

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,427

OSVALDO VALDES,

Petitioner,

-VS-


THE STATE OF FLORIDA,

Respondent.

FILED

SID J. WHITE

MAY 7 1999

CLERK, SUPREME COURT
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Chief Deputy Clerk

BRIEF OF PETITIONER ON JURISDICTION

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

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TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
SUMMARY OF ARGUMENT	3
ARGUMENT	
THE DECISION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN <i>THOMPSON v. STATE</i>, 708 So. 2d 315 (Fla. 2d DCA 1998).	4
CONCLUSION	6
CERTIFICATE OF SERVICE	6
CERTIFICATE OF FONT	7

TABLE OF CITATIONS

CASES	PAGE(S)
<i>Higgs v. State</i> , 695 So. 2d 872 (Fla. 3d DCA 1997)	5
<i>Holloway v. State</i> , 712 So. 2d 439 (Fla. 3d DCA), <i>review granted</i> , 727 So. 2d 906 (Fla. 1998)	5
<i>Holloway, Gonzalez v. State</i> , 724 So. 2d 1271 (Fla. 3d DCA 1999)	5
<i>Johnson v. State</i> , 616 So. 2d 1 (Fla 1993)	4
<i>Neilsen v. City of Sarasota</i> , 117 So. 2d 731 (Fla. 1960)	4
<i>Thompson v. State</i> , 708 So. 2d 315 (Fla. 2d DCA), <i>review granted</i> , 717 So. 2d 538 (Fla. 1998)	2-5
<i>Williams v. State</i> , __So. 2d__, 1999 WL 212795 (Fla. 3d DCA 1999)	5

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BRIEF OF PETITIONER ON JURISDICTION

INTRODUCTION

This is a petition for discretionary review on the grounds of express and direct conflict of decisions. In this brief of petitioner on jurisdiction, all references are to the appendix attached to this brief, paginated separately and identified as "A", followed by the page numbers. All emphasis is supplied unless the contrary is indicated.

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 (A. 1-2).

Notice of invocation of this Court's discretionary jurisdiction to review the decision of the district court of appeal was filed on April 21, 1999.

SUMMARY OF ARGUMENT

In this case, the defendant was sentenced for an offense committed after the effective date of the 1995 sentencing guidelines and within the window period to challenge chapter 95-182 Laws of Florida. In *Thompson*, the Second District Court of Appeal held that the criminal sentencing provisions of the aforementioned legislative enactment violated the single subject rule of Article III, section 6, of the Florida Constitution. Therefore, the express and direct conflict between the decisions of the two district courts of appeal is apparent.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN *THOMPSON v. STATE*, 708 So. 2d 315 (Fla. 2d DCA 1998).

This Court's jurisdiction to review decisions of district courts of appeal because of alleged conflict is invoked by (1) the announcement of a rule of law which conflicts with a rule previously announced in a district court or Supreme Court decision, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior district court or Supreme Court decision. *Neilsen v. City of Sarasota*, 117 So. 2d 731 (Fla. 1960). In the present case, the Third District Court of Appeal applied a rule of law to produce a different result in a case which involves substantially the same facts as the decision of the Second District in *Thompson, supra*.

In *Thompson*, the Second District relied on this Court's decision in *Johnson v. State*, 616 So. 2d 1 (Fla 1993), invalidating the 1989 habitual felony offender amendments because they were incorporated in a legislative act containing conceptually unconnected legislation. *Thompson* similarly concluded that chapter 95-182 was comprised of statutory subject matters that were logically unrelated. As a result, the Second District held that the criminal sentencing portions of chapter 95-182 were unconstitutional.

On appeal, the Petitioner asserted that his sentence was unlawful because the

statute that created the 1995 guidelines (Chapter 95-184, Laws of Florida) was 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: criminal sentencing, substantive crimes, private civil damages claims by crime victims, and civil remedies available to victims of domestic violence.

In its decision in this case, the Third District cited *Holloway v. State*, 712 So. 2d 439 (Fla. 3d DCA), *review granted*, 727 So. 2d 906 (Fla. 1998), and *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997), wherein the court rejected attacks to legislative enactments which were identical to the issue presented in the case *sub judice*. The Third District has recently certified conflict on the same issue in *Holloway, Gonzalez v. State*, 724 So. 2d 1271 (Fla. 3d DCA 1999) and *Williams v. State*, __ So. 2d __, 1999 WL 212795 (Fla. 3d DCA 1999).

This holding of the Third District Court of Appeal stands in express and direct conflict with the Second District's holding in *Thompson* and with the rule of law asserted by this Court in *Johnson, supra*. This Court should therefore exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal in the instant case.

CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

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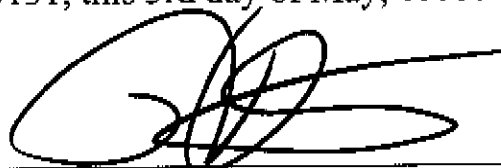
BY:



MANUEL ALVAREZ
Assistant Public Defender

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 3rd day of May, 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.

