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In The Supreme Court of Florida

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Jerry English,
Petitioner,

Fla. Case No. 94-759
D.C.A. Case No. 98-02784

v.
State of Florida,
Respondent.

PETITIONER'S BRIEF ON THE MERITS

On Review from the District Court
of Appeal, Third District
State of Florida

✓ Jerry English, Pro Se
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Table of Contents

Table of Citations	Page 3
Statement of the Case and Facts	Page 4 & 5
Summary of the Argument	Page 6
Jurisdictional Statement	Page 7
ARGUMENT	Pages 8-10
The Decision of the Third District Court of Appeal in this Case Expressly and Directly Conflicts with the Decision of the Second District Court of Appeal in <i>Thompson v. State</i> , 708 So.2d 315 (Fla. 2 nd DCA 1998). Petitioner's position is that the Second District Court of Appeals correctly resolves the issue in question.	
Conclusion	Page 11
Certificate of Service	Page 12

Table of Citations

<u>Cases</u>	<u>PAGE(S)</u>
Bunnell v. State, 453 So.2d 808 (Fla. 1984)	9
Chenowetia v. Kemp, 396 So.2d 1122 (Fla. 1981)	10
Higgs v. State, 695 So.2d 872 (Fla. 3 RD DCA 1998)	6, 8, 9
Sanford v. Rubin, 237 So.2d 134 (Fla. 1970)	10
Santos v. State, 380 So.2d 1284 (Fla. 1980)	9
State v. Canova, 94 So.2d 181 (Fla. 1957)	8
State v. Johnson, 616 So.2d 1 (Fla. 1993)	9, 10, 11
Thompson v. State, 708 So.2d 315 (Fla. 2 ND DCA 1998)	2, 6, 8, 9, 11
<u>Constitutional Provisions and Statutes</u>	
Article III, Section 6, Florida Constitution	4, 6, 8, 10
Article V § 3(b)(3) Florida Constitution (1980)	7
Chapter 95-182 of the Laws of Florida, Oct. 1, 1995	4, 8, 10
Florida R. App. P. 9.030 (a)(2)(A)(iv)	5, 7
Florida Statutes 775.084	4

Statement of the Case and Facts

Petitioner/Defendant was found guilty after a jury trial of trespass of an unoccupied structure and burglary of an unoccupied conveyance committed on or about January 15, 1996.

State of Florida/Respondent filed notice of State's intention to seek Enhanced Penalties pursuant to F.S. 775.084 and the Defendant was adjudicated as a Habitual Violent offender and sentenced to a term of fifteen years state prison with a minimum mandatory term of ten years.

Petitioner filed notice of direct appeal which the Third (3rd) District Court of Appeal affirmed Defendant's judgment of conviction and sentence. Subsequently, (Petitioner) filed a post conviction motion which raised the valid claim, that, section of Florida Statutes 775.084 utilized to enhance and impose sentence upon Defendant as a violent career criminal, is unconstitutional in that Law 95-182 was enacted in violation of the single subject requirement of Article III, Section 6 of the Florida Constitution.

The Third (3rd) District Court of Appeals once again affirmed the Circuit court denial that the statute is unconstitutional upholding the 3rd District position that the law does not violate the single subject provision of the Constitution.

The Second (2nd) District Court of Appeal ruled that this statute does violate the single subject rule of the Florida Constitution, thus the State enhancing a defendant's offense with the violent career criminal statute section 775.084 is an illegal sentence.

Both parties are in agreement as to the facts and that the crime was committed on January 15, 1996 which qualifies as inclusive of

the window class (October 1, 1995 thru May 24, 1997) and (PETITIONER) is entitled to relief if the Second (2ND) District Court of Appeals position is validated by the Florida Supreme Court of Florida.

This question has been certified to the Supreme Court of Florida by the Third (3RD) District Court in numerous cases pointing out the conflict between the Second (2ND) and Third (3RD) Districts.

Summary of the Argument

In this case, the Third (3rd) District Court of Appeal held that the section of Chapter 775.084 utilized to impose sentence upon the Defendant as a violent career criminal is constitutional and does not violate the single subject requirements of Article III, Section 6 of the Florida Constitution following their lead decision in Higgs v. State, 695 So. 2d 872 (Fla. 3rd DCA 1998).

(PETITIONER) position that the Second (2nd) District Court of Appeal has the more thoroughly analyzed holding that follows the Supreme Court of Florida's prior decisions interpreting the single subject portion of the constitution and the intent of the Florida constitution as evidenced in their decision in Thompson v. State, 708 So. 2d 315 (Fla. 2nd DCA 1998).

Jurisdictional Statement

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with another district court of appeal on the same point of law. ART. V § 3(b)(3) Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv).

Argument

The decision of the Third (3rd) District Court of Appeal in this case expressly and directly conflicts with the decision of the Second (2nd) District Court of Appeal in Thompson v. State, 708 So. 2d 315 (Fla. App. 2nd Dist. 1998).

