 6, because it dealt with both insurance and tort reform. In upholding the act, we pointed out:
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> > The purpose of the constitutional prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a "cloak" for dissimilar legislation having no necessary or appropriate

> connection with the subject matter. E.g., Colonial Inv. Co. v. Nolan, 100 Fla. 1349, 131 So. 178 (1930). This constitutional provision, however, is not designed to deter or impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation. See State ex rel. X-Cel Stores, Inc. v. Lee, 122 Fla. 685, 166 So. 568 (1936). This Court has consistently held that wide latitude must be accorded the legislature in the enactment of laws ...
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> Id. at 282.

In Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981), we debated whether chapter 76-260, Laws of Florida, was unconstitutional because it contained provisions covering medical malpractice, tort litigation, and insurance reform. Holding that the act did not violate article III, section 6, we said:

> [T]he subject of an act "may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection."

Id. at 1124 (quoting Board of Public Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969)).

Once again, in Smith v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987), this Court addressed the constitutionality of the 1986 Tort Reform and Insurance Act, chapter 86-160, Laws of Florida. In analyzing this comprehensive act we found that it covered five basic areas: (1) long-term insurance reform, (2) tort reform, (3) temporary insurance reform, (4) creation of a task force to study tort reform and insurance law, (5) modification of financial responsibility requirements applicable to physicians. The

> Court referred to the preamble of the act which explained how the tort reform provisions were "properly connected" for purposes of article III, section 6. Despite the many disparate subtopics contained in the act, we determined that all of them were reasonably related to the liability insurance crisis which the act was intended to address.

558 So. 2d at 2. The *Burch* court then turned its attention to chapter 87-243 and found the subject matter to be not as diverse as that contained in the legislation approved in *Lee*, *Chenoweth*, and *Smith*.[2] The court concluded "[t]he fact that several statutes are amended does not mean more than one subject is involved." Unlike the bill construed in *Bunnell*, chapter 87-243 was found to be a comprehensive law in which all its parts were directed toward meeting the crisis of increased crime.

Applying the principles of *Burch*, *Lee*, *Chenoweth*, and *Smith* to chapter 95-184, it is clear that its provisions are cogent and interrelated and directed toward one primary object: the definition, punishment, and prevention of crime and the

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[2]*See also In re Advisory Opinion to the Governor*, 509 So. 2d 292 (Fla. 1987) (legislation proper that established a tax on services and included an allocation scheme for the use of the tax revenues); *State v. McDonald*, 357 So. 2d 405 (Fla. 1978) (statute proper that provides for the decriminalization of traffic infractions and also creates a criminal penalty for refusing to sign traffic citation); *Board of Public Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969) (statute mandating open meetings for boards and commissions with provisions for criminal penalties and civil injunctive relief not unconstitutional); *State ex rel. Flink v. Canova*, 94 So. 2d 181 (Fla. 1957) (Florida Pharmacy Act covering practice of pharmacy and regulation of drug stores not unconstitutional since these matters properly connected).

concomitant protection of the rights of crime victims. The chapter is not as diverse and comprehensive as that upheld by the supreme court in *Burch*. It defines and clarifies substantive offenses, e.g., burglary and theft, prescribes punishment through the amendment of various statutes, including enhancement and reclassification statutes as well as statutes relating to gain time and control release, and attempts to protect victims' rights by amending statutes relating to supplemental civil restitution liens and domestic violence. The rights of crime victims are inextricably intertwined with the chapter's goal of the punishment and prevention of crime and there is a natural, logical connection between the two.

The instant enactment is not palpably in conflict with the Constitution as were the statutes at issue in *Johnson* and *Bunnell*. Likewise, the instant case is distinguishable from *Martinez v. Scanlon*, 582 So. 2d 1167 (Fla. 1991), *Alachua County v. Florida Petroleum Marketers Ass'n.*, 553 So. 2d 327 (1st DCA), *approved*, 589 So. 2d 240 (Fla. 1991), and *State v. Leavins*, 599 So. 2d 1326 (Fla. 1st DCA 1992). Each provision of chapter 95-184 is directed toward the definition, punishment, and prevention of crime and the related purpose of protecting and compensating crime victims. The Court should follow *Burch*, *Lee*, *Chenoweth*, and *Smith*.

