

Supreme Court of Florida

No. SC94832

STATE OF FLORIDA,
Petitioner,

vs.

SHAWN SEAY,
Respondent.

[April 13, 2000]

CORRECTED OPINION

PER CURIAM.

We have for review Seay v. State, 728 So. 2d 1181 (Fla. 2d DCA 1999), in which the Second District Court of Appeal relied on its prior decision in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), to reverse Shawn Seay's violent career criminal sentence.¹ The Seay court's decision expressly and directly conflicts with the Third District Court of Appeal's decision in Higgs v. State, 695 So. 2d 872, 873 (Fla.

¹ Although the record in this case does not conclusively show that the trial court sentenced Seay as a violent career criminal, the Second District Court of Appeal and the parties here uncontestedly assert that the trial court in fact did so. Accordingly, for purposes of review, we assume that Seay was sentenced as a violent career criminal.

3d DCA 1997). We have jurisdiction. See Art. V, § 3(b)(3), Fla. Const. Based on our decision in State v. Thompson, 25 Fla. L. Weekly S1 (Fla. Dec. 22, 1999), in which we held chapter 95-182, Laws of Florida, to be unconstitutional as violative of the single subject rule, we approve the decision below and remand this cause for resentencing in accordance with the valid laws in effect on January 14, 1996, which is when Seay committed the underlying offense in this case.² See Thompson, 25 Fla. L. Weekly at S3 (remanding for resentencing in accordance with the valid laws in effect at the time the defendant committed her offenses).

It is so ordered.

HARDING, C.J., and SHAW, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ.,
concur.
WELLS, J., dissents.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF
FILED, DETERMINED.

² We note that Seay has standing to raise a single subject rule challenge to chapter 95-182, Laws of Florida, even assuming the window period for raising such a challenge closed on October 1, 1996, as determined by the Fourth District Court of Appeal in Salters v. State, 731 So. 2d 826, 826 (Fla. 4th DCA), review granted, No. 95,663 (Fla. Dec. 3, 1999). Further, even though Seay failed to raise a single subject rule challenge in the trial court, we find that such challenge may be properly addressed in this case for the first time on appeal. Cf. Heggs v. State, 25 Fla. L. Weekly S137, S138, S140 n.4 (Fla. Feb. 17, 2000); Nelson v. State, 24 Fla. L. Weekly S250, S251 (Fla. May 27, 1999), cert. denied, 120 S. Ct. 950 (2000); State v. Johnson, 616 So. 2d 1, 3-4 (Fla. 1993).

Application for Review of the Decision of the District Court of Appeal -
Direct Conflict

Second District - Case No. 2D96-04336

(Pinellas County)

Robert A. Butterworth, Attorney General; Robert J. Krauss, Senior Assistant Attorney General, Chief of Criminal Law, ad Angela D. McCravy, Assistant Attorney General, Tampa, Florida; and James W. Rogers, Tallahassee Bureau Chief, Criminal Appeals, and Sherri Tolar Rollison, Assistant Attorney General, Tallahassee, Florida,

for Petitioner

Terrence E. Kehoe, Orlando, Florida,

for Respondent