

IN THE SUPREME COURT OF FLORIDA
JULY TERM

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CLERK, SUPREME COURT
By 

Seain C. Hull,
Petitioner

ORIGINAL

V.

Case No.: 95-292
District Court of Appeals
Fifth District
Case No.: 99-452

State of Florida,
Respondent

PETITIONER'S BRIEF ON THE MERITS

On review from the District Court of Appeals of the Fifth
District, State of Florida - No. 99-452.

Seain C. Hull
Petitioner, Pro se
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Chipley, Florida 32428

cc: Hon. Robert A. Butterworth
Ms. Belle B. Turner
Ms. Kristen L. Davenport

WHETHER SINGLE SUBJECT RULE WAS VIOLATED BY
ACT CONTAINING SENTENCING GUIDELINES AND
PROVISIONS FOR DOMESTIC VIOLENCE INJUNCTIONS.

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STATEMENT OF CASE AND FACTS

Petitioner was charged and convicted in the Circuit Court of the Eighteenth Judicial Circuit for the crime of Possession or Illegal Use of a Drivers License.

Petitioner sought relief pursuant to rule 3.800(a) F.R. Cr. P., alleging that the sentencing guidelines of Oct. 1st, 1995 were unconstitutional as applied for violation of the Single-Subject rule of Article III §6 of the Florida Constitution.

Petitioner, under these unconstitutoinal guidelines received two years State Prison at 85% but under the Constitutional 1994 guidelines would score to a non-state prison sanction.

The trial court on February 9, 1999 denied the petitioner's motion filed pursuant to rule 3.800(a) F.R.Cr.P. and an appeal was taken.

The District Court of Appeal on March 26, 1999, affirmed the decision of the trial court citing Heggs v. State, 718 So.2d 263 (Fla. 2nd DCA 1998), however review was granted in this Honorable Court in Heggs at 720 So.2d 518 (Fla 1998).

Petitioner on April 1, 1999 filed a notice of discretionary review.

On April 8, 1999, Petitioner filed his Brief on Jurisdiction with this Honorable Court and on August 24, 1999, an order was entered accepting jurisdiction and dispensing with oral argument.

Petitioners Brief on the Merits now follows:

SUMMARY OF THE ARGUMENT

Mr. Hull's sentence must be vacated because the 1995 guidelines under which he was sentenced were improperly enacted in violation of the Single-Subject rule, Article III §6 of the Florida Constitution, and are therefore invalid. Chapter 95-184, which amended the sentencing guidelines also contained provisions on numerous unrelated subjects, including civil remedies for victims of domestic violence, which were designed to accomplish separate and disassociated objects of legislative efforts.

ARGUMENT

Whether Single-Subject rule was violated by Act containing sentencing guidelines and provisions for domestic violence injunctions.

The underlying offense in the case was committed in December of 1995. The sentence was therefore governed by the 1995 guidelines, which were enacted by the legislature in Chapter 95-184 and applied to all crimes committed after October 1, 1999. Under the 1995 guidelines Mr. Hull scored to a total sanction of 24 months incarceration which was the sentence imposed to be served in prison.

The 1995 amendments also enhanced points for prior record causing the two year incarceration period. Under the 1994 guidelines Mr. Hull would have received a non-state prison sanction.

Mr. Hull's sentence must be vacated and the case remanded for resentencing because the 1995 guidelines were improperly enacted in violation of the Single-Subject rule of Article III §6 of the Florida Constitution. In Heggs v. State, 718 So.2d 263 (Fla 2nd DCA 1998), the Second District Court of Appeal certified question presented in this brief to this Honorable Court for immediate resolution.

The court stated that it "believe[d] that Chapter 95-184 violates

the Single-Subject rule because it...embraces civil and criminal provisions that are not logically connected." Id. The Second District Court of Appeal relied on its own precedent in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), review granted, 717 So.2d 538 (Fla. 1998), which held that Chapter 95-182 similarly violated the Single-Subject rule by combining unrelated provisions, but noted that Thompson conflicted with the Third District Court of Appeals decision in Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997).

