

IN THE SUPREME COURT OF FLORIDA

CARLOS D. GARCIA,

Petitioner,

v.

CASE NO. SC95,407

STATE OF FLORIDA,

Respondent.

_____ /

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

PETITIONER'S **SUPPLEMENTAL** BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

This court accepted jurisdiction of this case by its order dated August 6, 1999. The sole issue raised in the merit briefs filed in this proceeding is the constitutionality of the 1995 sentencing guidelines. This court, in Heggs v. State, 25 Fla. L. Weekly S137 (Fla. February 17, 2000), held that the 1995 guidelines were not constitutionally enacted because the law that created them dealt with more than one subject. In Heggs this court did not decide when that law, Chapter 95-184, Laws of Florida, was first reenacted; that initial reenactment, whenever it occurred, cured the defect. Specifically, this court's opinion in Heggs left open the question, which is disputed in the District Courts of Appeal, whether the law was first reenacted on October 1, 1996 or May 24, 1997. The criminal offense involved in this case was alleged to have been committed on May 4, 1997. The petitioner takes the position in this brief that this Court should hold that Chapter 95-184, Laws of Florida, was not formally reenacted until May 24, 1997.

SUMMARY OF ARGUMENT

The 1995 sentencing guidelines were void on May 4, 1997, the date when the offense charged in this case took place.

This court has held that the law which created the 1995 guidelines was void from its inception because it dealt with more than one subject. This court has not decided when the defect was cured. The Third and Second District Courts of Appeal hold that the defect was cured on May 24, 1997, when the usual comprehensive biennial statutory reenactment took place. The Fourth District Court has held that the defect was cured effective October 1, 1996, when the 1995 guidelines were amended by the Legislature. The Second and Third District Courts are correct, because amending a statute does not automatically have the effect of reenacting it and because no intent to reenact the guidelines as a whole was manifested by the Legislature in 1996.

In any event, the 1996 law relied on by the Fourth District Court itself violates the single-subject rule and thus cannot be said to cure the defect in the 1995 changes to the guidelines.

ARGUMENT

THE 1995 SENTENCING GUIDELINES WERE VOID AT THE TIME THE OFFENSE IN THIS CASE TOOK PLACE; THE CHANGES TO THE GUIDELINES MADE BY CHAPTER 95-184, LAWS OF FLORIDA, WERE NOT REENACTED UNTIL MAY 24, 1997.

In Heggs v. State, 25 Fla. L. Weekly S137 (Fla. February 17, 2000), this court held that the 1995 sentencing guidelines were enacted in an unconstitutional manner because the law that created them, Chapter 95-184, Laws of Florida, dealt with more than one subject. In Heggs this court did not reach the question when the Legislature cured the defect, i.e., did not decide when the Legislature first reenacted the changes to the guidelines that were originally made in Chapter 95-184. This court should now hold that those changes were not reenacted until May 24, 1997, and that for that reason the 1995 guidelines were void on May 4, 1997, the date when the offense charged in this case took place.

The Third and Second District Courts of Appeal, in Diaz v. State, 25 Fla. L. Weekly D518 (3rd DCA March 1, 2000) and Heggs v. State, 718 So. 2d 263, n.1 (Fla. 2d DCA 1998), have held that the defect in Chapter 95-184 was not cured until the general biennial reenactment of the Florida Statutes, which occurred May 24, 1997. To the contrary is Bortel v. State, 743 So. 2d 596 (Fla. 4th DCA

1999), where the court reasoned that Chapter 96-388, Laws of Florida, had the effect of reenacting the 1995 changes to the guidelines. The Diaz and Heggs decisions on this point are correct; this court should approve those decisions, disapprove Bortel, vacate the sentence imposed in this case, and remand this case for Mr. Garcia to be sentenced pursuant to constitutional statutes in effect on the date of his offense.

Chapter 96-388 does not purport to reenact the statutory amendments set out in 95-184. The title of 96-388 expressly states that the law *reenacts* statutory sections 895.02(3) and 790.235(1) and (2), which have to do with racketeering and possession of firearms, respectively, and that it *amends* numerous other statutes, including the sentencing guidelines provisions affected by the act, i.e., ss. 921.0011, 921.0012, 921.0013, and 921.0014. The title the Legislature gave the law also expressly states that the law has other intended effects distinct from reenactment of existing statutes, i.e., it, *creates* and *repeals* other statutes, *establishes* a continuous revision cycle for the criminal code and other public safety system statutes, *revises* membership of a Criminal and Juvenile Justice Information Systems Council, *enhances* the scope of that council, *establishes* guiding principles for public safety information technology resources, *requires* sexual predators to

register with local governments, *conforms* statutory language, *provides* enhanced penalties for various career criminals, *corrects* various grammatical errors and cross-references, *lowers* the amount of cannabis necessary to constitute the offense of trafficking, *restructures* an act relating to sexual predators, *authorizes* the Statewide Prosecutor's office to investigate and prosecute various pornography offenses, *defines* a new felony offense having to do with soliciting children for sex via computers, and *prohibits* operators of computer services from permitting such offenses.

The text of 96-388 plainly carries out the Legislature's expressed intention of 'amending' rather than 'reenacting' the sentencing guidelines. Sections 22 and 50-53 of 96-388 each create specific new substantive amendments to various portions of the sentencing guidelines which are logically independent of the specific, substantive amendments to the guidelines that appeared in Chapter 95-184.

Section 22 of 96-388, which does not go into effect until October 1, 1997, requires the Department of Corrections, rather than the Circuit Court clerks' offices, to send scoresheets to the State Attorneys' Offices; in view of Section 22's's effective date, that section plainly does not have the result of reenacting the guidelines as a whole as of October 1, 1996.

