

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,427

OSVALDO VALDES,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

BRIEF OF PETITIONER ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

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INTRODUCTION

The Petitioner, Osvaldo Valdes, was the appellant in the district court of appeal and the defendant in the Circuit Court. The Respondent, the State of Florida, was the appellee in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the symbol "R" will be used to designate the record on appeal.

STATEMENT OF THE CASE AND FACTS

Oswaldo Valdes was charged, *inter alia*, with second degree murder after a traffic incident erupted into an armed confrontation. The incident occurred on July 20, 1996. At trial Mr. Valdes was convicted of second degree murder, attempted second degree murder, and aggravated battery.

The trial court sentenced the Petitioner in accordance with the 1995 sentencing guidelines to a thirty (30) year term of incarceration. Mr. Valdes was sentenced on September 3, 1997. The 1995 sentencing guidelines took effect on October 1, 1995. The offenses for which Mr. Valdes was convicted took place within the temporal scope of the 1995 guidelines.

On appeal before the Third District Court of Appeal, the Petitioner challenged the constitutionality of the 1995 sentencing guidelines on the ground that when the guidelines were enacted they were part of a legislative act which encompassed both criminal and civil provisions that were logically unrelated. The Petitioner, relying on *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA), *review granted*, 717 So. 2d 538 (Fla. 1998), thus maintained that the 1995 guidelines violated Article III, section 6, of the Florida Constitution, i.e. the single subject rule. The Petitioner demonstrated that pursuant to the 1994 guidelines, his recommended sentencing range was substantially lower than under the 1995 sentencing scheme.

The Third District, recognizing conflict with *Thompson*, rejected the Petitioner's challenge to the 1995 guidelines and affirmed his sentence.

SUMMARY OF ARGUMENT

Appellant's sentences are illegal because he was sentenced under the 1995 guidelines, and those guidelines are invalid because the statute that created them violates the state constitutional "single subject" requirement. This statute -- Chapter 95-184, Laws of Florida -- contains provisions on several unrelated subjects, including sentencing, substantive crimes, private civil damages claims by crime victims, and civil remedies for the protection of victims of domestic violence.

ARGUMENT

APPELLANT’S SENTENCE IS ILLEGAL BECAUSE HE WAS SENTENCED UNDER THE 1995 GUIDELINES, WHICH ARE INVALID BECAUSE THE STATUTE THAT CREATED THEM VIOLATES THE STATE CONSTITUTIONAL “SINGLE SUBJECT” REQUIREMENT.

Mr. Valdes was sentenced on September 3, 1997 for offenses committed on July 21, 1996. (R. 1-4; 344-347). He was sentenced under the 1995 sentencing guidelines which apply to crimes committed between October 1, 1995 and May 24, 1997. In *Heggs v. State*, 718 So. 2d 263 (Fla. 2d DCA 1998), the Second District Court of Appeal held that the 1995 sentencing guidelines were unconstitutional. The Second District based its finding of unconstitutionality on the fact that the enacting legislation, chapter 95-184, Laws of Florida, violated the single subject rule contained in article III, section 6, of the Florida Constitution because it contained civil and criminal provisions that were not logically related. This single subject issue was raised in the violent career criminal sentencing context contained in chapter 95-182. *See Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997) (violent career criminal statute does not violate single subject rule); *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998), *review granted*, Case No. 92,831 (Fla. May 26, 1998) (violent career criminal statute violates single subject rule).

