

IN THE SUPREME COURT OF FLORIDA

**FILED**  
DEBBIE CAUSSEAU

OCT 01 1999

SEAIN C. HULL,

**ORIGINAL**

CLERK SUPREME COURT  
By                     

Petitioner,

v.

CASE NO. 95,292

STATE OF FLORIDA,

Respondent.

---

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

KELLIE A. NIELAN  
ASSISTANT ATTORNEY GENERAL  
FLORIDA BAR #618550

KRISTEN L. DAVENPORT  
ASSISTANT ATTORNEY GENERAL  
Fla. Bar #909130  
444 Seabreeze Blvd.  
Fifth Floor  
Daytona Beach, FL 32118  
(904) 238-4990

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . . ii

CERTIFICATE OF FONT AND TYPE SIZE . . . . . 1

STATEMENT OF FACTS . . . . . 2

SUMMARY OF ARGUMENT . . . . . 3

ARGUMENT:

THE TRIAL COURT PROPERLY DENIED  
HULL'S 3.800 MOTION, AS CHAPTER 95-  
184 DOES NOT VIOLATE THE SINGLE  
SUBJECT RULE. . . . . 4

CONCLUSION . . . . . 13

CERTIFICATE OF SERVICE . . . . . 14

TABLE OF AUTHORITIES

CASES:

<u>In re Advisory Opinion to the Governor,</u> 509 So. 2d 292 (Fla. 1987) . . . . .	5
<u>Bunnell v. State,</u> 453 So. 2d 808 (Fla. 1984) . . . . .	9
<u>Burch v. State,</u> 558 So. 2d 1 (Fla. 1990) . . . . .	6,10
<u>Heggs v. State,</u> 718 So. 2d 263 (Fla. 2d DCA), <u>rev. granted,</u> 720 So. 2d 518 (Fla. 1998) . . . . .	2
<u>Higgs v. State,</u> 695 So. 2d 872 (Fla. 3d DCA 1997) . . . . .	8
<u>Holloway v. State,</u> 712 So. 2d 439 (Fla. 3d DCA), <u>rev. granted,</u> 727 So. 2d 906 (Fla. 1998) . . . . .	8
<u>Hull v. State,</u> 24 Fla. L. Wkly D821 (Fla. 5th DCA March 26, 1999) . . . . .	2
<u>Jollie v. State,</u> 405 So. 2d 418 (Fla. 1981) . . . . .	2
<u>Martinez v. Scanlan,</u> 582 So. 2d 1167 (Fla. 1991) . . . . .	5
<u>State v. Johnson,</u> 616 So. 2d 1 (Fla. 1993) . . . . .	4,9,10
<u>State v. Lee,</u> 356 So. 2d 276 (Fla. 1978) . . . . .	5
<u>State v. McDonald,</u> 357 So. 2d 405 (Fla. 1978) . . . . .	5
<u>State v. Physical Therapy Rehabilitation Center,</u> 665 So. 2d 1127 (Fla. 1st DCA), <u>appeal dismissed,</u> 676 So. 2d 414 (Fla. 1996) . . . . .	4

State v. Stalder,  
630 So. 2d 1072 (Fla. 1994) . . . . . 4

Thompson v. State,  
708 So. 2d 315 (Fla. 2d DCA),  
rev. granted, 717 So. 2d 538 (Fla. 1998) . . . . . 7,8

OTHER:

Art. V, § (3)(b)(3), Fla. Const. . . . . 2

Art. III, § 6, Fla. Const. . . . . 4

CERTIFICATE OF FONT AND TYPE SIZE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

STATEMENT OF FACTS

The State submits the following additions/corrections to Hull's Statement of the Case and Facts:

Hull was charged with Unauthorized Use of a Driver's License, the offense having occurred May 23, 1996. On July 31, 1996, Hull was sentenced to 2 years imprisonment for this offense; he was also given a consecutive 15 year sentence for violating his community control. (Respondent's Appendix).

Hull filed a 3.800 motion challenging his sentence on the basis that the 1995 sentencing guidelines were enacted in violation of the single subject rule. The trial court denied Hull's motion, and the denial was affirmed on appeal. Hull v. State, 24 Fla. L. Wkly D821 (Fla. 5th DCA March 26, 1999). In its per curiam opinion, the district court found the decision of its sister court to be controlling -- Heggs v. State, 718 So. 2d 263 (Fla. 2d DCA), rev. granted, 720 So. 2d 518 (Fla. 1998) (case # 93,851).

This Court has jurisdiction pursuant to article V, section (3)(b)(3) of the Florida Constitution. See Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

### SUMMARY OF ARGUMENT

Jurisdiction of this case was improvidently granted, as Hull's attack on his expired sentence is clearly moot. Moreover, this claim should be rejected on its merits.

Chapter 95-184 does not violate the single subject rule, as it is merely a comprehensive piece of legislation updating interrelated components of the criminal justice system. The fact that several statutes are amended does not mean that more than one subject is involved. The subject of the act in question is the definition, punishment, and prevention of crime and the protection of the rights of crime victims; each of these matters has a natural or logical connection.