A. The Single-Subject Rule

Article III §6 of the Florida Constitution provides:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

This provision serves three purposes:

1. to prevent hodge-podge or 'logrolling' legislation i.e., putting two unrelated matters in one act;
2. to prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and
3. to fairly apprise the people of the subjects of legislation that are being considered, in order that they may have the opportunity of being heard thereon. State v. Canova, 94 So.2d

181 (Fla. 1957).

Although "the subject of law is that which is expressed in the title, . . . and may be as broad as the legislature chooses . . . the matters included in the act" must "have a natural or logical connection" to one another. State v. Lee, 356 So.2d 276, 282 (Fla. 1978) (citation and internal quotes omitted). Thus, an enormously broad topic will not necessarily be considered a "Single-Subject" merely because the legislature labels it so. For example, in recent cases, discussed below, topics such as "the Criminal Justice System", "Comprehensive Economic Development", and "Environmental Resources" have been held to be too broad to be considered Single-subjects. If the law were otherwise, the legislature could evade the purpose of Article III, §6 simply by attaching a broad label such as "Public Health, Safety, and Welfare" to legislation combining a wide variety of topics.

The rule also requires that "[W]hen the subject expressed in the title is restricted, only those provisions that are fairly included in such restricted subject and matter properly connected therewith can legally be incorporated in the body of the act, even though other provisions besides those contained in the act could have been included in one act having a single broader subject expressed in the title." Ex Parte Knight, 41 So.2d 786, 788 (Fla 1906). Thus, although the title "need [not] embrace

every detail of the subject matter the proposition embraced in the act shall be fairly and naturally germane to that recited in the Title." Black v. Boyer, 18 So.2d 880, 887 (Fla. 1944).

'The test for duplicity of subject is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort." State v. Thompson, 163 So. 270 (Fla. 1935). The test "requires examining the act to determine if the provisions are fairly and naturally germane to the subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the subject . . ." Smith v. Department of Insurance, 507 So.2d 1080, 1087 (Fla. 1987) (citations and internal quotes omitted).

In several recent decisions, Florida Courts have made clear that separate subjects cannot be artificially connected by the use of broad labels such as "The Criminal Justice System" or "Crime Control". Although the courts have given the legislature somewhat more latitude where comprehensive legislation is required to respond to a perceived crisis, that exception is not applicable here.

In Bunnell v. State, 453 So.2d 808 (Fla. 1984), the Supreme Court concluded that Chapter 82-150, Laws of Florida, was enacted in violation of the Single-Subject rule. The chapter contained

three substantive sections. Section one created a new offense of "obstruction by false information" (codified at §843.035, Fla Stat. (1982 Supp.)). Sections two and three made several amendments to §23.15 - 23.154, Fla. Stat. (1981), Concerning the membership of the "Florida Counsel on Criminal Justice", which, at the time was an advisory board composed of various officials in the criminal justice system. Two District Courts of Appeal had reached contrary conclusions regarding the constitutionality of Chapter 82-150. The Second District Court of Appeals upheld Chapter 82-150, finding that the sections of the Statute, "have a natural and logical connection to . . . the criminal justice system" and therefore did not violate the single-subject rule. State v. Bunnell, 447 So.2d 228, 230 (Fla. 2d DCA 1983), quashed 453 So.2d 808 (Fla. 1984). The Fifth District Court of Appeals disagreed, holding that "[t]he bill in question in this case is not a comprehensive law or code type statute." Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984). It went on to criticize the Second Districts rationale for upholding the Statute:

The Bunnell court reasoned that although not expressed in the title, it could infer from the provisions of the bill, a general subject, the criminal justice system, which was germane to both sections. Even if that subject was expressed, for example, in a title reading "Bill to Improve Criminal Justice in Florida," we think this is the

object and not the subject of the provisions. Further approving such a general subject for a non-comprehensive law would write completely out of the Constitution the anti-log-rolling provision of Article III, §6. . . . [T]he general objective of the legislative act should not serve as an umbrella subject for different substantive matters.