Under the 1995 guidelines used by the trial court, the sentencing range calculated was 345 months (28.75 years) to 575 months (47.9 years) imprisonment. The trial court

sentenced Mr. Valdes to thirty (30) years imprisonment, which fell at the lower end of the guideline range. The 1994 guidelines (which were superseded on October 1, 1995, by the 1995 guidelines) would have yielded a significantly lower guideline range: 241.5 months (21.13 years) to 415 months (34.58 years). The lower sentence would be calculated as follows:

I.	Primary Offense - Second Degree Murder w/ Firearm		
	level 10.....		114 points
II	Additional Offense - Attempted Second Degree Murder w/ Firearm (1 st degree felony)		
	level 7		28 points
	Additional Offense - Aggravated Battery w/ Firearm (
	level 7		28 points
III.	Victim Injury		
	2 nd Degree Murder	120 x 1 =	120
	Severe	40 x 1 =	40
	Moderate	18 x 1 =	18
	Total Sentence Points		350
	350 - 28 = 322 months in prison		
	322 x .75 = 241.5 months (20.13 years)		
	322 x 1.25 = 415.0 months (34.58 years)		

§921.0014, Fla. Stat. (1993); Fla. R. Crim. P. 3.990.

Appellant's sentences are unlawful because the statute that created the 1995 guidelines (Chapter 95-184, Laws of Florida) is invalid. Chapter 95-184 violates Article III, section 6 of the Florida Constitution because it does not contain only a "single subject," but rather embraces several distinct subjects, i.e., criminal sentencing, substantive crimes, private civil damages claims by crime victims, and civil remedies available to victims of domestic violence.

Although Appellant did not raise this issue at trial, the issue is one of fundamental error. *Johnson v. State*, 616 So. 2d 1 (Fla. 1993).

I. THE "SINGLE SUBJECT" REQUIREMENT

Article III, section 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 "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 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 opportunity of being heard thereon.

State v. Canova, 94 So. 2d 181, 184 (Fla. 1957).

It has often been said that "the subject of a law is that which is expressed in the title, . . . and may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection." *State v. Lee*, 356 So. 2d 276, 282 (Fla. 1978) (citation and internal quotes omitted). However, this statement cannot be read too literally. As will be discussed below, an enormously broad topic will not necessarily be considered a "single subject" merely because the legislature labels it so. Courts must insure that legislative subjects do not expand to such abstract and amorphous levels that Article III, Section 6 is rendered meaningless. Thus, in recent cases (discussed below), such topics as "the criminal justice system," "comprehensive economic development," and "environmental resources" were found to have been too broad to be considered as single subjects. This, of course, is only common sense. If it were otherwise, the legislature could simply assert that the subject of a particular statute is something like "the public health, safety, and welfare" and then combine a wide variety of topics under this broad "subject".

Further, "[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 its title." *Ex Parte Knight*, 41 So. 786, 788 (Fla. 1906). Thus, although the title "need [not] embrace every detail of the subject matter . . . , the propositions embraced in the act shall be fairly and naturally germane to that recited in the title." *Boyer v. Black*, 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, 283 (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) (citation and internal quotes omitted).

This Court has addressed the meaning of the single subject provision on several occasions in recent years. Three of those cases involved criminal statutes: *Bunnell v. State*, 453 So. 2d 808 (Fla. 1984); *Burch v. State*, 558 So. 2d 1 (Fla. 1990); and *Johnson, supra*. *Bunnell* and *Johnson* held that the statutes at issue violated the single subject provision; *Burch* rejected that challenge. These cases establish the framework for analysis in the present case; under that framework, Chapter 95-184 is invalid.

In *Bunnell*, the Court considered the validity of Chapter 82-150, Laws of Florida. That chapter contained three substantive sections. Section one created a new offense of

"obstruction by false information" (codified at section 843.035, Florida Statutes (1982 Supp.). Sections two and three made several amendments to Sections 23.15-.154, Florida Statutes (1981). Those sections concerned the membership of the "Florida Council on Criminal Justice," which, at the time, was an advisory board composed of various officials in the criminal justice system.

The Second District upheld Chapter 82-150 against a single subject attack. *State v. Bunnell*, 447 So. 2d 228 (Fla. 2d DCA 1983), quashed, *Bunnell, supra*. That court found "the general subject of the act to be the `Criminal Justice System'". *Id.* at 230. The court then concluded that Chapter 82-150 did not violate the single subject requirement because the sections of the statute "have a natural and logical connection to the general subject and to each other":

The Florida Council on Criminal Justice is an executive branch advisory agency under the jurisdiction of the governor created to advise the governor, legislature, supreme court, and especially the Bureau of Criminal Justice Assistance in the performance of its Chapter 23 duties, as to the improvement of state law enforcement activities and the administration of criminal and juvenile justice systems....

