

IN THE SUPREME COURT OF FLORIDA

CASE NO. 94,474

**GILBERT EDWARD SPANN,**

Petitioner,

-vs-

**STATE OF FLORIDA,**

Respondent.

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**BRIEF OF PETITIONER ON THE MERITS**

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ON PETITION FOR DISCRETIONARY REVIEW  
FROM THE DISTRICT COURT OF APPEAL  
OF FLORIDA, THIRD DISTRICT

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**BRIEF OF PETITIONER ON THE MERITS**

**INTRODUCTION**

Petitioner, Gilbert Spann, was the appellant in the district court of appeal and the defendant in the Circuit Court. Respondent, State of Florida, was the appellee in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the symbol "R" will be used to designate the record on appeal, the symbol "TR" will be used to designate the transcripts of hearings, and the symbol "A" will be used to designate the appendix attached to this brief.

## **STATEMENT OF THE CASE AND FACTS**

Gilbert Edward Spann was charged with committing the offense of burglary of a dwelling on September 12, 1996 (R. 1-3). A jury trial commenced on June 24, 1997 (TR. 1). Spann was convicted as charged (R. 184; TR. 358). The court entered an adjudication of guilt (R. 187-188), and sentenced Mr. Spann as a violent career criminal under the “Gort” Act to a 35-year term of imprisonment with a 30-year mandatory minimum sentence (R. 204-208, 267).

Spann appealed his conviction and sentence and on November 4, 1998, the Third District Court of Appeal affirmed his conviction but certified direct conflict with the Second District Court of Appeal on the violent career criminal sentencing issue (A. 1-2).

## SUMMARY OF ARGUMENT

The Gort Act violent career criminal provisions of Section 775.084(4)(c), Fla. Statutes (1995), are unconstitutional because the session law that created it, chapter 95-182, Laws of Florida, violates the single subject provisions of the Florida Constitution because it addresses two distinct subjects: career criminal sentencing and civil remedies for victims of domestic violence. Since these two subjects are not reasonably related, chapter 95-182 addresses more than one subject and is therefore invalid.

Consequently, defendants whose offenses were committed between the date the Gort Act took effect on October 1, 1995, and May 24, 1997, when the legislature reenacted the Gort Act, are entitled to relief from such violent career criminal sentencing. Since the defendant in the present case committed the crime on September 12, 1996, during this window period, he is entitled to relief from his violent career criminal sentence. The decision of the Third District must be quashed, the defendant's sentence must be reversed, and this case remanded to the trial court for resentencing.

This precise issue is presently pending in this Court in *State v. Thompson*, Case No. 92,831, and the defendant fully adopts the defense brief filed in this Court in *Thompson* for the initial brief in this case.

## ARGUMENT

**THE GORT ACT VIOLENT CAREER CRIMINAL PROVISIONS OF SECTION 775.084(4)(c) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-187, VIOLATED THE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S SENTENCE PURSUANT TO THE GORT ACT REVERSED FOR RESENTENCING.**

The issue before this Court is whether the Gort Act, creating the violent career criminal sentencing enhancement in Section 775.084(4)(c), Florida Statutes (1995), is unconstitutional on the ground that the session law that enacted it, chapter 95-182, Laws of Florida, violated the single subject provision of the state constitution, so that the defendant's sentence as a violent career criminal pursuant to that act is illegal.

This precise issue 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 for violation of the single subject requirement of article III, section 6, of the Florida Constitution, and invalidated a violent career criminal sentence under the Gort Act on that basis. The effect of that ruling is to invalidate a violent career criminal

disposition for crimes committed between the time the Gort Act was enacted on October 1, 1995, to the legislative reenactment of the Gort Act on May 24, 1997. As noted, the *Thompson* case is now pending before this Court on this issue.

In the present case, the defendant committed the crime of burglary of a dwelling on September 12, 1996 (R. 1-3), and thus he came within the window period during which the Gort Act was found unconstitutional in *Thompson*. The defendant was found to be a violent career criminal and was sentenced pursuant to the Gort Act to an enhanced sentence of 35 years in prison with a 30-year mandatory minimum sentence (R. 204-208, 267).

In *Linder v. State*, 711 So. 2d 1340 (Fla. 3d DCA 1998), the Third District acknowledged that a defendant would be entitled to sentencing relief on this issue if his case were proceeding in the Second District. The Third District also acknowledged in *Linder* that it had previously rejected this identical single subject challenge to chapter 95-182 in *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997). However, in view of the Second District's later contrary decision in *Thompson*, the Third District certified conflict to this Court both in *Linder* and in the present case on the issue of whether the violent career criminal sentencing statute, section 775.084(4)(c), Florida Statutes (1995), is unconstitutional in that it violates the single subject provision of the state constitution.

The defendant has reviewed the arguments made by the defense in the *Thompson* case and has determined they are fully applicable to this case. In the interest of judicial economy, the defendant therefore fully adopts the arguments made in the defense answer brief filed in this Court in *State v. Thompson* for the initial brief in this case.

In conclusion, chapter 95-182 creating the Gort Act violates the single subject provision of the Florida Constitution. Since the crime the defendant committed in this case occurred during the window period during which the Gort Act was unconstitutional, the defendant's sentencing as a violent career criminal under the Gort Act was illegal and his enhanced violent career criminal sentence of 35 years in prison must be reversed.

## **CONCLUSION**

Based upon the foregoing, the defendant 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 a new sentencing.

Respectfully submitted,

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BY: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, this 4th day of January, 1999.

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HOWARD K. BLUMBERG  
Assistant Public Defender