Id at 321 (footnote omitted)

Taking jurisdiction in Bunnell, the Florida Supreme Court agreed with the Fifth District Court of Appeals and concluded that Chapter 82-150 was invalid under the single-subject rule because "the Subject of section one has no cognent relationship with the subject of sections two and three and . . . the object of section one is seperate and disassociated from the object of sections two and three." 453 So.2d at 809.

In Burch v. State, 558 So.2d 1 (Fla 1990), a narrowly divided court upheld the validity of Chapter 87-243, Laws of Florida against a single-subject attack. The majority explained:

In the preamble to Chapter 87-243, the legislature explained the reasons for this legislation:

WHEREAS, Florida is facing a crisis of dramatic proportions due to a rapidly increasing crime rate, which crisis demands urgent and creative remedial action, and

WHEREAS, Florida's crime rate crisis affects, and is affected by, numerous social, educa-

tional, economic, demographic, and geographic factors, and

WHEREAS, the crime rate crisis through-out the state has ramifications which reach far beyond the confines of the traditional criminal justice system and cause deterioration and disintegration of businesses, schools, communities, and families, and

WHEREAS, the Joint Executive/Legislative Task Force on Drug Abuse and Prevention strongly recommends legislation to combat Florida's substance abuse and crime problems, and asserts that the crime rate crisis must be the highest priority of every department of government within the state whose functions touch upon the issue, so that a comprehensive battle can be waged against this most insidious enemy, and

WHEREAS, this crucial battle requires a major commitment of resources and a nonpartisan, nonpolitical, cohesive, well-planned approach, and

WHEREAS, it is imperative to utilize a proactive stance in order to provide comprehensive and systematic legislation to address Florida's crime rate crisis, focusing on crime prevention, throughout the social strata of the state, and

WHEREAS, in striving to eliminate the fragmentation, duplication, and poor planning which would doom this fight against crime, it is necessary to coordinate all efforts to-

wards a unified attack on the common enemy,
crime

To accomplish this purpose, Chapter 87-243 deals with three basic areas:

1. Comprehensive regulations and procedures,
2. Money laundering, and
3. Safe neighborhoods.

Each of these areas bear a logical relationship to the single-subject of controlling crime, whether by providing for imprisonment or through taking away the profits of crime and promoting education and safe neighborhoods. The fact that several different statutes are amended does not mean that more than one subject is involved. There is nothing in this act to suggest the presence of log-rolling, which is the evil that Article III, §6 is intended to prevent. In fact, it would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation. 558 So.2d at 2-3.

The Burch majority distinguished Bunnell, reasoning that, unlike the legislation at issue in Bunnell, which contained two separate subjects with only a "tenuous" relationship to each other, "Chapter 87-243 is comprehensive law in which all its parts are directed toward meeting the crisis of increased crime." Id at 3

Finally, in State v. Johnson, 616 So.2d 1 (Fla. 1993), the

Supreme Court held that Chapter 89-280, Laws of Florida, violated the single-subject requirement because it addressed two unrelated subjects: "the habitual offender statute, and the licensing of private investigators and their authority to repossess personal property." 616 So.2d at 4. Although "[t]he title of the act at issue designates it an act relating to criminal law and procedure," the court held that "it is difficult to discern a logical or natural connection between Career Criminal Sentencing and repossession of motor vehicles by private investigators." Id (citations and internal quotes omitted). The court "reject[ed] the State's contention that these two subjects relate to the single-subject of controlling crime." Id. Rather the court found these "two very separate and distinct subjects" had "absolutely no cogent connection" and were not "reasonably related to any crisis the legislature intended to address." Id.

Justice Grimes, the author of the Burch opinion, concurred separately to emphasize that,:

The Burch legislation was upheld because it was comprehensive law in which all parts were at least arguably related to its overall objective of crime control. Here, however, Chapter 89-280 is directed only to two subjects -- habitual offenders and repossession of motor vehicles and motor boats -- which have no relationship to each other whatsoever.

Id. at 5 (Grimes, J. Concurring).

The Court's decisions addressing single-subject challenges to other types of legislation underscore this same distinction between a statute that is truly a comprehensive package of legislation lumped together under a broad title. Thus, in State v. Lee, 356 So.2d 276 (Fla. 1978), Chenoweth v. Kemp, 396 So.2d 112 (Fla. 1981) and Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987), the court upheld legislation designed to comprehensively address perceived crisis in tort law and the insurance industry.

The court struck down as invalid however, attempts to unite disparate pieces of legislation under broad rubrics such as "an act relating to economic development", which contained 120 sections dealing with matters ranging from workers compensation to international trade. Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991). The court also struck down Chapter 88-156, Laws of Florida, "an act relating to the construction industry", which included provisions dealing with pollutant storage tanks. Alachua County v. Florida Petroleum Marketers, 589 So.2d 240 (Fla. 1991).

In State v. Leavins, 599 So.2d 1326 (Fla. 1st DCA 1992), the court struck down Chapter 89-175, Laws of Florida, which was entitled "an act relating to environmental resources . . ." and consisted of 48 sections, encompassing a range of topics including regulation of gas and oil exploration and development, littering, oil spills, protection of coastal reefs and fishing

areas, dredging and hunting." 599 So.2d at 1333-34. The court noted that, although the Supreme Court had "applied a somewhat relaxed rule in cases where it found that the subjects of an act were reasonably related to an identifiable crisis the legislature intended to address", the legislature in enacting Chapter 89-175 "has not ostensibly addressed any crisis, but has attempted to bundle together various matters encompassed by Chapter 89-175 under the rubric 'an act relating to environmental resources'" Id at 1334. The court held the statute was invalid, because:

This phrase ["an act relating to environmental resources"] is so broad, and potentially encompasses so many topics, that it lends little support to the State's attempt to fend off a single-subject challenge.

. . .

* * *

Although each individual subject addressed [in the statute] might be said to bear some relationship to the general topic of environmental resources, such a finding would not, and should not, satisfy the test under Article III, §6. If the purpose of the constitutional prohibition [is] to insure, as nearly as possible, that a member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic, the reviewing court must examine each subject in light of

the various other matters affected by the act, and not simply compare each isolated subject to the stated topic of the act.

Id. (footnote omitted).

B. Chapter 95-184 Violates The Single-Subject Rule

Like the legislation at issue in Bunnell, Johnson, Martinez, Alachua County, and Leavins, supra, Chapter 95-184 violates the single-subject rule because it combines separate and dis-associated topics. Chapter 95-184, denominated "an act relating to the Justice System" and entitled the "Crime Control Act of 1995" contains 40 sections. Sections 2 through 7, 13 and 14 significantly amend the sentencing guidelines. Section 8 amends the definition of burglary. Section 9 through 12 amend the definition of theft. Section 15 increases the punishment for certain drug trafficking offenses. Section 16 modifies the possible sentences for life felonies. Section 17 through 24 amend other specific sentencing statutes: §§ 775.0823, 775.0825, 775.087, 784.07, 775.0845, 775.0875, 874.04, and 794.023. Sections 25 through amend the general sentencing statutes (§§ 921.187, 944.275, and 947.146) to include the changes made by the preceding sections.

Sections 28 through 35 amend several provisions in Chapter 960

regarding the imposition and enforcement of **civil damage** actions by victims of crime. Section 36 creates a new **civil** cause of action for victims injured by violations of domestic violence injunctions, to be enforced by the court that issued the injunction. Section 37 creates a **civil** cause of action for domestic violence victims. Section 38 imposes certain new **administrative** duties on court clerks and sheriffs regarding the filing and enforcement of domestic violence injunctions.

In Heggs, supra, the Second District Court of Appeals relied on its decision in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), review granted, 717 So.2d 538 (Fla. 1998), and held that Chapter 95-184 failed to comply with the single-subject rule because it combined two distinct subjects: "sections one through seven of Chapter 95-182, known as the Gort Act, create and define the violent career criminal sentencing category and provide sentencing procedures and penalties" and "[s]ection eight through ten of Chapter 95-182 deal with **civil** aspects of domestic violence." Looking to the legislative history of the chapter, the court found that section eight through ten of Chapter 95-182 began as three bills in the House of Representatives, "each of which died in committee." The substance of these failed bills was "then" engrafted on several Senate bills, including [the] Committee Substitute for Senate Bill 168 (the Gort Act), and thereby became law." the Second District emphasized that "[I]t

is in circumstances such as these that problems with the single-subject rule are most likely to occur." Id at 316.