## ARGUMENT

THE TRIAL COURT PROPERLY DENIED  
HULL'S 3.800 MOTION, AS CHAPTER 95-  
184 DOES NOT VIOLATE THE SINGLE  
SUBJECT RULE.

Hull contends that his sentence should be vacated because the 1995 sentencing guidelines were enacted in violation of the single subject rule. First of all, the State submits that this case should be dismissed, as review of Hull's claim was improvidently granted by this Court.

Hull received his two-year sentence on July 31, 1996. Accordingly, he had completely served this sentence well before his 3.800 motion was filed attacking it. Even if Hull's argument prevailed here, all he would receive is a new, lesser sentence which would have already expired through credit for time-served -- he would be in the same situation he is in now. His claim is therefore moot and need not be considered by this Court.<sup>1</sup>

Even if Hull's claim was not moot, it should still be rejected on its merits.

Legislative acts are strongly presumed to be constitutional. Courts should resolve every reasonable doubt in favor of the constitutionality of a statute. See, e.g., State v. Stalder, 630

---

<sup>1</sup> Any argument Hull might have as to the effect of this claim on his other sentences was never raised below, in the trial court or the district court, and is therefore not properly before this Court.



So. 2d 1072, 1076 (Fla. 1994). Single subject challenges, like all constitutional challenges, are governed by these principles. State v. Physical Therapy Rehabilitation Center, 665 So. 2d 1127, 1130 (Fla. 1st DCA), appeal dismissed, 676 So. 2d 414 (Fla. 1996).

The single subject provision, article III, section 6 of the Florida Constitution, provides that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

This provision simply requires that there be a logical or natural connection between the various portions of a legislative enactment. State v. Johnson, 616 So. 2d 1, 4 (Fla. 1993). This requirement is satisfied as long as a "reasonable explanation exists as to why the legislature chose to join [the] subjects within the same legislative act." Id.

In making this determination, "wide latitude" must be given to the legislature, and a court should not strike down a statute on this basis absent a "plain violation" of the constitutional requirement. State v. Lee, 356 So. 2d 276, 282 (Fla. 1978). The act may be as broad as the legislature wishes, as long as there is some natural or logical connection between the various provisions. Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991).

Here, Hull challenges the constitutionality of the 1995 sentencing guidelines as enacted by chapter 95-184, Laws of Florida. He argues that the bill violated the single subject

requirement because it embraced not one, but several different subjects -- criminal sentencing and private civil damages. This argument should be rejected.

Examples abound where this Court has held that acts covering a broad range of issues do not violate the single subject provision. The single subject provision was not violated where an act provided for the decriminalization of traffic infractions and also created a criminal penalty for willful refusal to sign a traffic citation. State v. McDonald, 357 So. 2d 405 (Fla. 1978). This provision was not violated where an act covered both automobile insurance and tort law. Lee, 356 so. 2d 276.

Similarly, an act establishing a tax on services which included an allocation scheme for use of tax revenues was deemed not to have violated the single subject provision. In re Advisory Opinion to the Governor, 509 So. 2d 292 (Fla. 1987). Finally, and most analogous to the situation here, this Court found that an act dealing with comprehensive criminal regulations, money laundering, and safe neighborhoods was valid since each of the areas addressed bore a logical relationship to the single subject of controlling crime. Burch v. State, 558 So. 2d 1 (Fla. 1990).

The Act at issue here has the same objective -- controlling crime. Sections two through twenty-seven of Chapter 95-184 contain provisions dealing with discussion of those crimes to which the act applies, definitions, offense severity levels, the guidelines

worksheet and attendant computations, recommended and departure sentences, and amendments to certain criminal statutes. Sections twenty-eight through thirty-eight amend statutes dealing with assistance to victims of crime, including restitution provisions, damages, and injunctions. It is readily apparent that all of these provisions have a logical relationship to the control, prevention, amelioration, and punishment of crime.

Hull asserts that the last three sections, thirty-six through thirty-eight, are violative of the single subject rule because, he asserts, they combine civil and criminal penalties. The State submits that combining civil and criminal penalties is a common sense remedy for dealing with criminal behavior and does not violate the single subject provision of the constitution.

Nevertheless, the State addresses each of these sections in detail. Section thirty-six amends Florida Statute 741.31. The preexisting version of this statute criminalized the willful violation of an injunction for protection against domestic violence. Subsection (2), which was added in this chapter law, provides for a victim's recovery for injuries or loss caused by a violation of such an injunction. There is an obvious nexus between the punishment of crime and the award of monetary compensation to victims of crime.

Similarly, section thirty-seven permits recovery for victims of continuing domestic violence, and section thirty-eight clarifies

procedures to be followed in obtaining an injunction against repeat violence. Again, these provisions can only properly be viewed as encompassing both criminal penalties and civil remedies. A cognizable nexus, a natural and logical connection, therefore exists between these provisions and the other criminal penalties of the chapter law.

