

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

HENRY WILLIAMS,

Appellee.

Case No. 94,785

ON APPEAL FROM THE COURT OF APPEAL
IN AND FOR THE SECOND DISTRICT
STATE OF FLORIDA

APPELLANT'S INITIAL BRIEF ON THE MERITS

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STATEMENT REGARDING TYPE

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STATEMENT OF THE CASE AND FACTS

The relevant facts are set out within the opinion of the Second District Court of Appeal.

In 1995, the legislature passed Chapter 95-182, Laws of Florida, the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995" (The Gort Act). The act applied to all offenses committed after October 1, 1995. Chapter 95-182 was subsequently reenacted on May 24, 1997 as part of the biennial reenactment of Florida Statutes. See Chapter 97-97, Laws of Florida.

Appellee was charged with committing a battery on a law enforcement officer on November 27, 1996 (V 1 R 10-11), was tried by jury, and was convicted as charged (V 1 R 50). The State filed a notice requesting that Appellee be treated as a violent career criminal (V 1 R 53), and Appellee was sentenced as a violent career criminal to 15 years in prison with a 10-year minimum (V 1 R 55-61).

On appeal, in an opinion filed on January 20, 1999, the district court reversed Appellee's violent career criminal sentence and remanded for resentencing based on its holding in *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998), which held that Chapter

95-182 was unconstitutional as violative of the single subject provisions of Article III, Section 6, of the Florida Constitution. The State filed its notice of appeal of this decision on January 22, 1999.

SUMMARY OF THE ARGUMENT

The State maintains that the Gort Act does not violate the single subject provision of the Florida Constitution. There is a reasonable and rational relationship between all sections of the Act: all sections of the Act are designed to control the criminal behavior of recidivist offenders. Part of the Act is designed to control violent career criminal offenders, and the other part is designed to control continuing domestic violence offenders. The underlying theme of the legislation is criminal activity and its remedies, whether those remedies are increased periods of incarceration or restitution measures. Thus, there is a natural and logical connection among the sections, and the Gort Act does not violate the single subject provision.

ARGUMENT

WHETHER CHAPTER 95-182, LAWS OF FLORIDA,
VIOLATES THE SINGLE SUBJECT REQUIREMENT OF
FLORIDA'S CONSTITUTION.

Jurisdiction

This Court has jurisdiction over this issue pursuant to Article V, Section 3(b)(1), of the Florida Constitution as the decision of the lower tribunal declared a state statute

unconstitutional.

General Principles Applicable to the Case

Standing

Only a defendant who committed his offense prior to May 24, 1997 has standing to challenge the constitutionality of the Gort Act. The single subject provision applies only to session laws; Florida Statutes are not required to conform to the provision. *State v. Combs*, 388 So. 2d 1029 (Fla. 1980). Once reenacted as a portion of the Florida Statutes, a session law is no longer subject to challenge on the grounds that it violates the single subject provision of Article III, Section 6, of the Florida Constitution. *State v. Johnson*, 616 So. 2d 1, 2 (Fla. 1993). The reenactment of a statute cures any infirmity or defect. *Honchell v. State*, 257 So. 2d 889 (Fla. 1972); *State v. Carswell*, 557 So. 2d 183, 184 (Fla. 3d DCA 1990); *Alterman Transport Lines, Inc. v. State*, 405 So. 2d 456 (Fla. 1st DCA 1981).

As the *Thompson* court noted, the "window" period for challenging the Gort Act, Chapter 95-182, Laws of Florida, on the basis that it violates the single subject provision of the Florida Constitution is from the effective date of the law, which was October 1, 1995, until May 24, 1997, which was the date the Gort Act was reenacted. 708 So. 2d at 315, n. 1. The Gort Act was reenacted as part of the Florida Statutes' biennial adoption. See Chapter 97-97, Laws of Florida. Only those defendants who

committed their offenses prior to May 24, 1997 have standing to challenge the constitutionality of the Gort Act on the basis that it violates the single subject provision. Appellee committed his offense within the window period and has standing to challenge the act.

Preservation

The issue was not preserved in the trial court inasmuch as Appellee did not challenge the statute in any way, shape, or form at any time prior to raising the issue for the first time on appeal. However, the issue was raised and ruled on in the district court.

The Presumption of Constitutionality

Legislative acts are presumed constitutional. *State v. Kinner*, 398 So. 2d 1360, 1363 (Fla. 1981). Courts should resolve every reasonable doubt in favor of the constitutionality of a statute. *Florida League of Cities, Inc. v. Administration Commission*, 586 So. 2d 397, 412 (Fla. 1st DCA 1991). An Act should not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt. *Todd v. State*, 643 So. 2d 625, 627 (Fla. 1st DCA 1994), *review denied*, 651 So. 2d 1197 (Fla.), *cert. denied*, 515 U.S. 1143, 115 S. Ct. 2579, 132 L. Ed. 2d 829 (1995). Single subject challenges, like all constitutional challenges, are governed by these principles. *State v. Physical Therapy Rehabilitation Center of Coral Springs, Inc.*, 665 So. 2d

1127, 1130 (Fla. 1st DCA), *appeal dismissed*, 676 So. 2d 414 (Fla. 1996) (noting, in the context of a constitutional challenge to a statute alleging a defective title, that a presumption exists in favor of the validity of the statute).

The Standard of Review

The constitutionality of a statute is a question of law that an appellate court reviews *de novo*. See *United States v. Cardoza*, 129 F. 3d 6, 10 (1st Cir. 1997); *United States v. Bailey*, 115 F. 3d 1222, 1225 (5th Cir. 1997), *cert. denied*, ___ U.S. ___, 118 S. Ct. 866, 139 L. Ed. 2d 764 (1998); *United States v. Wilson*, 73 F. 3d 675, 678 (7th Cir. 1995), *cert. denied*, ___ U.S. ___, 117 S. Ct. 47, 136 L. Ed. 2d 12 (1996); *United States v. Crawford*, 115 F. 3d 1397, 1400 (8th Cir.), *cert. denied*, ___ U.S. ___, 118 S. Ct. 341, 139 L. Ed. 2d 264 (1997); *United States v. Michael R.*, 90 F. 3d 340, 343 (9th Cir. 1996). An appellate court reviews the constitutionality of all statutes, including sentencing statutes, *de novo*. *United States v. Quinn*, 123 F. 3d 1415, 1425 (11th Cir. 1997), *cert. denied*, ___ U.S. ___, 118 S. Ct. 1203, 140 L. Ed. 2d 331 (1998). Thus, the standard of review is *de novo*. See PHILIP J. PADOVANO, *FLORIDA APPELLATE PRACTICE* § 9.4 (2d ed. 1997).

Merits

The single subject provision, Article III, Section 6, of the Florida Constitution, provides: "Every law shall embrace but one subject and matter properly connected therewith, and the subject

shall be briefly expressed in the title."

The purpose of this constitutional prohibition against a plurality of subjects in a single legislative Act is to prevent "logrolling." *Martinez v. Scanlan*, 582 So. 2d 1167, 1172 (Fla. 1991); *State v. Lee*, 356 So. 2d 276, 282 (Fla. 1978). Logrolling is a practice wherein several separate issues are combined in a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. *In re Advisory Opinion to the Attorney General—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994).

While logrolling is improper, an Act may be as broad as the legislature chooses, provided that the matters included in the Act have a natural or logical connection. *Chenoweth v. Kemp*, 396 So. 2d 1122, 1124 (Fla. 1981); *Board of Public Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969). Broad and comprehensive legislative enactments do not violate the single subject provision. See *Smith v. Dep't of Insurance*, 507 So. 2d 1080 (Fla. 1987). The test to determine whether legislation meets the single subject provision is based on common sense. *Smith*, 507 So. 2d at 1087.

This Court has accorded great deference to the legislature in the single subject area and has held that the legislature has wide latitude in the enactment of laws. *State v. Lee*, 356 So. 2d 276, 282 (Fla. 1978); *State v. Leavins*, 599 So. 2d 1326, 1334 (Fla. 1st DCA 1992). Examples abound in which this Court has held that Acts

covering a broad range of topics do not violate the single subject provision. The single subject provision is not violated when an Act provides for the decriminalization of traffic infractions and also creates a criminal penalty for willful refusal to sign a traffic citation, *State v. McDonald*, 357 So. 2d 405 (Fla. 1978), when an Act covers both automobile insurance and tort law, *Lee*, when an Act covers a broad range of topics dealing with medical malpractice and insurance because tort litigation and insurance reform have a natural or logical connection, *Chenoweth v. Kemp; Smith*, or when an Act establishes a tax on services and includes an allocation scheme for the use of the tax revenues, *In re Advisory Opinion to the Governor*, 509 So. 2d 292 (Fla. 1987). Finally, this Court has found that an Act which deals with (1) comprehensive criminal regulations, (2) money laundering, and (3) safe neighborhoods is valid since each of these areas bears a logical relationship to the single subject of controlling crime. *Burch v. State*, 558 So. 2d 1 (Fla. 1990).

THE SECTIONS OF THE GORT ACT

The Gort act contains ten sections. Section 1 is the title. Section 2 creates and defines a new category of offender for sentencing purposes, the violent career criminal. Section 2 also adds aggravated stalking to the list of qualifying offenses for habitual violent felony offender status and the newly created list of qualifying offenses for violent career criminal status.

Sections 3-7 then deal with the sentencing of, legislative findings regarding, enforcement policies concerning, and prohibitions against the possession of firearms by members of the newly created class of violent career criminals. Section 8 amends the husband and wife statute providing for restitution for the misdemeanor offense of violating a domestic violence injunction. Section 9 amends the negligence statute providing for a private cause of action for domestic violence. And Section 10 amends the assault and battery statute, providing for clerk's duties, providing that only a law enforcement officer may serve a domestic violence injunction, requiring reporting of the injunction to law enforcement agencies, and restoring criminal contempt for a violation of an domestic violence injunction.

Case Law Interpreting the Gort Act

In *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997), the Third District rejected the contention that the Gort Act violated the single subject provision of the Florida Constitution and affirmed the defendant's sentence. The *Higgs* court held that there is a reasonable and rational relationship between all of the sections of the Gort Act. *Holloway v. State*, 712 So. 2d 439 (Fla. 3d DCA 1998), followed *Higgs* and certified conflict with *Thompson*.

In the instant case, the Second District reversed Appellee's sentence based on *Thompson*, in which the Second District held that the Gort Act violated the single subject provision of the Florida

Constitution.

The *Thompson* court noted that sections 1-7 of the chapter create and define violent career criminal sentencing, whereas sections 8-10 deal with civil remedies for domestic violence. The court recited a brief legislative history of the Gort Act, noting that sections 8-10 began as three House bills which died in committee. When the three House bills were engrafted onto the original Senate bill creating violent career criminal sentencing, the three House bills became law. The court stated: "It is in circumstances such as these that problems with the single subject rule are most likely to occur." 708 So. 2d at 317. Furthermore, the *Thompson* court reasoned that the two parts have no natural or logical connection because the Gort Act embraces both criminal and civil provisions. The court analogized the Gort Act to the cases of *State v. Johnson*, 616 So. 2d 1 (Fla. 1993), and *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984). The court also expressed concern that nothing in sections 2-7 addresses domestic violence and nothing in sections 8-10 addresses career criminals.

ANALYSIS OF THE DECISION

Civil and Criminal Matters

The *Thompson* court stated that the two parts of the Act have no natural or logical connection because the Gort Act embraces both criminal and civil provisions. Sections 1-7 of the chapter create and define violent career criminal sentencing, whereas sections 8-

10 deal with civil remedies for domestic violence. The *Thompson* court concluded that the first part of the Act is criminal and the second part is civil and that there is no natural or logical connection between the two parts of the Gort Act. This is not an accurate description of the two parts. The second part is both civil and criminal. It deals with civil remedies for repeated criminal behavior. Thus, the characterization by the *Thompson* court of these sections as civil is erroneous.