The state urges the Court to uphold chapter 95-184 as not in

violation of the single subject requirement as it is presumed to be valid. If, however, for some reason the Court should find the statute in violation of the single subject requirement, the state suggests the objectionable portion of the enactment should be severed.[3] This Court has summarized the general rule regarding severability as follows:

> An unconstitutional portion of a general law may be deleted and the remainder allowed to stand if the unconstitutional provision can be logically separated from the remaining valid provisions, that is, if the legislative purpose expressed in the valid portions can be accomplished independently of those which are void; and the good and bad features are not inseparable and the Legislature would have passed one without the other; and an act complete in itself remains after the invalid provisions are stricken.

*Moreau v. Lewis*, 648 So. 2d 124, 128 (Fla. 1995) (quoting *Presbyterian Homes v. Wood*, 297 So. 2d 556, 559 (Fla. 1974). *See generally* 49 *Fla. Jur. 2d, Statutes*, §§ 98, 99 (1984 ed. & 1998 Supp.). A legislative preference for severability of voided provisions is persuasive. *Moreau*, 648 So. 2d at 127.

The act in question, chapter 95-184, contains a severability clause. 95 Laws of Florida 184, §39. The provisions of the act

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[3]The state did not argue severability before the Second District. However, upon closer reflection the state believes the Court can and should entertain the possibility of severing the offending portion of the enactment. This is not an appeal from an adverse ruling but a continuing of the litigation in a higher court. As such, the state feels entitled to present the argument as a possible solution to the constitutional problem.

that offended the court in *Thompson* and in the instant case, i.e., the civil provisions addressing domestic violence injunctions, could easily be excised leaving the interrelated criminal justice legislation intact. The legislature specifically provided for severability, the remaining sections of the act are viable and complete, and from an objective viewpoint, in all likelihood the legislature would have passed the act without the inclusion of the unconstitutional provision, a conclusion supported by the inclusion of a severance clause in the act. *See Smith v. Dept. of Insurance*, 507 So. 2d 1080 (Fla. 1987).

This approach would avoid the expenditure of judicial labor feared by the Second District of having to resentence every defendant in the window period prior to the biennial reenactment. If chapter 95-184 were held unconstitutional or the court refused to sever the provisions offensive to the single subject requirement, every defendant sentenced in the window period between October 1, 1995 and May 24, 1997[4] would have to be resentenced under the 1994 guidelines. This would require an enormous expense of judicial time and labor in the courts of the state and

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[4]This was the date of the biennial reenactment of the 1995 amendments of chapter 95-184 by chapter 97-97, Laws of Florida. Once reenacted as a portion of the Florida Statutes, a chapter law is no longer subject to challenge on the grounds it violates the single subject requirement of article III, section 6. *State v. Johnson*, 616 So. 2d 1, 2-3 (Fla. 1993). Thus, the reenactment cured the alleged single subject violation for all defendants whose offenses were committed after that date.

would be contrary to the legislative intent in enacting chapter 95-184.

The state respectfully requests that the Court uphold chapter 95-184 as constitutional and not in violation of article III, section 6 of the Florida Constitution. Alternatively, the state requests the Court to sever the offensive portion and leave the remainder of the enactment intact.

## CONCLUSION

In light of the foregoing facts, arguments, and authorities the statutory revisions embodied in Chapter 95-184, Laws of Florida, should be upheld as constitutional. Alternatively, the Court should sever the offending portions of the legislation.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to Richard J. Sanders, Esq., Public Defender's Office, Polk County Courthouse, P.O. Box 9000--Drawer P.D., Bartow, Florida 33831 on this 23rd day of October, 1998.

Dan Tanpley

**OF COUNSEL FOR RESPONDENT**

**IN THE SUPREME COURT OF FLORIDA**

**CURTIS LEON HEGGS,**

Petitioner,

v. **CASE NO. 93,851**

**STATE OF FLORIDA,**

Respondent.
_____/

**APPENDIX TO**

**MERITS BRIEF OF RESPONDENT**

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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CURTIS LEON HEGGS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 96-05252

Opinion filed September 4, 1998.



Appeal from the Circuit Court for Polk County; Oliver L. Green, Jr., Judge.

James Marion Moorman, Public Defender, and Richard J. Saunders, Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Dale E. Tarpley, Assistant Attorney General, Tampa, for Appellee.

NORTHCUTT, Judge.

Curtis Heggs contends that the 1995 sentencing guidelines are unconstitutional because the enacting legislation, chapter 95-184, Laws of Florida, violated the single subject rule contained in article III, section 6, of the Florida

Constitution. We conclude that the resolution of this issue will have a great effect on the proper administration of justice throughout the state. Therefore, pursuant to Florida Rule of Appellate Procedure 9.125, on our own motion we certify that the issue requires immediate resolution by the Florida Supreme Court under article V, section 3(b)(5), of the Florida Constitution.

On November 1, 1996, Heggs was sentenced to two concurrent terms of 132 months' imprisonment, both for armed robbery. He was sentenced under the 1995 guidelines, which permitted a sentencing range of 83.2 months to 138.7 months. It is not disputed that Heggs's sentencing range under the 1994 guidelines would be 55.8 months to 93.5 months.

Heggs did not challenge the constitutionality of the sentencing guidelines in the circuit court. Even so, his increased sentence under the 1995 guidelines implicates a fundamental due process liberty interest. See State v. Johnson, 616 So. 2d 1, 3 (Fla. 1993). Consequently, we may review this issue of fundamental error on appeal. See Id. at 4; see also §924.051(3), Fla. Stat. (Supp. 1996).

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 (quoting State ex rel. Landis v. Thompson, 120 Fla. 860, 892-893, 163 So. 270, 283 (1935)). 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.

However, if we were to declare that the 1995 sentencing guidelines are unconstitutional, our ruling would have a wide-ranging effect: any defendant sentenced in this district between October 1, 1995 and May 24, 1997 might have an argument that his sentence should be reversed.[1] Moreover, in Thompson we acknowledged conflict

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[1] The window period for challenges to chapter 95-184 would begin on its effective date, October 1, 1995. The window would close on May 24, 1997, when chapter 97-97, Laws of Florida, reenacted the 1995 amendments in chapter 95-184 as part of the Florida Statutes' biennial adoption. "Once reenacted as a portion of the Florida Statutes, a chapter law is no longer subject to challenge on the ground that it violates the single subject requirement of article III, section 6, of the Florida Constitution." State v Johnson, 616 So. 2d 1, 2 (Fla. 1993).

with Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997), in which the Third District declared that chapter 95-182 did not violate the single subject rule. We presume that the Third District would reach the same result if presented with a similar challenge to chapter 95-184. Thus, our resolution of this issue could lead to differing sentencing standards among Florida's appellate districts. Consequently, we refer the issue to the supreme court for immediate resolution so that the trial courts in this state will have the benefit of a uniform pronouncement on the applicability of the 1995 sentencing guidelines. See State v. Hootman, 697 So. 2d 1259, 1261 (Fla. 2d DCA 1997).[2]

Our decision to ask the Florida Supreme Court for immediate resolution of this issue is bolstered by that court's election to accept review in Thompson. As previously pointed out, our reasoning in that case applies with equal force here. If we were to declare chapter 95-184 unconstitutional, much judicial labor would be expended both in this court and in the trial courts correcting sentences. It would further judicial economy for the supreme court to decide both of these interrelated constitutional challenges.[3]

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[2] The Florida Supreme Court accepted jurisdiction and answered the certified question in State v. Hootman, 709 So. 2d 1357 (Fla. 1998). It has since determined that it has no jurisdiction under Article V, section 3(b)(5) of the Florida Constitution, to accept a case certified by a district court when, as in Hootman, the case is pending in the district court on a petition for writ of certiorari. See State v. Matute-Chirinos, 23 Fla. L. Weekly S386 (Fla. July 16, 1998). Matute-Chirinos reiterates, however, that such jurisdiction does exist when, as here, the case is pending before the district court on appeal.

[3] We also note that the Florida Constitution states that the supreme court "[s]hall hear appeals from . . . decisions of district courts of appeal declaring invalid a

Accordingly, we respectfully ask the Florida Supreme Court to accept jurisdiction for an immediate resolution of the constitutionality of chapter 95-184, Laws of Florida, pursuant to article V, section 3(b)(5) of the Florida Constitution, and Florida Rule of Appellate Practice 9.125. To that end, we will entertain no motions for rehearing in this case.

CAMPBELL, A.C.J., and PATTERSON, J., Concur.

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state statute . . . ." Art. III, §3(b)(1), Fla. Const. Thus, if we were to declare the 1995 sentencing guidelines unconstitutional, the supreme court would have jurisdiction to review our decision.