In arguing that Chapter 95-184 improperly combines provisions dealing with unrelated criminal and civil penalties, Hull relies on the opinion of the district court in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA), rev. granted, 717 So. 2d 538 (Fla. 1998) (case # 92,831). There, the court found that Chapter 95-182, Laws of Florida, was unconstitutional as violating the single subject rule. According to this opinion, harsh sentencing for violent career criminals and providing civil remedies for victims of domestic violence comprise two distinct subjects. Id. at 317.

As Hull acknowledges, the Third District Court of Appeal has come to the contrary conclusion, finding that the provisions of Chapter 95-182 are reasonably related. Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997). See also Holloway v. State, 712 So. 2d 439 (Fla. 3d DCA) (following Higgs and certifying conflict with Thompson), rev. granted, 727 So. 2d 906 (Fla. 1998) (case # 93,437). The State submits that Higgs is the more well-reasoned opinion and should be followed by this Court.

Additionally, the State notes that the focus of the criminal provisions of Chapter 95-182 is much more narrow than the focus of the criminal provisions of Chapter 95-184. Accordingly, even if Chapter 95-182 is eventually found to be unconstitutional by this Court, it does not necessarily mean that Chapter 95-184 should fail as well.

Hull contends that sections two through thirty-five of Chapter 95-184 solely address sentencing concerns, whereas sections thirty-six through thirty-eight solely address domestic violence. Hull is incorrect in his assessment. For example, section five of Chapter 95-184 deals with all of the forms of conduct which constitute domestic violence, ranking them in an appropriate offense severity level. Section eight, which amends the burglary statute, addresses two forms of domestic violence, assault and battery, which may occur during the commission of the crime. Section twelve, which addresses the collection and dissemination of criminal justice information, was amended to include minors who commit assault and battery, two forms of domestic violence. Finally, section nineteen added aggravated stalking, with other forms of domestic violence, to enumerated acts qualifying for enhancement or imposition of a minimum mandatory sentence for possession of a firearm.

Chapter 95-184 is a prototypical crime control measure, a comprehensive piece of legislation updating interrelated components

of the criminal justice system. The provisions of the bill are not designed to accomplish separate and disassociated objects of legislative effort. The rights of crime victims are inextricably intertwined with the chapter's goal of the punishment and prevention of crime and there is a natural, logical connection between the two.

Finally, the State notes that Hull's reliance on this Court's prior opinions in Johnson, 616 So. 2d 1, and Bunnell v. State, 453 So. 2d 808 (Fla. 1984), is misplaced. Both of these cases are readily distinguishable from the instant situation.

In Johnson, this Court held that a chapter law violated the single subject provision because it addressed two unrelated subjects, "the first being the habitual offender statute, and the second being the licensing of private investigators and their authority to repossess personal property." Johnson, 616 So. 2d at 4. This Court found that the two matters had absolutely no cogent connection because sentencing for repeat offenders and the licensing of private investigators had no common core.

Similarly, in Bunnell, this Court held that a session law violated the single subject provision because the law created the criminal offense of obstruction of justice by false information and amended provisions concerning membership of the Florida Council on Criminal Justice, an item entirely unrelated to obstruction of justice by false information.

In contrast to these cases, the instant amendments do have a common core -- they concern sentencing and remedies to victims of crime. In addition, these amendments concern matters which are traditionally legislative, since both criminal sentencing and the compensation of victims of crime are within the legislature's purview. Finally, all of the sections of the chapter law have significant criminal aspects.

In Burch, 558 So. 2d 1, this Court held that the Crime Prevention and Control Act did not violate the single subject provision of the Florida Constitution. That Act addressed comprehensive criminal regulations, money laundering, drug abuse education, forfeiture of conveyances, crime prevention studies, and safe neighborhoods. This Court found that there was a logical and natural connection among these subjects because all of the parts were related to the overall objective of controlling crime, whether by providing for imprisonment or through taking away the profits of crime through forfeiture (a *civil* proceeding).

Chapter 95-184 is clearly comparable to the chapter law upheld by this Court in Burch.

Because this chapter law addresses sentencing for crimes and also provides alternative or additional remedies for victims of these crimes, there is a natural and logical connection among its sections. This chapter law does not violate the single subject provision of the Florida Constitution, and this Court should affirm

the district court's decision upholding the constitutionality of  
the Act.

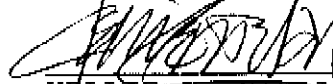


CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests this honorable Court approve the decision of the district court in all respects.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL



---

KELLIE A. NIELAN  
ASSISTANT ATTORNEY GENERAL  
Fla. Bar #618550




---

KRISTEN L. DAVENPORT  
ASSISTANT ATTORNEY GENERAL  
Fla. Bar #909130  
444 Seabreeze Boulevard  
Fifth Floor  
Daytona Beach, FL 32118  
(904) 238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Respondent's Brief on the Merits has been furnished by U.S. mail to Seain C. Hull, DOC #722146, Washington Correctional Institute, 4455 Sam Mitchell Drive, Chipley, Florida 32428, this 30<sup>th</sup> day of September, 1999.

  
\_\_\_\_\_  
Kristen L. Davenport  
Assistant Attorney General