The domestic violence statute, Section 741.28(1), Florida Statutes (1997), defines domestic violence as follows:

"Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

It is clear from the definition of domestic violence that it is a crime. The legislature has expressly declared its intention that "domestic violence be treated as a criminal act." § 741.-2901(2), Fla. Stat. (1997). Thus, it is incorrect to suggest that the measures dealing with domestic violence are purely civil. Both section 8 and section 9 are more properly viewed as restitutorial in nature. Restitution is viewed as part of the criminal law process. *Strickland v. State*, 681 So. 2d 929 (Fla. 3d DCA 1996) (holding that a trial court's imposition of additional restitution

after sentencing was an increased sentence and therefore, violated double jeopardy). The purpose of restitution is to compensate the victim *and to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.* *Glaubius v. State*, 688 So. 2d 913, 915 (Fla. 1997).

Moreover, the Crime Control Act of 1995, Chapter 95-184, Laws of Florida, includes the same language that is in sections 8-10 of the final Gort Act as part of numerous restitution measures. §§ 28-38, Ch. 95-184. The legislature clearly viewed sections 8-10 of the Gort Act as restitution measures.

Section 8 of the Gort Act amended Section 741.31(1), Florida Statutes (Supp. 1994),¹ by creating subsection (6).² Section 741.31 already provided that a violation of an injunction for protection against domestic violence is a misdemeanor. The new subsection allows a victim of domestic violence to recover damages and attorney's fees for that misdemeanor. § 741.31(6), Fla. Stat. (1995).³ This new section is clearly a prototypical restitution provision.

Section 9 amends the negligence chapter of the Florida

¹The current version of the statute is significantly modified, but the version at the time of the amendment had only a short paragraph in subsection one declaring the violation to be a misdemeanor.

²As enacted by section 8 of Chapter 95-182, subsection (6) of Section 741.31 was added as "subsection (2)"; apparently the drafters did not realize that Section 741.31 was already divided into subunits.

³This subsection was renumbered to subsection (7) in 1996.

Statutes by creating a private cause of action for repeated instances of domestic violence. Given that domestic violence is a crime, this measure should be viewed as both civil and criminal. The purpose is to compensate the victim and to punish the offender because it includes both compensatory and punitive damages. Therefore, this section is also a type of restitution. See *Glaubius*.

Section 10, while dealing with clerks' and law enforcement's duties, amends the chapter concerning the crimes of assault, battery, and culpable negligence. Section 10 also restores the power of trial courts to enforce domestic violence injunctions through criminal contempt proceedings. This is clearly a criminal matter. Thus, contrary to the *Thompson* court's reasoning, even the "civil" parts of the final Gort Act are criminal in nature.

Legislative History

The *Thompson* court's brief legislative history of the Gort Act is overly simplified. While the three original House bills that comprise sections 8, 9, and 10 of the Gort Act died in committee, the substance of one of these bills was not in fact engrafted onto the Senate Bill 168. Only minor, limited portions of the original House bill actually became part of the final Gort Act. HB 1251, which became section 10 of the final Gort Act, originally provided that a trial court must consider requiring a perpetrator to participate in a certified batterers' program, provided for a

statement of legislative intent that every victim of domestic violence shall have access to shelter and counseling, and expanded the conduct that constituted a violation of an injunction. None of these measures was engrafted onto the final Gort Act. Only the measures relating to the clerks' and law enforcement officers' duties were engrafted onto the final Gort Act. These were the most minor provisions of the original House Bill. While significant portions of the other two House bills were engrafted onto the final Gort Act, as discussed below, this engrafting was natural and logical.

This is not evidence of logrolling; rather, it is the normal legislative process. Bills that die in one form are resurrected in another form and thereafter become law. The legislative process is messy, and the average statute is the product of compromise. L.H. LaRue, *Statutory Interpretation: Lord Coke Revisited, Special Issue on Legislation: Statutory and Constitutional Interpretation*, 48 U. PITT. L. REV. 733 (1987). Thus, the fact that relevant measures from other bills were added does not prove that logrolling occurred.