The Third (3rd) District Court of Appeal interpreted the simple subject provision of the Constitution as being constitutional because there was a "reasonable and rational relationship" between each section of the 95-182 Law amending the Florida Statutes. The Court's analysis was extremely limited and did not apply either the Socratic, Aristotelean, or Radiant methods of logical legal analysis or legalistic thinking. Instead, the Court substituted a flippant societal rationale in arriving at their holding: Higgs v. State, 695 So. 2d 872 (3rd DCA 1998).

The Second (2nd) District Court of Appeal's analysis of the case was clear, concise, and complete in Thompson v. State, 708 So. 2d 315 (Fla. App. 2nd Dist. 1998). The Court discussed and evaluated the issue from the legislative standpoint, the constitutional viewpoint, and the verbiage and sectional content within the chapter 95-182, Laws of Florida [THE GORT ACT].

Constitutionally, the single subject provision was purposely enacted to serve three functions as the Court, en banc, stated in State v. Canova, 94 So. 2d 181 (Fla. 1957):

- (1) To prevent putting two unrelated matters in one act;
- (2) To prevent surprise or fraud by means of provisions in bills of which the titles give no intimations, and to prevent careless errors;

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(3) To fairly apprise the people of the subjects of legislation that are being considered in order that they may have the opportunity to discuss their viewpoints.

In Santos v. State, 380 So.2d 1284 (Fla. 1980), the Court held that the single requirement applies to laws in the sense of Acts of the Legislature.

Legislatively, the GORT ACT consisted of three (3) Bills which died in Committee which were subsequently engrafted onto several Senate bills and therefore became Law causing the exact circumstances the single subject rule was designed to alleviate!

Chapter 95-182 joined together criminal and civil subjects. In State v. Johnson, 616 So.2d 1 (Fla. 1993), the Court declared that the sections involved in that instance were in conflict and had "Absolutely no cogent connection" and were not "reasonably related to any crisis the Legislature intended to address." The provisions or sections of an ACT should have "a natural or logical connection," the Court added in Bunnell v. State, 453 So.2d 808 (Fla. 1984).

Obviously, there is a major contradiction in the premises that the two Courts used in deciding the relationship factor regarding a single subject violation. "Natural or logical connection" as opposed to "reasonable and rational relationship" (3rd DCA). Under any of the three methods of legalistic analysis (Socratic, Aristotelean, or Radiant), there is a quantum leap in arriving at the conclusion of reasonable and rational.

The major cases decided, Johnson, Thompson, and Higgs, were

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all criminal cases involving Habitualization of the defendants. Using the Socratic stare decisis method of legal analysis, the case at hand parallels Johnson v. State, 616 So. 2d 1 (Fla. 1993), in which the Court properly found a constitutional violation of the single subject provision for a 1989 law amendment to the Habitual Felony Offender Statute. The Court stated that the amendment addressed two very separate and distinct subjects. On the 95-182 Law, there are divergent criminal sections, distinct procedural duty sections and a separate civil procedure section which the Second (2nd) DCA properly analyzed and determined were not a natural or logical connection.

In Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981), the Court emphasized the sections of a Law should have a "natural or logical connection", thus the Court has not stated a "reasonable and rational relationship" in any of its previous decisions.

Clearly, Habitual Felony Offender type amendments involve fundamental "liberty" and due process interests (Sanford v. Rubin, 237 So. 2d 134 (Fla. 1970), as represented and guaranteed by the Constitution of the State of Florida and the Constitution of the United States of America: Such are an ultimate basis of our heritage and thus are totally separated from other types of amendments which do not involve due process considerations, but are prefunctory, necessary types of legislation for economic, procedural, or social facets of our society.

Relief Requested and Conclusion

Adopt the Second (2ND) District Court of Appeal's decision in Thompson v. State, 708 So.2d 315 (2 DCA 1998) and REVERSE Defendant's, Jerry English's sentence and Remand his case for resentencing in accordance with the valid laws in effect at the time of his criminal offense. Johnson v. State, 616 So.2d 1.

Conclusion

This Court has discretionary jurisdiction to review the decision in conflict between the two District Court of Appeals and the Court has agreed to exercise that jurisdiction to adjudicate the merits, and mandate the Petitioner's argument and award his requested relief. The question has been certified many times by both District Courts of Appeal and should be resolved to expedite and define justice and proper law.

NOTARY



Patricia Ann Wright
MY COMMISSION # CC536111 EXPIRES
February 28, 2000
BONDED THRU TROY FAIN INSURANCE, INC.

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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing jurisdictional brief has been furnished by the U.S. Mail, this 19th day of February, 1999, to Ms. Christine E. Zarralban, Assistant Attorney General located at Attorney General Office, The Capitol, Tallahassee, Florida 32399-1050.

Jerry English
Jerry English, Pro Se