

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. 94,042

MARIO D. ALMANZA,

Petitioner,

-vs.-

THE STATE OF FLORIDA,

Respondent.

FILED

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ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON THE MERITS

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BRIEF OF PETITIONER ON THE MERITS

INTRODUCTION

This is a petition for discretionary review based on certified conflict with *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998), which is presently pending in this Court on a petition for discretionary review in *State v. Thompson*, Case No. 92,831. In this brief the symbol "R." designates the record on appeal. The appendix, consisting of a copy of the decision of the Third District Court of Appeal, is designated as "A."

STATEMENT OF THE CASE AND FACTS

Mario D. Almanza, the petitioner, was convicted of burglary of an unoccupied structure, a third degree felony (R. 60–61). *See* 810.02(4)(a), Fla. Stat. (1997). The offense was committed on July 21, 1996. (R. 2).

After a sentencing hearing, the trial court found Mr. Almanza to be a violent career criminal under section 775.084(1)(c) of the Florida Statutes (R. 155). The trial court then sentenced him to the maximum sentence: fifteen years in prison with a minimum mandatory term of ten years (R. 133, 138, 156). *See* 775.084(4)(c)3, Fla. Stat. (1995). The written sentencing orders erroneously state that Mr. Almanza was sentenced as a habitual violent felony offender (R. 134, 138). The trial court's oral pronouncement, however, makes clear that Mr. Almanza was actually sentenced as a violent career criminal (R. 154-56).

The Third District Court of Appeal affirmed Mr. Almanza's conviction and sentence, but certified direct conflict with the Second District Court of Appeal's opinion in *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998). The issue is whether the law creating the violent career criminal provisions, Chapter 95-182, Laws of Florida, violates the single-subject requirement of the Florida Constitution (A. 1-2).

SUMMARY OF THE ARGUMENT

Sentencing the defendant as a violent career criminal was fundamental error. Chapter 95-182 of the Laws of Florida, which created the sentencing category of violent career criminal, was enacted in violation of the single subject requirement of Article III, section 6, of the Florida Constitution. Chapter 95-182 embraces two separate subjects – violent career criminal sentencing and civil remedies for victims of domestic violence – that have no logical or natural connection, and accordingly could not be joined in the same act. Because the appellant’s sentence was imposed for an offense committed before the biennial reenactment of the provisions originally contained in chapter 95-182, his sentencing as a violent career criminal was unconstitutional. The decision of the Third District must be quashed, and the defendant’s sentence reversed with directions to remand to the trial court for resentencing.

This same issue is presently pending before this Court in *State v. Thompson*, Case No 92,831. The petitioner fully adopts the defense answer brief filed in this Court in *Thompson* for the initial brief in this case.

ARGUMENT

CHAPTER 95-182, LAWS OF FLORIDA, WHICH
CREATED THE SENTENCING CATEGORY OF
VIOLENT CAREER CRIMINAL, VIOLATES THE
SINGLE SUBJECT REQUIREMENT OF ARTICLE III,
SECTION 6 OF THE FLORIDA CONSTITUTION.

Mr. Almanza was sentenced as a violent career criminal to serve fifteen years in prison with a minimum mandatory term of ten years, pursuant to sections 775.084(1)(c), (3)(b) &(4)(c), Florida Statutes (1995). (R. 154-56). Chapter 95-182 (the “Gort Act”), which created these violent-career-criminal provisions, was enacted in violation of the single subject requirement of Article III, section 6 of the Florida Constitution. Chapter 95-182 embraces two distinct and unrelated subjects – career criminal sentencing and civil remedies for victims of domestic violence – which have no logical or natural connection, and accordingly could not constitutionally be joined in the same act. Because Mr. Almanza’s offense occurred on July 21, 1996, before the biennial reenactment of the provisions originally contained in 95-182, his sentencing as a violent career criminal was unconstitutional.

The exact same issue of the constitutionality of the Gort Act is presently pending before this Court in *State v. Thompson*, Case No 92,831. In *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998), the Second District Court of Appeal held that chapter 95-182 was unconstitutional because it violated the single subject

requirement, and invalidated a violent-career-criminal sentence on that basis. In the present case, the Third District Court of Appeal affirmed Mr. Almanza's fifteen-year violent-career-criminal sentence based on its previous decision in *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997), but certified direct conflict with the Second District's opinion in *Thompson* (A. 1-3).

As noted above, *Thompson* is now pending before this Court on petition for discretionary review. Undersigned counsel for petitioner has reviewed the arguments made by the defense in *Thompson* and has determined that they are fully applicable to this case. In the interests of judicial economy, petitioner therefore fully adopts the arguments made in the defense brief (Answer Brief of Respondent on the Merits) filed in this Court in *State v. Thompson* for the initial brief in this case.

Mr. Almanza's violent-career-criminal sentence was imposed for an offense committed on July 21, 1996, before the reenactment of the provisions originally contained in chapter 95-182. The effective date of chapter 95-182 was October 1, 1995. On May 24, 1997, the Legislature reenacted the 1995 provisions contained in chapter 95-182 as part of the biennial adoption of the Florida Statutes. *See* Ch. 97-97, Laws of Fla. Therefore, sentences imposed pursuant to the violent career criminal provisions violate the single-subject requirement if the offenses were committed between October 1, 1995, and May 24, 1997. *See Thompson*, 708 So. 2d at 317 n. 1;

see also State v. Johnson, 616 So. 2d 1, 2-3 (Fla. 1993).

Although the issue was not raised in the trial court, it presents fundamental error and accordingly may be reviewed on appeal from the sentence. *See Johnson*, 616 So. 2d at 3-4 (claim that act amending habitual offender statute violated the single subject rule raised a fundamental error and was reviewable on appeal despite failure to raise the claim before the trial court).

Because the offense in this case was committed during the window period during which the Gort Act was unconstitutional, the defendant's fifteen-year sentence as a violent career criminal was illegal and must be reversed.

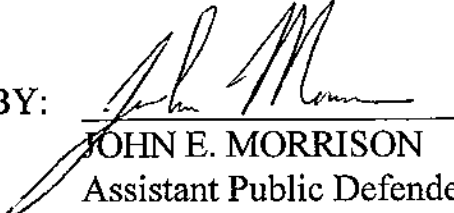
CONCLUSION

Based on the foregoing, the petitioner requests that this Court quash the decision of the Third District Court of Appeal and reverse his violent career criminal sentence with directions to remand the case to the lower court for resentencing.

Respectfully submitted,

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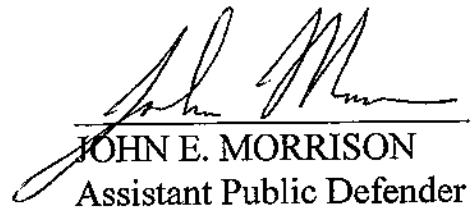
JOHN E. MORRISON
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered by mail to Fredrick Sands, Assistant Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, this second day of November 1998.

CERTIFICATE OF TYPE SIZE

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


JOHN E. MORRISON
Assistant Public Defender

Appendix

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1998

MARIO D. ALMANZA,

**

Appellant,

**

vs.

** CASE NO. 97-1834

THE STATE OF FLORIDA,

** LOWER
TRIBUNAL NO. 97-23087

Appellee.

**

Opinion filed September 2, 1998.

An Appeal from the Circuit Court for Dade County, Robert N. Scola, Judge.

Bennett H. Brummer, Public Defender, and Donald Tunnage, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Fredericka Sands, Assistant Attorney General, for appellee.

Before LEVY, FLETCHER and SORONDO, JJ.

PER CURIAM.

Mario D. Almanza, defendant, appeals his sentence as a violent career criminal on his conviction for the crime of burglary. He challenges the constitutionality of the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995," Chapter 95-182, Laws of Florida as being in violation of the single subject rule of the Florida Constitution.

This court addressed this issue in Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997) and held that the statute in question is not violative of Florida's Constitution. Since then the Second District Court of Appeal decided Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), holding that the statute in question is in violation of Article III, section 6 of the Florida Constitution, the single subject rule.

We affirm the defendant's sentence and certify direct conflict with Thompson.