Upon examination, it is readily apparent that the council and laws relating to the council are embraced by the admittedly broad subject "Criminal Justice System"....

Furthermore, it is clearly apparent that section 843.[035], the crime of obstruction of justice by giving false information, is also embraced within the same general subject impliedly

set forth by the legislature....

Id. at 231 (citation and internal quotes omitted).

The Fifth District disagreed and held Chapter 82-150 violated the single subject provision. *Williams v. State*, 459 So. 2d 319 (Fla. 5th DCA 1984). Although recognizing that that provision should be "interpreted . . . liberally," particularly when dealing with "very comprehensive law revisions", *id.* at 320, the court nonetheless found 82-150 to be invalid:

The bill in question in this case is not a comprehensive law or code type of statute. It is very simply a law that contains two different subjects or matters. One section creates a new crime and the other section amends the operation and membership of the Florida Criminal Justice Council. The general object of both may be to improve the criminal justice system, but that does not make them both related to the same subject matter.

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-logrolling provision of article III, section 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*, this Court had no trouble concluding that this statute was invalid because it embraced more than one subject. This Court asserted "the subject of section 1 has no cogent relationship with the subject of sections 2 and 3 and . . . the object of section 1 is separate and disassociated from the object of sections 2 and 3." 453 So. 2d at 809.

In *Burch*, this Court upheld the validity of Chapter 87-243, Laws of Florida against a single subject attack. This Court reasoned as follows:

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 which crisis demands urgent and creative remedial action, and

WHEREAS, Florida's crime rate crisis affects, and is affected by, numerous social, educational, 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 deterio- ration 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 toward a unified attack on the common enemy, crime

To accomplish this purpose, chapter 87-243 deals with three basic areas: (1) comprehensive criminal 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, section 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.

This Court further noted that "the subject matter of chapter 87-243 is not as diverse

as that contained in the legislation approved in *State v. Lee*, [*supra*,] *Chenoweth* [*v. Kemp*, 396 So. 2d 1122 (Fla. 1981)] and *Smith*, [*supra*]." *Id.* at 2. These three cases will be discussed further below. This Court distinguished *Bunnell*:

In *Bunnell*, this Court addressed chapter 82-150, Laws of Florida, which contained two separate topics: the creation of a statute prohibiting the obstruction of justice by false information and the reduction in the membership of Florida Criminal Justice Council. The relationship between these two subjects was so tenuous that this Court concluded that the single-subject provision of the constitution had been violated. Unlike *Bunnell*, chapter 87-243 is a comprehensive law in which all of its parts are directed toward meeting the crisis of increased crime.

Id. at 3.

Burch was a 4-3 decision. The three dissenters asserted:

The challenged act's title embraces eight pages of description. It contains seventy-six sections, including three separate titles (Crime Prevention and Control Act; Money Laundering Control Act; Safe Neighborhoods Act), and provisions on the following unrelated subjects: drug-abuse crimes, drug education, vehicle registration, vessel-operation crimes, money laundering, hoax bombs, pawn brokers, entrapment, attempted burglary, witness tampering, appeal by the state, judgment costs, chop shops, crime-prevention studies, and safe-neighborhood programs. The common thread that permeates the fabric of the legislation is crime prevention. However, an act in violation of the single-subject provision of the constitution cannot be saved or pass constitutional muster by virtue of the fact that improvement of the criminal justice system is the general object of the law -- it is the subject matter which is our focus. [Citations

omitted]. Included in the unrelated subjects logrolled into the act is a section treating real property forfeiture -- a provision that the discontinuance of rights-of-way caused by the installation of cul-de-sacs shall not operate as abandonment of the rights-of-way. I am unable to accept the argument that the treatment of rights-of-way is logically or fairly related to the control of drugs.