A handwritten signature in black ink, appearing to read 'MANUEL ALVAREZ', written over a horizontal line.

MANUEL ALVAREZ
Assistant Public Defender

Appendix

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

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

OSVALDO VALDES,

**

Appellant,

**

vs.

** CASE NO. 97-2896

THE STATE OF FLORIDA,

** LOWER

Appellee.

**

TRIBUNAL NO. 96-23081

Opinion filed April 7, 1999.

An Appeal from the Circuit Court for Dade County, Barbara S. Levenson, Judge.

Bennett H. Brummer, Public Defender and Manuel Alvarez and Suzanne M. Froix, Assistant Public Defenders, for appellant.

Robert A. Butterworth, Attorney General and Sylvie Perez-Posner (Fort Lauderdale) and Consuelo Maingot, Assistant Attorneys General, for appellee.

Before SCHWARTZ, C.J., and GODERICH and GREEN, JJ.

PER CURIAM.

There is no merit either in the defendant's sole claim of trial error, see *Watson v. State*, 504 So. 2d 1267 (Fla. 1st DCA 1986), review denied, 506 So. 2d 1043 (Fla. 1987); *Gosney v. State*, 382 So. 2d 838 (Fla. 5th DCA 1980), or in his challenge to the 1995

guidelines under which he was sentenced, based on a claim that Chapter 95-184, Laws of Florida, is unconstitutional. See Holloway v. State 712 So. 2d 439 (Fla. 3d DCA 1998), review granted, (Fla. Case no. 93,437, October 12, 1998); Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997). The latter holding is in conflict with Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), review granted, 717 So. 2d 538 (Fla. 1998). See Heggs v. State, 718 So. 2d 263 (Fla. 2d DCA 1998), review granted, 720 So. 2d 518 (Fla. 1998).

Affirmed.

SCHWARTZ, C.J., and GODERICH, J., concur.

GREEN, J. (specially concurring in part)

While I agree with the majority concerning the merits of this case, I write separately to address the appellant's ensuing sentence made pursuant to the "Officer Evelyn Gort and all Fallen Officers Career Criminal Act of 1995", Chapter 95-192, Laws of Florida. As I have previously stated in my special concurring opinions in John v. State, 724 So. 2d 708 (Fla. 3d DCA 1999), English v. State, 721 So. 2d 1250 (Fla. 3d DCA 1998), and Elliard v. State, 714 So. 2d 1218 (Fla. 3d DCA 1998), I steadfastly believe that this act is unconstitutional because it violates the single subject requirement of article III, section 5 of the Florida Constitution; I am persuaded by the reasoning as outlined in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA), review granted, 717 So. 2d 538 (Fla. 1998). Accordingly, I would prefer that this court: (1) recede from its opinion in Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997); and its progeny;¹ (2) adopt Thompson and

¹ See McGowan v. State, 24 Fla. L. Weekly D442 (Fla. 3d DCA Feb. 17, 1999); Russell v. State, 24 Fla. L. Weekly D442 (Fla. 3d DCA Feb. 17, 1999); Waldo v. State, 24 Fla. L. Weekly D395 (Fla. 3d DCA Feb. 10, 1999); Robbins v. State, 24 Fla. L. Weekly D328 (Fla. 3d DCA Feb. 3, 1999); Gonzalez v. State, 724 So. 2d 1271 (Fla. 3d DCA 1999); John, 724 So. 2d at 708; Marshall v. State, 723 So. 2d 923 (Fla. 3d DCA 1999); English, 721 So. 2d at 1250; Spann v. State, 719 So. 2d 1031 (Fla. 3d DCA 1998); Tillman v. State, 718 So. 2d 944 (Fla. 3d DCA 1998); Cyrus v. State, 717 So. 2d 619 (Fla. 3d DCA 1998); Almanza v. State, 716 So. 2d 351 (Fla. 3d DCA 1998);

its progeny;² and (3) reverse the appellant's sentence and remand for resentencing.

Elliard, 714 So. 2d at 1218; Holloway v. State, 712 So. 2d 439 (Fla. 3d DCA 1998); Dupree v. State, 711 So. 2d 647 (Fla. 3d DCA 1998); Linder v. State, 711 So. 2d 1340 (Fla. 3d DCA 1998).

² See Seay v. State, 24 Fla. L. Weekly D382 (Fla. 2d DCA Feb. 3, 1999); Williams v. State, 24 Fla. L. Weekly D255 (Fla. 2d DCA Jan. 20, 1999); Heggs v. State, 718 So. 2d 263 (Fla 2d DCA 1998); Pugh v. State, 717 So. 2d 635 (Fla 2d DCA 1998); Davis v. State, 709 So. 2d 641 (Fla 2d DCA 1998); Taylor v. State, 709 So. 2d 641 (Fla 2d DCA 1998); Jones v. State, 709 So. 2d 1385 (Fla 2d DCA 1998); Morris v. State, 708 So. 2d 697 (Fla 2d DCA 1998).