

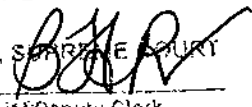
ORIGINAL

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

FILED

SID J. WHITE

MAY 12 1999

CLERK, SUPREME COURT
By 
Chief Deputy Clerk

TARVAN GULLEY,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

CASE NO: 95-392

DCA CASE NO: 98-2848
(Third DCA)

PETITIONER'S BRIEF ON THE MERITS

ON REVIEW FROM THE DISTRICT COURT
OF APPEAL, THIRD DISTRICT
STATE OF FLORIDA

TARVAN GULLEY #082447
Petitioner, pro se
Madison Corr. Inst.
Post Office Box 692
Madison, Florida 32341-0692

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TABLE OF CITATIONS

CASES

Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997)

Thompson v. State, 708 So.2d 315 (Fla.App. 2 Dist. 1998)

Johnson v. State, 616 So.2d at 4

CONSTITUTIONAL PROVISIONS AND STATUTES

Article III, Sec. 6

Article V, 3(b)(3)

775.084 Fla. Stat.

777.011

810.02(3)c

Chapter 95-182 Laws of Florida

House Bill 1789, 2513

Senate Bill 168

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CONSTITUTIONAL PROVISIONS AND STATUTES

Article III, Sec. 6 6,9
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STATEMENT OF THE CASE AND FACTS

Gulley was charged with Attempted Burglary of an Occupied Structure, a lesser included offense; contrary to 810.02(3)c and 777.011, Florida Statute; Resisting an officer without violence, contrary to 843.02 and 777.011, Florida Statute.

These offenses occurred in 1995. The Court adjudicated Gulley guilty on or about the 15th day of February. The State filed it's notice that Gulley be treated as a Habitual Violent Offender (H.V.O.); and the Court sentenced Gulley, upon conviction, to five (5) years minimum mandatory. On September 17th, 1998, Gulley filed a Rule 3.800(a) Motion to Correct Illegal Sentence, in which, the Trial Court and the Third District Court of Appeal denied.

Gulley then filed a Motion for Rehearing to find conflict in authority between District Courts of Appeal and the Motion was granted. Gulley motion to invoke the discretionary jurisdiction of this Court is timely filed.

SUMMARY OF THE ARGUMENT

In this case, the Third District Court of Appeal in Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997); held that the "Officer Evelyn Gort And All Fallen Officers Career Criminal Act of 1995 does not violate single subject rule of State Constitution."

Thus, Gulley contends that the decision of the Second District Court of Appeal in, Thompson v. State, 708 So.2d 315 (Fla. 2nd DCA 1995); expressly and directly conflicts with Higgs v. State, which states that: Violent Career Criminal sentencing statute violated constitutional single subject requirement by joining criminal provision with civil remedies for victims of domestic violence, two subjects having no nature or logical connection.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law. Art. V § 3(b)(3) Fla. Const. (1997); Fla.R.App.P. 9.030(3)(2)(A)(iv).

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN HIGGS v. STATE, EXPRESSLY AND DIRECTLY CONFLICTS WITH THE SECOND DISTRICT COURT OF APPEAL DECISION IN, THOMPSON v. STATE.

The petitioner, Tarvan Gulley, contends that his sentence as a "Habitual Violent Offender" under chapter 95-182, Laws of Florida, the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995" (the Gort Act) is illegal.

The Third District Court of Appeal in, Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997); alleges that (The Gort Act) of 1995 does not violate "single subject rule of the State Constitution, "for there is a reasonable and rational relationship between each of the sections of the said Act.

Gulley was sentenced as a habitual violent offender pursuant to section 775.084 Florida Statute (1995) (as amended by chapter 95-182) to (5) years minimum mandatory.

Article III, section 6, of the Florida Constitution provides, "Every law shall embrace but one subject and matter properly connected therewith, and this subject shall be briefly expressed in the title." This provision serves three purposes:

- [1] to prevent hodge podge or "log rolling" 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 intention, 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 - - opportunity of being heard thereon.

As the Second District Court of Appeal did in Thompson, this Court should also look to the legislature history of this act.

Section 1 through 7 of chapter 95-182, known as the Gort Act, creates and define the violent career criminal sentencing category and provide sentencing procedures and penalties. Section 8 through 10 of chapter 95-182 deals with civil aspects of domestic violence.

Section 8 creates a civil cause of action for damages for injuries inflicted in violation of a domestic violence injunction. Section 9 creates substantive and procedural rules regulating private damages actions brought by victims of domestic abuse. Section 10 imposes procedural duties on the court clerk and the sheriff regarding the filing and enforcement of domestic violence injunctions.

The legislature history show that section 8 through 10 of chapter 95-182 began as three bills in the House of Representatives. Proposed committee substitute for House Bill 1251 dealt principally with the duties of the clerk and the sheriff in the processing and execution of injunctions for protection.

Proposed committee substitute for House Bill 1789, filed on

behalf of the Governor's Task Force on Domestic Violence, encompassed a laundry list of the recommendations found in the January 1994 report of the Task Force, including matter relating to the duties of the clerk. House Bill 2513 provided for civil remedies for victims of domestic violence. Each of these bills died in committee. See Fla.H.R.Comm. on the Judiciary, PCS/HB 1251 (1995) Bill Analysis 6 (final July 10, 1995) (on file at state Archives); ect.

The Second District Court of Appeal held that the substance of these failed bills was engrafted on several senate bills, including committee substitute for senate bills 168 (The Gort Act), and there by became law.

The court concluded in its analysis that it is circumstances such as these problems with single subject Rule are most likely to occure. And adding that chapter 95-182 joins together criminal and civil subjects.

Such a joinder has confronted this Court in State v. Johnson, 616 So.2d 1 (Fla.1993), and Bunnell v. State, 453 So.2d 808 (Fla. 1984).

In Johnson, the court held that chapter 89-280, law of Florida, violated the single subject provision because it addressed two subjects: "the first being the habitual offender statute, and the second being the licensing of private investigators and their authority to repossess personal property." 616 So.2d at 4.

The Court stated that the two matters had "absolutely no cogent connection "and were not reasonably related to any crisis

the legislature intended to address.

However, as this Honorable Court ruled in Johnson and Bunnell; it should rule the same in Gulley's case, for joinder of these two subjects in one act, violates ARTICLE III, SECTION 6 of the Florida Constitution. Therefore, Chapter 95-182, Laws of Florida, is unconstitutional.

CONCLUSION

Based on the foregoing facts and authorities, as well as the showing of conflicts in this case with cases previously rendered, Gulley's sentence must be reversed and remanded for resentencing absent the provisions of Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995; to the extent of the penalties lawfully in effect on February 15, 1996.

The decision of the Third District Court of Appeal should be quashed with directions to remand for resentencing.

RESPECTFULLY SUBMITTED,

Tarvan Gulley 082447
TARVAN GULLEY DPC # 082447
Appellant/Petitioner
Madison Correctional Institution
Post Office Box 692
Madison, Florida 32341-0692

RELIEF REQUESTED

The Court should find the statute under review unconstitutional and petitioner's sentence should be reversed. Remand to the trial court for resentencing under the laws in effect at the time of the petitioner's crimes would be lawful.

VERIFICATION

UNSWORN DECLARATION UNDER PENALTY
OF PERJURY PURSUANT TO 28 U.S.C.
§ 92.525 FLORIDA STATUTES (1989)

I, Tarvan Gulley, DO HEREBY DECLARE under penalty of perjury that the information contained herein or attached hereto is true and correct.

EXECUTED ON THIS 10 day of May, 1999.

Tarvan Gulley 082447
Tarvan Gulley DC #082447

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: STATE ATTORNEY'S OFFICE, E.R. GRAHAM BLDG. 1350 N.W. 12th AVENUE, MIAMI, FLORIDA 33136-2111 on this 10 day of May 1999, via, pre-paid postage First-Class U.S. Mail.

Tarvan Gulley 082447
Tarvan Gulley DC #082447
Petitioner, pro se
Madison Correctional Institution
P.O. Box 692
Madison, Florida 32341-0692

FILED

SID J. WHITE

MAY 12 1999

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Tarvan Gulley DOC # 082447
Madison Correctional Institution
P.O. Box 692
Madison, Florida 32341-0692

May 10, 1999

Honorable Sid J. White
Clerk of the Court
Supreme Court of Florida
Tallahassee, Florida 32399-

RE: GULLEY V. STATE
CASE NO:

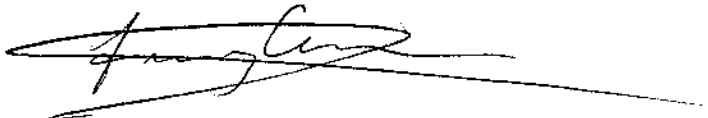
DEAR MR. WHITE:

Enclosed please find 3 PETITIONER'S BRIEF ON THE MERITS.
Please file these with the Court. I have provided a copy to the
Attorney General's Office this day.

Thank you.

Sincerely,

TARVAN GULLEY # 082447
Petitioner, pro se



IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1999

TARVAN GULLEY,

**

Appellant,

**

vs.

**

CASE NO. 98-2848

THE STATE OF FLORIDA,

**

LOWER

Appellee.

**

TRIBUNAL NO. 95-31429

Opinion filed April 7, 1999.

An Appeal under Fla. R. App. P. 9.140(i) from the Circuit Court for Dade County, Ronald C. Dresnick, Judge.

Tarvan Gulley, in proper person.

Robert A. Butterworth, Attorney General, for appellee.

Before SCHWARTZ, C.J., and FLETCHER and SHEVIN, JJ.

ON MOTION FOR REHEARING

PER CURIAM.

We grant the motion for rehearing and vacate the opinion of this court issued March 10, 1999. We affirm the order denying defendant's motion for post conviction relief, see Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997), and certify conflict with Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA), review granted, 717 So. 2d 538 (Fla. 1998).

Affirmed; conflict certified.