* * *

[T]he matters included in an act must bear a logical and natural connection, and must be germane to one another. In my view, it will not suffice to say all of the act's provisions deal with crime prevention or control. By upholding the constitutionality of the act before us, the single-subject requirement of the constitution is rendered meaningless.

As noted in *Bunnell* [citation omitted], the constitution requires a "cogent relationship" among sections of an act in order to avoid unconstitutionality. I find that relationship lacking here. . . .

Id. at 4 (Shaw, J., dissenting).

Finally, in *Johnson*, this 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. This Court adopted the district court's description of Chapter 89-280:

The title of the act at issue designates it an act relating to criminal law and procedure. The first three sections of the act amend section 775.084, Florida Statutes, pertaining to

habitual felony offenders; section 775.0842, Florida Statutes, pertaining to career criminal prosecutions; and section 775.0843, Florida Statutes, pertaining to policies for career criminal cases. Sections four through eleven of the act pertain to the Chapter 493 provisions governing private investigation and patrol services, specifically, repossession of motor vehicles and motorboats.

Id. (citation omitted).

This Court also agreed with the district court that "it is difficult to discern a logical or natural connection between career criminal sentencing and repossession of motor vehicles by private investigators." *Id.* (citation and internal quotes omitted). This Court found these to be "two very separate and distinct subjects" which had "absolutely no cogent connection [and were not] reasonably related to any crisis the legislature intended to address." *Id.* This Court "reject[ed] the State's contention that these two subjects relate to the single subject of controlling crime." *Id.*

Johnson -- like *Bunnell* -- was a unanimous decision. Concurring, Justice Grimes noted:

In *Jamison v. State*, 583 So. 2d 413 (Fla. 4th DCA), *rev. denied*, 591 So. 2d 182 (Fla. 1991), and *McCall v. State*, 583 So. 2d 411 (Fla. 4th DCA 1991), the court relied upon this Court's decision in Burch [citation omitted], in concluding that chapter 89-280 did not violate the single subject rule. As the author of the *Burch* opinion, I find that case to be substantially different. The *Burch* legislation was upheld because it was a comprehensive law in which all of the 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. Thus, I conclude that this case is controlled by the principle of *Bunnell* [citation omitted] rather than *Burch*.

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

These cases establish the following principles: provisions in a statute will be considered as covering a single subject if they have a cogent, logical, or natural connection or relation to each other. The legislature will be given some latitude to enact a broad statute, provided that statute is intended to be a comprehensive approach to a complex and difficult problem that is currently troubling a large portion of the citizenry. However, separate subjects cannot be artificially connected by the use of broad labels like "the criminal justice system" or "crime control". These same principles are found in the recent case law addressing single subject challenges to non-criminal statutes as well. The three cases relied upon in *Burch* illustrate how the this Court has been willing to give the legislature some latitude to tackle major, complex problems with broad measures, particularly in response to a crisis or emergency.

Thus, in *State v. Lee, supra*, this Court upheld the Tort Reform Act of 1977 because it "dealt comprehensively with a broad subject": it was "an attempt by the legislature to deal comprehensively with tort claims and particularly with the problem of

a substantial increase in automobile insurance rates and related insurance problems." 356 So. 2d at 242. The three dissenters found that the statute "relates to at least three distinct and separate subjects . . . : (i) insurance and matters related therein; (ii) tort law; and (iii) enhanced penalties for moving traffic violations" *Id.* at 287 (Sundberg, J., dissenting).

Lee was followed in *Chenoweth, supra*, in which the Court summarily rejected a single subject attack on Chapter 76-260, Laws of Florida. The Court asserted:

While chapter 76-260 covers a broad range of statutory provisions dealing with medical malpractice and insurance, these provisions do relate to tort litigation and insurance reform, which have a natural or logical connection.