Analysis of Sections of the Act

The *Thompson* court also expressed concern that nothing in sections 2-7 addressed domestic violence and nothing in sections 8-10 addressed career criminals. This is not correct. Section 2 addresses a form of domestic violence, to wit: aggravated

stalking. Section 2 added aggravated stalking to the list of qualifying offenses for habitual violent felony offenders and to the newly created list of qualifying offenses for violent career criminals.

The legislative history of the House bill reveals the natural and logical connection among the sections of the Gort Act. The major connection is aggravated stalking. One of the House bills that died in committee contained a measure that added aggravated stalking to the list of qualifying offenses for habitual violent felony offender sentencing. HB 1789. The original Senate bill, SB 168, did not provide for the addition of aggravated stalking as a qualifying offense for habitual violent felony offender sentencing. However, a separate Senate bill, SB 118, did provide for this. Thus, in both houses of the legislature, the issue of whether aggravated stalking should be a qualifying offense for habitual violent felony offender sentencing was being considered. Naturally and logically, once the new sentencing category of violent career criminal was being proposed, the issue of whether aggravated stalking should be a qualifying offense for the new category arose also. It was natural and logical for the legislature to combine the addition of aggravated stalking to both sentencing categories in the same bill.

The Staff Analysis of the House bills also noted that the then current definition of domestic violence did not include aggravated

stalking. HB 1789. The House bill was designed to address this situation by adding aggravated stalking to the definition. HB 1789. Thus, both the House bill and the final Gort Act concern controlling the criminal offense of aggravated stalking.

Aggravated stalking is a form of domestic violence. Aggravated stalking is defined, inter alia, as repeatedly following or harassing another person in violation of an injunction for protection against domestic violence entered pursuant to Section 741.30.⁴ Thus, contrary to the *Thompson* court's reasoning, sections 2-7 of the Gort Act do address domestic violence in its most virulent form.

Additionally, another connection among the sections ignored by the *Thompson* court is that several of the crimes that constitute domestic violence are also qualifying forcible felonies for the career criminal classification. These offenses include aggravated assault, aggravated battery, sexual battery, and kidnaping.⁵ Thus, there are numerous connections between the career criminal section of the Act and the domestic violence section of the Act.

Finally, another connection is that all sections of the final Gort Act concern controlling and punishing the criminal behavior of recidivist offenders. The first part deals with sentencing for

⁴§ 784.048(4), Fla. Stat. (1997). There are additional court orders that a person may violate and thereby violate the aggravated stalking statute, but this is the crucial definition for this analysis.

⁵ See Section 776.08, Florida Statutes (1997).

domestic violence in its most virulent form, and the second part deals with additional remedies for this conduct. Thus, the sections have a cogent relationship to each other.

LOGROLLING

The *Thompson* court implied that the addition of sections 8-10 to the final Gort Act constituted logrolling. Logrolling is the joining of separate issues into a single proposal, which can result in the passage of an unpopular measure simply because it is paired with a widely supported one. *Advisory Opinion to the Attorney General re Fish & Wildlife Conservation Commission*, 705 So. 2d 1351, 1353 (Fla. 1998). The problem with this implication is that sections 8-10 of the final Gort Act were passed *twice* by the same legislature, once as part of the final Gort Act and again as part of the Crime Control Act of 1995. Chapters 95-182 and 95-184, Laws of Florida. The same language was used in both bills. CS/SB 168; CS/SB 172. Measures that have passed the legislature twice can hardly be viewed as unpopular riders. Moreover, while the Gort Act may be viewed as widely popular, given the incident that provoked the Act and the mandatory lengthy sentencing, the Crime Control Act of 1995 was the prototypical crime control measure. The Crime Control Act of 1995 was an ordinary, routine measure that mainly tinkered with existing statutes. There was nothing in the Crime Control Act of 1995 to arouse passions or to make the Act widely popular. Therefore, the amendments at issue here could not have

passed based on the popularity of the other parts of the Crime Control Act of 1995.

Given that the same legislature voted twice for the exact same amendments, logrolling is not a viable concern. The harm sought to be prevented by the single subject provision did not occur in light of the fact that sections 8-10 passed the legislature twice as part of two separate Acts.

