

IN THE SUPREME COURT OF FLORIDA

DEREK ADSIDE,)
)
 Petitioner,)
)
vs.)
)
STATE OF FLORIDA,)
)
 Respondent.)
_____)

S. CT. CASE NO. SC94-752
DCA CASE NO. 5D97-672

**APPEAL FROM THE CIRCUIT COURT
IN AND FOR MARION COUNTY, FLORIDA
AND FIFTH DISTRICT**

SUPPLEMENTAL POINT ON APPEAL

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

| | <u>PAGE NO.</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| TABLE OF CONTENTS | i |
| TABLE OF CITATIONS | ii |
| SUMMARY OF ARGUMENT | 1 |
| ARGUMENT | 2 |
| <u>POINT II</u> : THE TRIAL COURT ERRONEOUSLY SENTENCED THE PETITIONER UNDER CHAPTER 95-184, LAWS OF FLORIDA, WHICH IS UNCONSTITUTIONAL. | |
| CONCLUSION | 4 |
| CERTIFICATE OF SERVICE | 5 |

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in the brief is 14 point proportionally spaced Times New Roman.

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER

TABLE OF CITATIONS

| <u>CASES CITED:</u> | <u>PAGE NO.</u> |
|--------------------------------------------------------------------------------|-----------------|
| <u>Heggs v. State,</u> 25 Fla. L. Weekly S137 (Fla. February 17, 2000) | 2 |
| <u>OTHER AUTHORITIES CITED:</u> | |
| Article III, Section 6, Florida Constitution Art. V, § 3(b)(5), Fla. Const. | 1, 2 2 |
| Chapter 95-184, Laws of Florida | 1-4 |
| Florida Rule of Criminal Procedure 3.900 (a) | 2 |
| Florida Rule of Criminal Procedure 3.991 (a) | 2 |

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POINT II

SUMMARY OF THE ARGUMENT

The trial court erroneously sentenced the Petitioner under chapter 95-184, Laws of Florida, which this Court has found to be unconstitutional as a violative of the single subject rule contained in article III, Section 6 of the Florida Constitution. Accordingly, this Court should remand this cause for resentencing according to the valid guidelines laws which were in effect prior to the October 1, 1995, enactment date of chapter 95-184, Laws of Florida.

ARGUMENT

POINT II: THE TRIAL COURT ERRONEOUSLY SENTENCED THE PETITIONER UNDER CHAPTER 95-184, LAW OF FLORIDA, WHICH IS UNCONSTITUTIONAL.

The Petitioner was sentenced by the trial court for the instant offenses, which occurred between May and July of 1996, under chapter 95-184, Laws of Florida. (R 188-192, 407-412, 428-433) The scoresheet, which the trial court referred to in imposing the Petitioner's guidelines sentences, was based on Florida Rule of Criminal Procedure 3.991 (a), which became effective on October 1, 1995, under chapter 95-184, Laws of Florida. (R 26-28)

This Court has recently ruled in Heggs v. State, 25 Fla. L. Weekly S137 (Fla. February 17, 2000), (clarified in 25 Fla. L. Weekly S359 (Fla. May 4, 2000)) that chapter 95-184, Laws of Florida, is unconstitutional as violative of the single subject rule contained in article III, Section 6 of the Florida Constitution. See Art. V, § 3(b)(5), Fla. Const. As further noted by the Florida Supreme Court in Heggs, for an offense, such as the instant offense, which occurs between October 1, 1995, and October 1, 1996, a defendant has standing to raise this claim of unconstitutionality as being violative of the single subject rule under article III, Section 6 of the Florida Constitution. If the Petitioner's unlawful sentence could not have been imposed under the constitutional guidelines in effect prior to the October 1, 1995, effectual date

of Chapter 95-184.

Applying the sentencing guidelines in effect prior to enactment of chapter 95-184, Laws of Florida, the Petitioner's maximum permissible guidelines sentence would be significantly reduced from 200 months to 113.25 months incarceration. Case numbers 96-8695, 96-8791, and 96-8793) (R 188-192, 402-404, 407-412, 428-433) This is because the Petitioner's additional offense score would drop to 40.2 months under Florida Criminal Rule of Procedure 3.990 (a). The Petitioner is, therefore, entitled to be sentenced under the sentencing guidelines which were in effect prior to the enactment of chapter 95-184, Laws of Florida.

CONCLUSION

As to Point Two, Petitioner respectfully requests that this Honorable Court vacate the Petitioner's sentence and remand for resentencing under the sentencing guidelines in effect prior to the effective date of Chapter 95-184, Laws of Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to: Mr. Derek Adside, DOC #X01968 V19, Union Correctional Institution, P.O. Box 221, Raiford, FL 32083, on this 2nd day of June, 2000.

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER