IN THE SUPREME COURT OF FLORIDA

CARLOS D. GARCIA, V,

Petitioner,

v. CASE NO. 95,407

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL,
FIFTH DISTRICT

PETITIONER'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The State Attorney for the Seventh Judicial Circuit (St. Johns County), in case no. CF97-1581, charged the petitioner, Carlos Garcia, with one count of attempted first degree murder. (R 1) The offense was alleged to have taken place on May 4, 1997. (R 1) After a jury trial the petitioner was adjudicated guilty of the lesser included offense of aggravated battery, a second degree felony, and was sentenced to the maximum prison term permitted by the sentencing guidelines, eighty-six months. (R 108, 118-23, 128-29)

On appeal from the judgment and sentencing orders, Mr. Garcia argued that the 1995 sentencing guidelines had been enacted in an unconstitutional fashion since the law that created them dealt with more than one subject. The Fifth District Court of Appeal, in its case no. 98-1066, affirmed the petitioner's conviction and sentence per curiam, issuing an opinion which read, in its entirety, 'AFFIRMED on the authority of Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 719 So. 2d 169 (Fla. 1998).' The State, in its jurisdictional brief filed with this court in this case on or around May 13, 1999, conceded that this court has jurisdiction to hear Mr. Garcia's case.

SUMMARY OF ARGUMENT

The 1995 sentencing guidelines, used to sentence the petitioner, were enacted in an unconstitutional manner; the error is fundamental and the petitioner should be resentenced on remand under the 1994 guidelines.

ARGUMENT

THE 1995 SENTENCING GUIDELINES WERE ENACTED UNCONSTITUTIONALLY; THE LAW THAT CREATED THEM DEALT WITH MORE THAN ONE SUBJECT.

The sentence imposed in this case is tainted by the fundamental error of sentencing a criminal defendant pursuant to a statute that was passed in an unconstitutional fashion. State v. Johnson, 616 So. 2d 1, 3 (Fla. 1993). That constitutional issue, since it is fundamental, was timely raised for the first time on appeal in this case. Id. The Fifth District Court of Appeal declined to consider the issue based on its decision in Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 719 So. 2d 169 (Fla. 1998), which as this court well knows precludes defendants from raising *any* sentencing issue for the first time on appeal, no matter how clear from the record, and no matter how egregious, the error may be. This court has given notice in Speights v. State, 711 So. 2d 167 (Fla. 1st DCA 1998), quashed, case no. 93,207 (Fla. May 14, 1999), that it proposes to reverse Maddox. It would serve judicial economy for this court to address the single substantive issue raised in this case as well as the Maddox issue, since that substantive issue is also pending in this court in other cases.

As to that substantive issue, in Heggs v. State, 718 So. 2d 263 (Fla. 2d DCA), review granted, 720 So. 2d 518 (Fla. 1998), a panel of the Second District Court of Appeal concluded that Chapter 95-184, Laws of Florida, which created the 1995 version of the sentencing guidelines, was enacted unconstitutionally because it dealt with more than one subject. The District Court panel declined to declare the statute unconstitutional and instead certified the question of the statute's constitutionality directly to this court for resolution. Id. The Second District panel reached the right conclusion in Heggs, and the sentence imposed in this case under the 1995 guidelines should be vacated and the case remanded for resentencing under the 1994 guidelines.

Chapter 95-184 increased the number of points allotted on sentencing guidelines scoresheets to various offenses. See Chapter 95-184, s. 6. The 1995 changes to the guidelines affect the petitioner, who was convicted of the level 7 offense of aggravated battery. Under the 1994 guidelines such offenses were scored at 42 points; under the 1995 guidelines, they are scored at 56 points. See Chapter 95-184, s.6.Each guidelines point over the 28th point corresponds roughly to a month in prison. See Section 921.0014(1), Florida Statutes (1995).

Chapter 95-184 also amended various substantive criminal

statutes, see ss. 8, 9, and 13-15; amended various criminal sentencing statutes, see ss. 7, 10, 11, 16, 17, and 19-25; amended statutes regulating prisoners' gain time and control release, see ss. 26 and 27; amended statutes which create a civil cause of action in private individuals against convicted offenders, see ss. 28-34; amended a statute which creates a civil cause of action in favor of the government against convicted offenders, see s. 35; created a civil cause of action in private individuals for whose benefit domestic-violence injunctions have been entered, see s. 36 and cf. Section 741.31, Florida Statutes (1994 supp.); created a civil cause of action in private individuals who have been the victims of repeated acts of domestic violence, regardless of the existence of an injunction, see s. 37; established a statute of limitations for actions brought pursuant to that cause of action, see s. 37; added to the duties of the clerks of the Circuit Courts vis-à-vis law enforcement agencies with regard to each petition filed with them for a domestic-violence injunction, see s. 38; and amended a statute which sets out the duties of the clerks of the Circuit Courts vis-à-vis the Division of Criminal Justice with regard to each case in which a minor is convicted of one of various misdemeanors. 95-184, s. 12, and see Section 943.051(b), Florida

Statutes (1994 supp.). Chapter 95-184, like the laws involved in State v. Johnson, 616 So. 2d 1 (Fla. 1993), Bunnell v. State, 453 So. 2d 808 (Fla. 1984), and Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA), review granted 717 So. 2d 538 (Fla. 1998), deals with more than one subject.

As the First District Court of Appeal noted in Trapp v. State, 24 Fla. L. Weekly D1431 (Fla. 1st DCA June 17, 1999), when it certified the precise legal question involved in this case to this court as a matter of great public importance,

> there is no general statement of legislative purpose contained in [95-184] itself which explains the logical connection among the bill's provisions.... In addition, combining provisions for stiffer criminal penalties with civil remedies for domestic violence arguably involves logrolling, which is the evil sought to be prevented by article III, section 6 [which contains the constitutional single-subject requirement]. Combining provisions that may appeal to different constituencies causes legislators to vote for a provision which they might not necessarily support if it was dealt with separately. This insulates legislators from accountability for their actions thereby violating the intent of article III, section 6, Florida Constitution.

14 Fla. L. Weekly at D1431. The court in Trapp eventually concluded that the law at issue was not unconstitutional, certifying the question to this court for final resolution. The analysis quoted above is persuasive; the First District panel

should have heeded it, as should this court in this case.

Before the biennial reenactment of the Florida Statutes on May 24, 1997, the defectively enacted Chapter 95-184 was the sole authority for the 1995 amendments to the sentencing guidelines. This court should declare Chapter 95-184 void ab initio due to its violation of the single-subject rule, see Martinez v. Scanlan, 582 So. 2d 1167, 1174 (Fla. 1991), and should decline to give it effect in this case, in which the charged offense took place on May 4, 1997.The sentence entered in this case should be vacated and the petitioner resentenced on remand pursuant to laws that were valid on the date of the offense.

CONCLUSION

The petitioner requests this court to hold that the 1995 sentencing guidelines were unconstitutionally enacted, to vacate his sentence, and to remand for resentencing pursuant to a constitutional statute.

Respectfully submitted,

_____
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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing has been served on Attorney General Robert A. Butterworth, of 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, 32118, by way of his in-box at the Fifth District Court of Appeal, on this _____ day of August, 1999.

_____
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CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this brief is Courier 12.

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Nancy Ryan
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