Section 50 of 96-388 amends Section 921.0011(7) of the Florida Statutes to specifically provide that victim injury is to be scored under the guidelines separately as to each offense at conviction, not merely as to the primary offense at conviction. Sections 51 and 52 of 96-388 respectively amend Sections 921.0012(2) and 921.0013 of the Statutes to specifically provide that the information in the first two columns of the offense severity ranking chart which appears in Section 921.0012(3) controls over the information in its third column. Section 51 also adds six offenses to that chart and removes one offense from it. Section 53 of the law amends Section 921.0014(a) of the statutes, which sets out the guidelines worksheet, by adding a point multiplier for criminal street gang members, and amends 921.0014(b) of the statutes, which sets out a 'key' to the worksheet, by referring to the new street gang multiplier and by clarifying when community sanction points and prior serious felony points are to be included on scoresheets.

The changes made in 1995 to the guidelines were similar but distinct exercises in micro-managing Circuit judges' sentencing authority. See Chapter 95-184, ss. 2-7, Florida Statutes. It is plain that neither in 1995 nor in 1996 did the Legislature express any intention of reenacting the sentencing guidelines as a whole.

The question remains whether 96-388 had the legal *effect*,

whether intended or not, of reenacting each existing statute it purports to amend. In Alterman Transport Lines, Inc., v. State, 405 So. 2d 456, 460 (Fla. 1st DCA 1981), the court held that Chapter 77-434, Laws of Florida, amended but did not reenact Chapter 323 of the Florida Statutes. Chapter 77-434 is very substantially similar to Chapter 96-388, in that it purports to amend some existing statutory provisions, to repeal others, to create still others, and to take various other actions, such as providing, increasing and decreasing various fees.

Nothing in Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991), or in any other authority the undersigned has discovered, is contrary to Alterman Transport on this point, or supports the holding in Bortel v. State, supra. Scanlan involved a single-subject challenge successfully made in a Tallahassee Circuit Court, and the Legislature's prompt response of convening a special session and reenacting the two irreconcilable halves of Chapter 90-201, Laws of Florida, as Chapters 91-1 and 91-5, Laws of Florida. This court held that 91-1 and 91-5 between them reenacted the substance of 90-201. Scanlan, 582 So. 2d at 1182-83. That holding is supported by the title and substance of 91-1 and 91-5, which expressly and repeatedly state that the Legislature's intent therein was to *reenact* numerous statutes. Chapter 96-388 is plainly

distinguishable from Chapters 91-1 and 91-5.

In any event, Chapter 96-388 itself violates the single-subject rule at least as egregiously as do Chapters 95-182 and 95-184, and thus it cannot reasonably be held to have cured the defects in those laws. Chapter 96-388 is a sprawling seventy-four-section law whose title extends over more than a page and a half of single-spaced type. As noted above, it purports to accomplish all of the following: creating a continuous revision cycle for the criminal code and other statutes which have to do with 'the public safety system' (s. 1); altering the membership and scope of a Criminal and Juvenile Justice Information Systems Council (ss. 3-4); creating 'guiding principles for public safety information technology resources' (s. 5); specifying permissible purposes for juvenile offenders' photographs and fingerprints (s. 17); clarifying the content of adults' criminal history records (s. 18, 20, 21); making various findings and laws with regard to members of criminal street gangs (ss. 33-43); defining 'unenclosed curtilage' with reference to the trespassing statutes (s. 48); creating degrees of petit theft (s. 49); modifying registration requirements for sexual predators and sexual offenders (ss. 61-65); adding to the duties of state and local registrars regarding the birth certificates of missing children (s. 66); adding to the duties of

public and private school personnel regarding the student records of missing children (s. 67); requiring the Florida Sheriffs' Association and Florida Police Chiefs' Association to develop protocols regarding hospital treatment of injured arrestees (s. 68); adding to the duties of the Statewide Prosecutor's Office vis-à-vis various pornography offenses (s. 69); enacting new substantive criminal prohibitions having to do with child pornography and the Internet (ss. 70-71); and authorizing the courts to curtail the prison privileges of any person who initiates a civil suit which is successfully defended on the basis that the plaintiff was committing a forcible felony when he incurred his injury (s. 72).

In short, Chapter 96-388 purports to, and does, deal with that broad topic 'public safety.' In enacting it the Legislature identified no crisis which called for an immediate and comprehensive response. 96-388 is subject to the evils sought to be prevented by the single-subject requirement, e.g., confusion of the public and logrolling. This court should hold that the Legislature has violated the constitutional requirement that its laws deal with a single subject. See Heqqs, supra, 25 Fla. L. Weekly S137 (Fla. February 17, 2000); State v. Thompson, 25 Fla. L. Weekly S1 (Fla. December 22, 1999); State v. Johnson, 616 So. 2d 1 (Fla. 1993);

Bunnell v. State, 453 So. 2d 808 (Fla. 1984).

Since Chapter 96-388 did not cure the constitutional flaw in Chapter 95-184, Mr. Garcia must be resentenced pursuant to a statute that was valid on May 4, 1997, the date of his offense.

CONCLUSION

The petitioner requests this court to hold that Chapter 95-184, Laws of Florida, was not reenacted until May 24, 1997; 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 Assistant Attorney General Wesley Heidt, of 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, 32118, by way of the Attorney General's in-box at the Fifth District Court of Appeal, and mailed to Mr. Carlos Garcia, No. V05431, Taylor C. I. Rt 1, Box 1086, Perry, FL 32347 on this 30th day of March, 2000.

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)	
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_____)	

C E R T I F I C A T E O F F O N T

I hereby certify that the size and style of type used in this brief is 12 point Courier New, a font that is not proportionately spaced.

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