

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,216

JOHN JOHN,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

This is the initial brief on the merits of petitioner/defendant John John on conflict jurisdiction from the Third District Court of Appeal.

Citations to the record are abbreviated as follows:

(R.) - Clerk's Record on Appeal

(TR.) - Transcript of Proceedings

(S.R.) - Supplemental Record on Appeal

(A.) - Appendix with Third District's decisions

STATEMENT OF THE CASE AND FACTS

The petitioner/defendant was charged with burglary of an unoccupied dwelling. (R. 1-3). Specifically, Mr. John was accused of entering an unoccupied dwelling, and was taken into custody exiting a window. (S.R. 18-23, 50). This offense was committed on June 29, 1996. (R. 1).

The jury found the Defendant guilty of attempted burglary of a dwelling. (R. 16-17). Mr. John was sentenced on February 6, 1998 as a violent career criminal, pursuant to section 775.084(1)(c), Florida Statutes (1995), the “Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995 to a state prison term of fifteen years with a ten year minimum mandatory. (R. 39-41). *See* § 775.084(4)(c), Fla. Stat. (1995).

The defendant appealed his conviction and sentence and on January 27, 1999, the Third District Court of Appeal affirmed his conviction, citing *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997), a decision out of the Third District in which the court held that the Gort Act does not violate the single subject requirement. (A. 1-2). Judge Green dissented on this issue and opined that the Gort Act violates the single-subject requirement of the Florida Constitution and the sentence should be reversed. (A. 2). The Third District did not certify conflict with the Second District Court of Appeal’s opinion in *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998). The

defendant filed a notice to invoke discretionary review, and this Court dismissed for lack of jurisdiction. The Petitioner then filed a motion to withdraw the mandate in the Third District Court of Appeal, on the ground that in all other cases in that court bearing on the Gort issue, the court certified conflict with *Thompson*. The court granted the motion, filed an opinion certifying conflict with *Thompson*, and the Petitioner now properly seeks review in this Court. (A. 3-4).

SUMMARY OF ARGUMENT

The Gort Act violent career criminal provisions of § 775.084(4)(c), Fla. Stat. (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. The Gort Act 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, Laws of Florida, 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 committed the crime on October 22, 1996, during this window period, he falls within this window period and should be resentenced within the guidelines. The decision of the Third District must be quashed, the defendant's sentence 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 § 775.084(4)(c) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-182, LAWS OF FLORIDA (1995), VIOLATED THE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S 15 YEAR SENTENCE 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 § 775.084(4)(c), Florida Statutes (1995), is unconstitutional on the ground that the session law that enacted it, chapter 95-182, at 1665, Laws of Florida, violated the single subject provision of the state constitution, so that the defendant's sentence as a violent career criminal pursuant to that act is 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 committed the offenses of aggravated assault on June 29, 1996, 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 an enhanced sentences of 15 years in prison with a 10 year mandatory minimum before release. (R. 42).

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, § 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 petitioner's brief in this case.

In conclusion, chapter 95-182, Laws of Florida, 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 sentence of 15 years in prison must be reversed.

CONCLUSION

Based upon the foregoing, the defendant requests that this Court quash the decision of the Third District 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 copy of the foregoing was mailed to Dominique Suite-Brown, Assistant Attorney General, Office of the Attorney General, Criminal Division, 110 SE 6th Street, Fort Lauderdale, Florida 33301, this ____ day of April, 1999.

By: _____
LISA WALSH
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CERTIFICATE OF FONT

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

LISA WALSH
Assistant Public Defender