396 So. 2d at 1124.

There were two dissenters in *Chenoweth*. They distinguished *Lee* and asserted "Chapter 76-260 is a paradigm example of a law embracing more than one subject":

[In *Lee*,] the Court took a rather permissive view of the one subject requirement of article III, section 6. The majority in *Lee* characterized the chapter there under attack as dealing comprehensively with "automobile insurance rates and related insurance problems." *Id.* at 282 (emphasis supplied). Here, chapter 76-260 ranges over almost the entire insurance field, incorporating wholly unrelated matters from medical malpractice insurance to life insurance to a policyholder's "bill of rights." Indeed, it strays from the insurance arena altogether in its inclusion of provisions on expert medical testimony and standards of tort recovery.

Id. at 1126-27 (Sundberg, J., dissenting).

Finally, in *Smith, supra*, this Court upheld the Tort Reform and Insurance Act of 1986. Following *Lee* and *Chenoweth*, the Court said that statute was enacted in "respon[se] to public pressure brought about by a liability insurance crisis, [and] each of the challenged sections is an integral part of the statutory scheme enacted by the legislature to advance one primary goal: The availability of affordable liability insurance." 507 So. 2d at 1086.

Three justices dissented in *Smith*. They argued that *Lee* and *Chenoweth* were wrongly decided and should be overruled:

[*Lee* and *Chenoweth*] confused *the subject* of the act with *its object*, "The subject is the matter to which an act relates; the object, the purpose to be accomplished." [Citations omitted]. The distinction between the subject of an act and its object is critical here.

As recognized by the majority, the object of 86-160 is to increase the affordability and availability of liability insurance. However, by the Court's own reckoning, included in this one act are at least four different *subjects*. This is precisely the type of legislation prohibited by article III, section 6. In short, 86-106 is arguably the most gargantuan logroll in the history of Florida legislation. The majority has come up with a new constitutional test to determine whether legislation meets the single subject requirement: "common sense." However, the majority has exercised none of that seemingly rare and precious commodity by its interpretation of article III, section 6. Its confusion lies in applying an incorrect analysis to the single subject requirement. Inquiring into the "germanity" required for testing whether a statute's provisions are properly connected to the subject of the act

only arises if, in fact, there is one subject. The threshold question is based on common sense: does the act itself contain a single subject? If it does then the act's elements are examined to see whether they are in fact properly connected with, i.e., germane to, that single subject. If the act contains more than one subject, it is unconstitutional.

Id. at 1097 (Ehrlich, J., concurring in part and dissenting in part) (footnote omitted) (emphasis in original).

The similarities between these three cases (*Lee*, *Chenoweth*, and *Smith*) and *Burch* are obvious. All are close decisions in which seemingly disparate topics are considered as a single subject because they are arguably related to a broad and comprehensive subject that links them all together. The statute will, nevertheless, be valid *only if* there is a perceived public crisis requiring such a broad and comprehensive statute.

However, the mere labeling of a statute with a broad title will not insulate it from a single subject attack. Three recent cases illustrate the point: *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991); *Alachua County v. Florida Petroleum Marketers*, 589 So. 2d 240 (Fla. 1991); and *State v. Leavins*, 599 So. 2d 1326 (Fla. 1st DCA 1992).

In *Martinez*, this Court looked at the validity of Chapter 90-201, Laws of Florida. The title to that statute began "an act relating to economic development" The act contained 120 sections, the first of which provided that Chapter 90-201 "may be cited as

the "Comprehensive Economic Development Act of 1990". *Id.*, Sec. 1.

The act was prefaced with 29 legislative "Whereas" clauses. These clauses laid out broad legislative "findings" and "intent", the thrust of which was: 1) Florida's continuing economic health depends upon its ability to compete successfully in an international marketplace; 2) Florida's then-existing workers' compensation laws were outdated, inefficient, and expensive, thus putting Florida at a competitive disadvantage with respect to attracting new business; and 3) Florida needs "comprehensive governmental action to protect the state's economy." Sections 2 through 58 of the statute overhauled Florida's workers' compensation laws in a major way. Section 59 announced more "legislative findings and intent", the thrust of which was that Florida needs to "articulate a clear policy for international economic development. . . ." Section 60 through 119 aimed to accomplish this purpose through the formation of various advisory and planning agencies that included representatives from both the public and private sectors.