ANALYSIS: RELEVANT SINGLE SUBJECT CASES

Johnson and Bunnell

The *Thompson* court's reliance on *State v. Johnson*, 616 So. 2d 1 (Fla. 1993), and *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984), is misplaced. In *Johnson*, this Court held that a session law violated the single subject provision because it addressed two subjects, "the first being the habitual offender statute, and the second being the licensing of private investigators and their authority to repossess personal property." 616 So. 2d at 4. This Court stated that the two matters had absolutely no cogent connection. Sentencing for repeat offenders and the licensing of private investigators have no common core.

Similarly, in *Bunnell v. State*, this Court held that a session law that created the criminal offense of obstruction of justice by false information and made amendments concerning membership of the Florida Council on Criminal Justice violated the single subject provision. The *Thompson* court characterized these amendments as

noncriminal and dealing with an executive branch function.

In contrast to *Johnson*, the instant amendments do have a common core. They concern repeat criminal offenders and the various remedies for dealing with such offenders. Moreover, in contrast to *Bunnell*, which dealt with amendments that involved both legislative and executive functions, these amendments both concern traditionally legislative matters. Setting punishment for recidivist offenders and compensating victims are both legislative matters. Additionally, as shown, all sections of the Gort Act address different aspects of recidivist criminal behavior. Thus, the legislative enactment at issue in this case is significantly different from the Acts at issue in *Johnson* and *Bunnell*.

Burch

In *Burch*, this Court held that the Crime Prevention and Control Act did not violate the single subject provision of the Florida Constitution. The Act dealt with (1) comprehensive criminal regulations, (2) money laundering, (3) drug abuse education, (4) forfeiture of conveyances, (5) crime prevention studies, and (6) safe neighborhoods. This Court held that there was a logical and natural connection among these subjects because all of the parts of the Act in issue were related to its overall objective of crime control. This Court noted that the sections were intended to control crime, whether by providing for imprisonment or through taking away the profits of crime. The

"taking away profits" language is a reference to the forfeiture section of the Act. A forfeiture proceeding is civil and independent of any criminal action. *Kern v. State*, 706 So. 2d 1366, 1369 (Fla. 5th DCA 1998). All civil forfeiture cases are heard before a circuit judge of the civil division, and the rules of civil procedure govern. § 932.704(2), Fla. Stat. (1997). Thus, the legislature may combine criminal sentencing and civil remedies for crimes without violating the single subject provision.

Here, as in *Burch*, the legislature has combined criminal sentencing and civil remedies for criminal conduct in one Act. In *Burch*, the legislature controlled crime both by incarceration and by taking away the profits of crime. Here the legislature provided for a private cause of action to control crime. The legislature may control crime by providing for imprisonment and civil remedies. When the legislature does so, the sections have a natural and logical connection and do not violate the single subject provision.

Remedy

If the Gort Act is found to be unconstitutional, the correct remedy is to resentence the defendant in accordance with the sentencing law in effect at the time the offense was committed, not in accordance with the law in effect at the time of sentencing. *But see Johnson*, 616 So. 2d at 5 (remanding for resentencing in accordance with the valid laws in effect at the time of the original sentencing); *Thompson*, 708 So. 2d 315 (same).

SUMMARY

There is a natural and logical connection among all of the sections of the Gort Act. The first part concerns sentencing for aggravated stalking and other forms of violent conduct. The second part provides a remedy for the victims of this conduct when the conduct occurs in a relationship. These provisions have a cogent relationship to each other. Thus, the Gort Act does not violate the single subject provision of Florida's Constitution. Therefore, this Court should quash the decision below.

CONCLUSION

Based on the foregoing facts, argument, and citations of authority, Appellant respectfully requests that this Honorable Court disapprove the decision of the District Court of Appeal below and affirm the judgment and sentence entered by the trial court.

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, Assistant Public Defender, P.O. Box 9000)Drawer PD, Bartow, Florida 33831, this 8th day of March, 1999.

COUNSEL FOR APPELLANT