IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,097

RICKY COOPER MCGOWEN,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The Petitioner, RICKY COOPER MCGOWEN, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal (hereafter, “Third District”). The State of Florida was the prosecution in the trial court and the Appellee in the Third District. In this brief, the parties will be referred to as they stood in the trial court. The symbols "R." and "T." will refer to the record on appeal and the transcripts of the proceedings, respectively.

CERTIFICATE OF FONT AND TYPE SIZE

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STATEMENT OF THE CASE AND FACTS

The State is in substantial agreement with the Defendant's version of the case and facts as they pertain to the sentencing hearing and issues pertinent to this appeal.

POINT INVOLVED ON APPEAL

WHETHER THE LOWER COURT ERRED IN RULING THAT CHAPTER 95-182 LAWS OF FLORIDA DID NOT VIOLATE THE SINGLE REQUIREMENT OF FLORIDA'S CONSTITUTION.

SUMMARY OF THE ARGUMENT

There is a natural and logical connection among sections of the Gort Act. The first part concerns sentencing for aggravated stalking and other forms of violent conduct. The second 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 affirm the decision below.

As the issue in the instant case is the precise issue presently pending before this Court in State v. Thompson, Case No. 92,831, and since the Defendant has fully adopted the defense brief filed in this Court in Thompson for his initial brief, the State will therefore fully adopt the State's brief filed in this Court in Thompson for the State's answer brief in this case.

ARGUMENT

THE LOWER COURT CORRECTLY RULED THAT CHAPTER 95-182 LAWS OF FLORIDA DID NOT VIOLATE THE SINGLE REQUIREMENT OF FLORIDA'S CONSTITUTION.

In the instant case, the trial court sentenced the Defendant as a violent career criminal to a term of natural life pursuant to §775.084(4)(c), Fla. Stat. (1995), the "Gort Act". (R. 36-38) Now, the Defendant is arguing, as he argued in the Third District, that his violent career criminal sentence should be vacated because §775.084(4)(c), Fla. Stat. (1995) is unconstitutional on the ground that the session law that enacted it, Chapter 95-182, Laws of Florida, violated the single subject provision of the Florida Constitution. This Court should reject this claim and affirm the lower court's ruling.

As noted by the Defendant, the Third District has previously held that chapter 95-182 did not violate the single subject requirement of the Florida Constitution. Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997). On the other hand, the Second District has held to the contrary. Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998). Hence, although the Third District affirmed in the instant case on the authority of Higgs, in light of Thompson, the Third District also certified conflict with Thompson.

The issue in the instant case is the exact issue currently pending before this Court in State v. Thompson, No. 92,831. Since the Defendant has adopted the defense brief in State v. Thompson,

and in the interests of judicial economy, the State will therefore adopt the State's brief in State v. Thompson for the answer brief in this case.

CONCLUSION

Based upon the foregoing, the State submits that Third District properly held that Chapter 95-182 did not violate the single subject provision of the Florida Constitution. This Court should therefore affirm.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed this _____ day of May, 1999, to Andrew Stanton, Assistant Public Defender, 1320 N.W. 14th Street, Miami, Florida, 33125.

ALISON B. CUTLER
Assistant Attorney General