This Court (without dissent) had no trouble concluding that this statute violated the single subject requirement:

Chapter 90-201 essentially consists of two separate subjects, i.e., workers' compensation and international trade. While Martinez contends that these subjects are logically related to the topic of comprehensive economic development, we can find only a tangential relationship at best to exist. . . . [W]e have held that, despite the disparate subjects contained within a comprehensive act, the act did not violate the single subject

requirement because the subjects were reasonably related to the crisis the legislature intended to address. [Citing *Burch* and *Smith*]. In the instant cast, however, the subjects of workers' compensation and international trade are simply too dissimilar and lack the necessary logical and rational relationship to the legislature's stated purpose of comprehensive economic development to pass constitutional muster. *See Bunnell*

582 So. 2d at 1172.

Similarly, in *Alachua County*, the Court addressed the validity of Chapter 88-156, Laws of Florida. The title to that statute indicated it was "an act relating to the construction industry. . . ." Most of its 24 sections modified various statutes in Chapter 489 of the Florida Statutes, including 1) expansion of the types of contractors covered by Chapter 489 (Ch. 88-156, Sec. 3); 2) modifications of the membership and procedures of the Construction Industry Licensing Board (*id.*, Secs. 4-6); 3) strengthening of the oversight and enforcement powers of this board (*id.*, Secs. 7-15); and 4) providing for other remedies (*id.*, Secs. 19-22).

Interwoven into these provisions were several provisions regarding storage tanks. The definitions of "pollutant storage systems specialty contractor", "pollutant storage tank", "tank", and "registered precision tank tester", and the licensing board's authority to promulgate rules and regulations regarding pollutant storage tanks, were moved from existing statutes to new Section 489.133. *Id.*, Secs. 3, 7, and 16. The Department of

Environmental Regulation was given certain regulatory responsibilities regarding "pollutant storage tank[s], as defined in s. 489.133" *Id.*, Sec. 17. This section also directed the department to coordinate its efforts with local governments. *Id.* Finally, Section 376.317, Florida Statutes (1987) was amended to allow county governments to adopt their own (more stringent than state law) regulations regarding underground petroleum storage tanks. *Id.*, Sec. 18.

On direct appeal, the First District held that Chapter 88-156 violated the single subject provision:

In this case the pending bill containing some 16 sections amending Chapter 489, relating to the regulation of the construction industry, was amended by adding Section 18 to amend Chapter 376, relating to pollutant discharge prevention and removal, a subject totally distinct and different from the subject matter of the act before the amendment. The provisions of Section 18 are not germane to the construction industry, the subject of the pending act it amended, nor are its provisions such as are necessary incidents to, or which tend to make effective or promote, the objects and purposes of the pending construction industry legislation. . . .

Alachua County v. Florida Petroleum Marketers, 553 So. 2d 327, 329 (Fla. 1989), *aff'd*

Alachua County, supra.

In this Court, a five member majority adopted the opinion of the district court.

Alachua County, supra, 589 So. 2d at 240. Two justices dissented:

[C]hapter 489 and chapter 376 have sections other than the

section at issue in this proceeding that are interrelated. I find that the provisions of chapter 88-156, Laws of Florida, amending chapter 489 . . . and the provisions amending chapter 376 . . . have a logical connection and that the legislation on its face shows that it is not "a `cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter." . . . The relationship is clear. Three sections of chapter 88-156 have provisions relating to both chapter 489 and chapter 376 First, section 16 of chapter 88-156 creates section 489.133 . . . entitled "pollutant storage systems specialty contractors; definitions; certification; restrictions." Section 489.133(1)(b) . . . expressly refers to a pollutant storage tank "as defined in s. 376.301." Second, section 17 of chapter 88-156 adds a new subsection (3) to section 376.303 Section 376.303(3)(a) . . . reads, in part: "Any person installing a pollutant storage tank, as defined in s. 489.133, shall certify that such installation is in accordance with the standards adopted pursuant to this section." Section 376.303(3)(c) also provides that "[t]he department may enjoin the installation or use of any pollutant storage tank that has been or is being installed in violation of this section or of s. 489.133." Third, section 376.317 . . . which is amended by section 18 of chapter 88-156, the section in issue, allows certain governmental entities to have more stringent regulations for these pollutant storage tanks. There is clearly a logical connection between chapters 489 and 376 . . . since each chapter refers to the other chapter in its respective sections.

Id. at 244-45 (Overton, J., dissenting).

Finally, in *State v. Leavins*, the court struck down Chapter 89-175, Laws of Florida. The title of that statute began "an act relating to environmental resources" In 48 sections, the statute addressed 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 this 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," in the statute at issue "the legislature has not ostensibly addressed any crisis, but has attempted to bundle together the 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, as follows:

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, Section 6. If a 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).

As these cases make clear, Florida courts will not to strain to invent relationships and connections between different provisions in a statute; rather, there must be a "natural, logical, or intrinsic connection" between the provisions before they will be considered as embracing a single subject. *Colonial Investment Co. v. Nolan*, 131 So. 178, 181 (Fla. 1930). Tangential connections, tenuous relationships, or coincidental overlap will not convert two subjects into one. Seemingly unrelated subjects may be tied together as part of a "comprehensive law" that attempts a major overhaul of a large topic, provided that connection or relation to the large topic can be found in all its parts and there is a genuine crisis that needs to be addressed; nevertheless, such "comprehensive laws", given their inherently sprawling nature, must be closely examined. The mere fact that the legislature declares a "crisis", or perceives some need to deal with a broad topic in a "comprehensive" manner, is not controlling; courts retain the oversight responsibility of insuring that legislative "subjects" do not become too broad or nebulous.

II. ANALYSIS OF CHAPTER 95-184

The title of Chapter 95-184 declares it is "an act relating to criminal justice"; the statute is reprinted in its entirety in the appendix.

Chapter 95-184 contains 40 sections. Section one provides "Sections 2 through 36 of this act may be cited as the `Crime Control Act of 1995". Sections 2 through 7, 13,

and 14 significantly amend the sentencing guidelines.

Section 8 amends the definition of burglary. Sections 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.

Sections 17 through 24 amend other specific sentencing statutes: Sections 775.0823, 775.0825, 775.087, 784.07, 775.0845, 775.0875, 874.04, and 794.023. Sections 25 through 27 amend the general sentencing statutes (Sections 921.187, 944.275, and 947.146) to include the changes wrought by the sections just discussed.

Section 28 through 35 amend several sections 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. Finally, Section 39 is a severability clause and Section 40 provides an effective date ("upon becoming a law").

Chapter 95-184 is a hodge-podge of unrelated provisions. It includes sentencing provisions, amendments to substantive crimes, private civil damages actions by crime victims, and civil protections for victims of domestic violence.

Chapter 95-184 clearly embraces several subjects that have no "logical or natural connection." *Johnson, supra*, 616 So. 2d at 4. Rather, they are "separate and distinct subjects [that have] absolutely no cogent connection [, are not] reasonably related to any crisis the legislature intended to address," *id.*, and "are designed to accomplish separate and dissociated objects of legislative effort." *State v. Thompson*, 163 So. at 283. Nor is Chapter 95-182 a "comprehensive law in which all of its parts were at least arguably related to its overall objective of crime control." *Johnson, supra*, 616 So. 2d at 5 (Grimes, J., concurring). Rather, there is "only a tangential relationship at best" between these various subjects. *Martinez, supra*, 582 So. 2d at 1172.

Chapter 95-184 violates the single subject provision.

