

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,050

CARL CYRUS,

Petitioner,

-VS-

STATE OF FLORIDA,

Respondent.

BRIEF OF PETITIONER ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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INTRODUCTION

Petitioner, Carl Cyrus, was the appellant in the district court of appeal and the defendant in the Circuit Court. Respondent, State of Florida, was the appellee in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the letter "R" is used to designate the record on appeal, "TR" is used to designate the transcripts of hearings, "SR" designates the supplemental record on appeal, and "A" designates the appendix which accompanies this brief.

STATEMENT OF THE CASE AND FACTS

On December 9, 1996, Carl Cyrus and Terence Hines stole oranges from Viola Reaves's back yard.¹ (TR. 300-320). The State of Florida charged Mr. Cyrus with petit theft and burglary to an unoccupied dwelling. (R. 1-5). After trial by jury, the lower tribunal adjudicated Mr. Cyrus guilty as charged. (R. 44-45).

At the sentencing hearing on October 30, 1997, the State of Florida asked the Court **not** to sentence Mr. Cyrus as a violent career criminal pursuant to section 775.084(4)(c). (SR. 27-28). The state maintained that a violent career criminal sentence was not justified under the facts of the case. (SR. 27). Instead, the state asked the court to sentence Mr. Cyrus to twenty-five years in state prison with a ten year minimum-mandatory term, pursuant to the habitual violent offender statute. (SR. 28).

Nevertheless, the trial court sentenced Mr. Cyrus, who has symptomatic HIV, (SR. 21, 22, 30), to forty years in prison with a thirty year minimum mandatory term. The judge sentenced Mr. Cyrus as a violent career criminal, pursuant to section 775.084(4)(c), Florida Statutes.

Mr. Cyrus appealed his conviction and sentence. On September 23, 1998, the

¹The District Court's claim that Mr. Cyrus stole the fruit from "an elderly couple who depended on selling their fruit to derive income," is simply false. During her testimony, Ms. Reaves **twice** stated that she and her husband **did not sell the fruit**, but instead grew it for personal use. (TR. 303, 320).

Third District Court of Appeal affirmed. *See Cyrus v. State*, 717 So. 2d 619 (Fla. 3d DCA 1999). (A-1). The court certified direct conflict with the Second District Court of Appeal's decision in *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA), review granted, 717 So. 2d 538 (Fla. 1998) concerning the constitutionality of the "Officer Evelyn Gort and all Fallen Officers Career Criminal Act of 1995," Chapter 95-192, Laws of Florida.

SUMMARY OF ARGUMENT

The “Officer Evelyn Gort and all Fallen Officers Career Criminal Act of 1995” (Gort Act) is unconstitutional because the session law that created it, chapter 95-182, Laws of Florida, violates the single subject provisions of the Florida Constitution. Chapter 95-182 addresses two distinct subjects: career criminal sentencing and civil remedies for victims of domestic violence. Since these two subjects are not reasonably related, chapter 95-182 addresses more than one subject and it therefore violates article III, section 6 of the Florida Constitution. Because Mr. Cyrus’s offense was committed between the date the Gort Act took effect on October 1, 1995, and May 24, 1997, when the legislature reenacted it, his sentence must be reversed.

This precise issue is presently pending in this Court in *State v. Thompson*, Case No. 92,831, and the defendant fully adopts the defense brief filed in this Court in *Thompson* for the initial brief in this case.

ARGUMENT

THE APPELLANT’S SENTENCE PURSUANT TO THE “GORT ACT” MUST BE REVERSED BECAUSE CHAPTER 95-182 VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

The “Officer Evelyn Gort and all Fallen Officers Career Criminal Act of 1995” (Gort Act) is unconstitutional. The legislature enacted the Gort Act as chapter 95-182, Florida Statutes. Chapter 95-182 embraces more than one subject (career criminal sentencing and civil remedies for victims of domestic violence), in violation of the “single subject” clause of article III, section 6 of the Florida Constitution.

This precise issue is presently pending before this Court in *State v. Thompson*, Case No. 92,831. In *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998), the Second District Court of Appeal held that chapter 95-182 does violate the single subject requirement of article III, section 6. The effect of the Second District’s ruling in *Thompson* is to invalidate the Gort Act for crimes committed between its enactment on October 1, 1995, and its re-enactment on May 24, 1997.

The Third District Court of Appeal has concluded that the Gort Act does not violate article III, section 6. See *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997). The Third District decided *Higgs* before the Second District’s decision in *Thompson*.

In *Linder v. State*, 711 So. 2d 1340 (Fla. 3d DCA 1998), the Third District considered the effect of *Thompson* and reaffirmed its own holding in *Higgs*, certifying the conflict. Thereafter, the Third District has repeatedly certified the conflict, as it has in this case. (A-1).²

The defendant has reviewed the arguments made by the defense in the *Thompson* case and has determined they are fully applicable to this case. In the interest of judicial economy, the defendant therefore fully adopts the arguments made in the defense answer brief on the merits filed in this Court in *State v. Thompson* for the initial brief in this case. A copy of that brief is attached as Appendix 2.

In this case, Mr. Cyrus was convicted of an offense which occurred on December 9, 1996. This falls within the window period between October 1, 1995, and May 24,

²See *Valdes v. State*, No. 97-2896, 1999 WL 187025 (Fla. 3d DCA Apr.7, 1999); *Gulley v. State*, No. 98-2848, 1999 WL 187930 (Fla. 3d DCA Apr.7, 1999); *Boswell v. State*, 24 Fla. L. Weekly D764 (Fla. 3d DCA Mar. 24, 1999); *McGowan v. State*, 725 So. 2d 470 (Fla. 3d DCA 1999); *Russell v. State*, 725 So. 2d 470 (Fla. 3d DCA 1999); *Waldo v. State*, 24 Fla. L. Weekly D395 (Fla. 3d DCA Feb. 10, 1999); *Robbins v. State*, 24 Fla. L. Weekly D328 (Fla. 3d DCA Feb.3, 1999); *Gonzalez v. State*, 724 So. 2d 1271 (Fla. 3d DCA 1999); *John v. State*, 724 So. 2d 708 (Fla. 3d DCA 1998); *Marshall v. State*, 723 So. 2d 923 (Fla. 3d DCA 1999); *English v. State*, 721 So. 2d 1250 (Fla. 3d DCA 1998); *Spann v. State*, 719 So. 2d 1031 (Fla. 3d DCA 1998); *Tillman v. State*, 718 So. 2d 944 (Fla. 3d DCA 1998); *Almanza v. State*, 716 So. 2d 351 (Fla. 3d DCA 1998); *Elliard v. State*, 714 So. 2d 1218 (Fla. 3d DCA 1998); *Holloway v. State*, 712 So. 2d 439 (Fla. 3d DCA 1998); *Dupree v. State*, 711 So. 2d 647 (Fla. 3d DCA 1998).

1997, during which the Gort Act was unconstitutional. Mr. Cyrus's 40-year sentence as a violent career criminal is illegal and must be reversed. *See Thompson.*

CONCLUSION

The "Officer Evelyn Gort and all Fallen Officers Career Criminal Act of 1995" violates the single subject provision of the Florida Constitution. Since the crime the defendant committed in this case occurred during the window period during which the Gort Act was unconstitutional, the defendant's sentence of forty years in state prison under the Gort Act was illegal and must be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, this 19th day of May, 1999.

ANDREW STANTON
Assistant Public Defender

CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times Roman.

Andrew Stanton
Assistant Public Defender

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APPENDIX TO BRIEF ON THE MERITS

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Answer Brief of Respondent on The Merits

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