

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

SHAWN SEAY,

Respondent.

CASE NO. 94,832

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner/Appellant, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner or the State. Respondent/Appellee SHAWN SEAY, the Appellant in the Second District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or Defendant.

The record on appeal consists of three volumes, which will be referenced according to the respective number designated in the Index to the Record on Appeal, followed by any appropriate page number.

All emphasis through bold lettering is supplied unless the contrary is indicated.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

Defendant was convicted of a burglary. The crime took place on January 14, 1996. [I 5]. On September 12, 1996, defendant's was sentenced to 12 years incarceration as a violent career criminal, pursuant to §775.084 (4)(c)(1) Fla. Stat. (1995), a codification of chapter 95-182, Laws of Florida. [I 28,66].

Defendant's relevant prior criminal offenses at the time of sentencing were as follows:

CRC 95-11487: Burglary
CRC 94-03441: Possession of Cocaine
CRC 88-14808: Burglary Assault and Sexual Battery
CRC 87-08488: Grand Theft Auto

[I 38-61].

On appeal, the district court affirmed the conviction without comment but reversed the habitual offender sentence on the authority of Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), review pending under case no. 92,831. Oral argument on Thompson was held in this Court on 4 November 1998.

The state sought discretionary review here because of direct and express conflict with Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997) and Almanza v. State, 716 So.2d 351 (Fla. 3d DCA 1998). Art. V, §3(b)(3), Fla. Const. It appears on examination that jurisdiction is more properly found under article V, §3(b)(1), Florida Constitution under which an appeal of right may be taken from decisions invalidating a statute.

SUMMARY OF ARGUMENT

The district court held that defendant's sentence as a violent career criminal, pursuant to §775.084, Florida Statutes (Supp. 1996), was unconstitutional because chapter 95-182, Laws of Florida violated the single subject rule of Article III § 6, of the Florida Constitution. The court cited Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998, review granted 717 So.2d 358 (Fla. 1998) as authority.

The state maintains that the single subject rule is not violated because all sections of the act deal with measures to sanction and deter repeat criminal offenders and the intent is the protection of innocent persons victimized by these repeat offenders.

The State contends that the Thompson holding was wrongly decided for the reasons set forth in the state's brief there but recognizes that the outcome in Thompson will also be dispositive here. Accordingly, the state adopts its brief in Thompson.

The state also relies on Almanza v. State, 716 So.2d 351 (Fla. 3d DCA 1998) which held that chapter 95-182 did not violate the single subject rule and certified conflict with the decision in Thompson.

The date of the offense here, 14 January 1996, falls within the window of Thompson. It should be noted, contrary to Thompson, that the statute at issue was reenacted effective 1 October 1996 and that the window of unconstitutionality, if any, ends on that

date. Ch. 96-388, §44 Laws of Florida, Salters v. State, No. 97-3234 (Fla. 4th DCA May 5, 1999).

ARGUMENT

ISSUE

DOES CHAPTER 95-182, LAWS OF FLORIDA VIOLATE
THE SINGLE SUBJECT RULE OF ARTICLE III, §6, OF
THE FLORIDA CONSTITUTION AS HELD BY THE
DISTRICT COURT BELOW?

The Second District Court held that defendant's sentence as a violent career criminal was unconstitutional because ch. 95-182, Laws of Florida violates the single subject rule of Article III § 6, of the Florida Constitution. In support of its holding, the district court cited Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998, review granted 717 So.2d 358 (Fla. 1998) where it had previously held that ch. 95-182 violated the single subject rule and that criminals who were sentenced as career criminal offenders pursuant to this law for offenses committed during the calculated window period, October 1, 1995 to May 24, 1997, could challenge their sentence based on the constitutional violation¹.

The State contends that Thompson was wrongly decided. The state agrees with the Third District Court's decisions in Higgs v. State, 695 So.2d 872 (Fla 3d DCA 1997) and Almanza v. State, 716 So.2d 351 (Fla 3d DCA 1998), that Chapter 95-182 does not violate the single subject rule of the Florida Constitution because there is a reasonable and rational relationship between

¹The Second District Court held, "[T]he window period begins on the effective date of Chapter 95-182, which is October 1, 1995. The window closes on May 24, 1997, when chapter 97-97, Laws of Florida, reenacted the 1995 amendments contained in Chapter 95-182 as part of the Florida Statutes' biennial adoption."

each section of the Act. Almanza certified conflict with Thompson.

Moreover, the Thompson court overlooked the legislative intent of the sections in question as well as the judgment of this Court in Burch v. State, 558 So.2d 1 (Fla. 1990). In Burch, this Court upheld a similarly broad legislative enactment, declaring:

[C]hapter 87-243 deals with three basic areas: (1) comprehensive criminal regulations and procedures, (2) money laundering, and (3) safe neighborhoods. Each of these areas bear a logical relationship to the single subject of controlling crime, whether by providing for imprisonment or through taking away the profits of crime and promoting education and safe neighborhoods. The fact that several different statutes are amended does not mean that more than one subject is involved. There is nothing in this act to suggest the presence of log rolling, which is the evil that article III, section 6, is intended to prevent. In fact, it would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation.

*

*

*

[C]hapter 87-243 is a comprehensive law in which all of its parts are directed toward meeting the crisis of increased crime.

Burch v. State, 558 So.2d 1,3 (Fla. 1990).

In the instant case, chapter 95-182, § 2(d), specifically states:

If the court finds, pursuant to subparagraph (3)(a)6, or subparagraph 3(b)5., that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

Sections 8-10 of the act deal with criminal and civil actions which may be taken against repeat offenders who violate

injunctions for the protection of domestic violence victims. Thus, all sections of the act deal with sanctioning repeat criminal offenders and the evident intent is the protection of innocent persons victimized by these repeat offenders.

The state recognizes that this Court's decision in Thompson, when issued, will also be controlling here and adopts by reference its arguments there.

Finally, the state points out that the window period of unconstitutionality declared by Thompson is clearly erroneous. Thompson assumed that "Chapter 97-97, laws of Florida, reenacted the 1995 amendments contained in Chapter 182, as part of the Florida Statutes' biennial adoption." Id. at 317, FN1. In actual fact, chapter 96-388, § 44 Laws of Florida, states in pertinent part:

Effective October 1, 1996, paragraphs (a)(b)and (c) of subsections (1), and subsections (2), (3), and (4) of section 775.084, Florida Statutes are amended and subsection (6) of said section is reenacted

Chapter 96-388, § 44, which was approved by the Governor on May 31, 1996 and became effective 1 October 1996, omits sections 8-10 dealing with the domestic violence sanctions and thus presents no single subject issue. Furthermore, the last entry in the legislative history of § 774.084 Fla. Stat. (1996 Supp), cites chapter 96-388, § 44. In this connection, see Salters v. State, 24 Fla. L. Weekly D1116, on motion for rehearing (Fla. 4th DCA May 5, 1999) which certified to this Court that its holding on

the window of opportunity to challenge the statute conflicted with Thompson.

In summary, the state maintains that chapter 95-182 does not violate the single subject rule because all sections deal with measures to protect the public against repeat offenders.

Accordingly, the decision below should be disapproved and respondent's sentence upheld.

CONCLUSION

The state submits that the conflict should be resolved in favor of Almanza and Salters and the decision below quashed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S INITIAL BRIEF ON THE MERITS has been furnished by U.S. Mail to Terrence Kehoe, Tinker Building, 18 West Pine Street, Orlando, Florida 32801, this 18th day of May, 1999.

Sherri Tolar Rollison
Attorney for the State of Florida

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