The court also noted that such a joinder of "criminal and civil subjects" had been fatal in Johnson, and Bunnell, *supra*. The court found that sections two through seven and sections eight through ten of Chapter 95-182 addressed distinct subjects and were "designed to accomplish separate and disassociated objects of legislative effort." Id (quoting State v. Thompson, 120 Fla. 860, 892-93, 163 So. 270, 283 (1935)), rather than "to implement comprehensive legislation to solve a crisis." Id. The court concluded: "harsh sentencing for violent career criminals and providing civil remedies for victims of domestic violence, however laudable, are nonetheless two distinct subjects. The joinder of these two subjects in one act violates Article III §6 of the Florida Constitution; thus we hold that Chapter 95-182 Laws of Florida, is unconstitutional."

In Heggs, the court noted that the "objectional civil provisions addressing domestic violence injunctions," which had been engrafted on 95-182 after failing to gain passage on their own, were also engrafted on Chapter 95-184.

The court held:

Following our own precedent in Thompson, we believe that Chapter 95-184 violates the single-subject rule because it, too, embraces

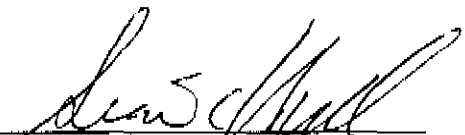
civil and criminal provisions that are not logically connected. The two subjects "are designed to accomplish separate and disassociated objects of legislative effort." 708 So.2d 317 (quoting State ex rel Landis v. Thompson, 120 Fla, 860, 892 - 893, 163 So. 270, 283 (1935)). likewise as in Thompson, here there is no legislative statement of intent to implement comprehensive legislation to solve a crisis. See Thompson, 708 So.2d at 315. 718 So.2d at 264.

As noted above petitioner acknowledges that Thompson is in conflict with the Third District Court of Appeals decision in Higgs v. State, 695 So.872 (Fla. 3rd DCA 1997) and that the Fifth District Court of Appeals opinion in Hull v. State, 24 Fla. L. Wkly D821 (Fla. 5th DCA March 26, 1999), conflicts with the opinion of the Second District's opinion in Heggs v. State, 718 So.2d 263 (Fla. 2d DCA 1998) review granted, 720 So.2d 518 (Fla. 1998), and that this Honorable Court has excepted jurisdiction in Heggs, Hull, and Thompson. Therefore the petitioner submits that this Honorable Court should follow their own precedent law on the single-subject issue and enter a ruling in favor of the fore-mentioned petitioners vacating their sentences and remanding for resentence under the constitutional 1994 guidelines.

CONCLUSION

For the foregoing reasons and those stated in the record, petitioner's sentence must be reversed and the case remanded for a new sentence in accordance with the 1994 guidelines.

Respectfully Submitted

/s/ 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded to: Robert Butterworth, Atty. Gen., State of Florida, The Capital, Tallahassee, Florida 32399-1050. Ms. Belle B. Turner, Asst. Atty. Gen., The Capital, Tallahassee, Florida 32399-1050. Ms. Kristen L. Davenport, Asst. Atty. Gen., State of Florida, The Capital, Tallahassee, Florida 32399-1050 on this 6th day of September 1999.

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 1999

SEAIN C. HULL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

Case No. 99-452

Opinion filed March 26, 1999

3.800 Appeal from the Circuit Court
for Brevard County,
Warren Burk, Judge.

Seain C. Hull, Chipley
pro se.

No Appearance for Appellee.

PER CURIAM.

AFFIRMED. See Heggs v. State, 718 So. 2d 263 (Fla. 2d DCA), review granted,

720 So. 2d 518 (Fla. 1998).

SHARP, W., GOSHORN and THOMPSON, JJ., concur.