III. SEVERABILITY

As noted earlier, 95-184 contains a severability clause:

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Ch. 95-182, Sec. 11.

"[T]he question of whether the taint of an illegal provision has infected the entire enactment, requiring the whole unit to fail," *Schmidt v. State*, 590 So. 2d 404, 414-15

(Fla. 1991), is answered with a four-part test:

When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provision can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Id. at 415 (citation omitted).

The mere existence of a severability clause does not guarantee that severance can properly occur; "severability can occur whether or not the enactment contains a severability clause [,and] inclusion of [such a] clause will not save a statute if the unconstitutional portions clearly cannot be severed." *Id.* at f.n.12.

It is questionable whether the doctrine of severability applies in this context at all. Challenges to statutes alleged to be violative of the single subject requirement are not challenges to an "illegal provision" or "a part of a statute," *id.*; they are challenges the method by which the whole statute was enacted. Severability is generally applied to statutes that violate some substantive limitation on legislative authority, such as substantive due process, equal protection, or the first amendment. In that context, there is no question that the statute under attack is *procedurally* valid; that is, the statute was

enacted with due regard to the applicable procedural requirements. Rather, the statute is invalid (at least partially) because the *substance* of it is beyond (at least partially) the legislature's reach. In this context, it makes sense to talk of severance: the tree may be saved by clipping its rotten limbs, provided the trunk and roots are healthy.

This logic does not apply to procedural attacks on statutes, such as a single subject attack. In this context, there is no question that the legislature has the substantive authority to enact the statute at issue; it is just that they failed to follow proper procedure. *See City of Winter Haven v. A.M. Klemm & Son*, 181 So. 153, 155 (Fla. 1938) (recognizing distinction between statutes that are invalid because they violate "a prohibition of the Constitution which relates . . . to the form of the exercise of the legislative power in enacting statutes, as does [the single subject provision]", and statutes that are invalid due to "the nature of character of the subject matter").

Failure to follow proper procedure invalidates the whole statute because the statute itself never properly came into existence; to extend the analogy, we are not dealing with a healthy tree with a rotten limb, but a healthy tree that was planted in the wrong place and thus must be wholly uprooted and relocated. In terms of the four-part test in *Schmidt*, "the unconstitutional provisions can[not] be separated from [any] remaining valid provisions", 590 So. 2d at 415, because there are no "remaining valid portions": each part of the statute is equally invalid, on the same grounds. It appears that this Court has

recognized this. *Sawyer v. State*, 132 So. 188, 192 (Fla. 1931) (statute that violates single subject rule "must be held unconstitutional and void, in toto"); *Colonial Investment Co., supra*, 131 So. at 183 ("The act deals with two separate and distinct subjects . . . , thus rendering the entire act unconstitutional and void"); *Ex Parte Winn*, 130 So. 621 (Fla. 1930) ("The act . . . dealt with more than one subject . . . , and for this reason the entire act must fall").

In any event, even if severability applies here, Appellant must be given his relief because the court would have to invalidate those parts of Chapter 95-184 that he has standing to challenge. See cases collected at 10 Fla. Jur. 2d, Constitutional Law, Secs. 63, 73-74 (courts will go no farther than they have to in declaring a legislative act invalid, and litigants can challenge the constitutionality of statutes only to the extent they are adversely affected by them). Thus, the question of severability may be of some interest to others, but it does not affect Appellant's remedy.

Appellant respectfully requests that this Court hold that the 1995 sentencing guidelines violate the single subject mandate contained in the Florida Constitution. Fla. Const. Art. III, section 6.

CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to: (1) quash that portion of the decision of the district court of appeal which upholds the petitioner's sentence, and (2) remand this cause for resentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, this 27th day of September, 1999.

MANUEL ALVAREZ
Assistant Public Defender

CERTIFICATE OF FONT

The undersigned certifies that the type used in this brief is 14 point proportionately spaced Times Roman.

MANUEL ALVAREZ
Assistant Public Defender