

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95, 101

LARRY WALDO,

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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CERTIFICATE OF FONT

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

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BRIEF OF PETITIONER ON THE MERITS

INTRODUCTION

Petitioner, Larry Waldo, 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 symbol "R" will be used to designate the record on appeal, the symbol "TR" will be used to designate the transcripts of hearings, and the symbol "A" will be used to designate the appendix attached to this brief.

STATEMENT OF THE CASE AND FACTS

Larry Waldo was charged with committing the offenses of burglary and aggravated battery on January 25, 1997 (R. 1-4). A jury trial commenced on September 2, 1997 (TR. 1). Waldo was convicted as charged (R. 45-46; TR. 223). The court entered adjudications of guilt (R. 52-53), and sentenced Waldo as a violent career criminal under the “Gort” Act to a fifteen-year term of imprisonment with a ten-year minimum term for burglary, and to a forty-year term of imprisonment with a 30-year minimum term for aggravated battery (R. 61-65).

Waldo appealed his convictions and sentences and on February 10, 1999, the Third District Court of Appeal affirmed his convictions but certified direct conflict with the Second District Court of Appeal on the violent career criminal sentencing issue (A. 1-4).

SUMMARY OF ARGUMENT

The Gort Act violent career criminal provisions of Section 775.084(4)(c), Fla. Statutes (1995), are unconstitutional because the session law that created it, chapter 95-182, Laws of Florida, violates the single subject provisions of the Florida Constitution because it 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 is therefore invalid.

Consequently, defendants whose offenses were committed between the date the Gort Act took effect on October 1, 1995, and May 24, 1997, when the legislature reenacted the Gort Act, are entitled to relief from such violent career criminal sentencing. Since the defendant in the present case was convicted of crimes committed on January 25, 1997, during this window period, he is entitled to relief from his violent career criminal sentence. The decision of the Third District must be quashed, the defendant's sentences must be reversed, and this case remanded to the trial court for resentencing.

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 GORT ACT VIOLENT CAREER CRIMINAL PROVISIONS OF SECTION 775.084(4)(c) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-187, VIOLATED THE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S SENTENCES PURSUANT TO THE GORT ACT REVERSED FOR RESENTENCING.

The issue before this Court is whether the Gort Act, creating the violent career criminal sentencing enhancement in Section 775.084(4)(c), Florida Statutes (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 state constitution, so that the defendant's sentences as a violent career criminal pursuant to that act are illegal.

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 was unconstitutional for violation of the single subject requirement of article III, section 6, of the Florida Constitution, and invalidated a violent career criminal sentence under the Gort Act on that basis. The effect of that ruling is to invalidate a violent career criminal disposition for crimes committed between the time the Gort Act was enacted on October 1, 1995, to the

legislative reenactment of the Gort Act on May 24, 1997. As noted, the *Thompson* case is now pending before this Court on this issue.

In the present case, the defendant was convicted of the offenses of burglary and aggravated battery committed on January 25, 1997 (R. 1-4), and thus he came within the window period during which the Gort Act was found unconstitutional in *Thompson*. The defendant was found to be a violent career criminal and was sentenced pursuant to the Gort Act to enhanced sentences of fifteen years imprisonment with a ten-year minimum term for burglary, and forty years with a 30-year minimum term for aggravated battery (R. 61-65).

In *Linder v. State*, 711 So. 2d 1340 (Fla. 3d DCA 1998), the Third District acknowledged that a defendant would be entitled to sentencing relief on this issue if his case were proceeding in the Second District. The Third District also acknowledged in *Linder* that it had previously rejected this identical single subject challenge to chapter 95-182 in *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997). However, in view of the Second District's later contrary decision in *Thompson*, the Third District certified conflict to this Court both in *Linder* and in the present case on the issue of whether the violent career criminal sentencing statute, section 775.084(4)(c), Florida Statutes (1995), is unconstitutional in that it violates the single subject provision of the state constitution.

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 filed in this Court in *State v. Thompson* for the initial brief in this case.

In conclusion, chapter 95-182 creating the Gort Act 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 sentencing as a violent career criminal under the Gort Act was illegal and his enhanced violent career criminal sentences must be reversed.

CONCLUSION

Based upon the foregoing, the defendant requests that this Court quash the decision of the Third District Court of Appeal and reverse his violent career criminal sentence with directions to remand the case to the lower court for a new sentencing.

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 April, 1999.

HOWARD K. BLUMBERG
Assistant Public Defender