

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,647

HAROLD WILLIAMS,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The Petitioner, HAROLD WILLIAMS, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal (hereafter, "Third District"). The State of Florida was the prosecution in the trial court and the Appellee in the Third District. In this brief, the parties will be referred to as they stood in the trial court. The symbols "R." and "T." will refer to the record on appeal and the transcripts of the proceedings, respectively.

CERTIFICATE OF FONT AND TYPE SIZE

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STATEMENT OF THE CASE AND FACTS

The State is in substantial agreement with the Defendant's version of the case and facts as they pertain to the sentencing hearing and issues pertinent to this appeal.

POINTS INVOLVED ON APPEAL

I.

WHETHER THE LOWER COURT ERRED IN RULING THAT CHAPTER 95-182 LAWS OF FLORIDA DID NOT VIOLATE THE SINGLE REQUIREMENT OF FLORIDA'S CONSTITUTION?

II.

WHETHER THE DEFENDANT WAS PROPERLY SENTENCED AS A VIOLENT CAREER CRIMINAL WHERE THE THREE PRIOR CONVICTIONS REQUIRED ARE NOT REQUIRED TO BE FOR THE SAME CRIME OR GROUP OF CRIMES AS THE INSTANT CONVICTION?

SUMMARY OF THE ARGUMENT

There is a natural and logical connection among sections of the Gort Act. The first part concerns sentencing for aggravated stalking and other forms of violent conduct. The second provides a remedy for the victims of this conduct when the conduct occurs in a relationship. These provisions have a cogent relationship to each other. Thus, the Gort Act does not violate the single subject provision of Florida's Constitution. Therefore, this Court should affirm the decision below.

As the issue in the instant case is the precise issue presently pending before this Court in State v. Thompson, Case No. 92,831, and since the Defendant has fully adopted the defense brief filed in this Court in Thompson for his initial brief, the State will therefore fully adopt the State's brief filed in this Court in Thompson for the State's answer brief in this case.

The Defendant does qualify as a violent career criminal since he met all of the statutory requirements and that the statute does not require that the prior convictions be for the same crime or group of crimes as the instant conviction. The statute read as a whole is unambiguous.

ARGUMENT

I.

THE LOWER COURT CORRECTLY RULED THAT CHAPTER 95-182 LAWS OF FLORIDA DID NOT VIOLATE THE SINGLE REQUIREMENT OF FLORIDA'S CONSTITUTION.

In the instant case, the trial court sentenced the Defendant as a violent career criminal to a state prison term of life in prison pursuant to §775.084(4)(c), Fla. Stat. (1995), the "Gort Act". (R. 39-41). Now, the Defendant is arguing, as he argued in the Third District, that his violent career criminal sentence should be vacated because §775.084(4)(c), Fla. Stat. (1995) is unconstitutional on the ground that the session law that enacted it, Chapter 95-182, Laws of Florida, violated the single subject provision of the Florida Constitution. This Court should reject this claim and affirm the lower court's ruling.

As noted by the Defendant, the Third District has previously held that chapter 95-182 did not violate the single subject requirement of the Florida Constitution. Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997). On the other hand, the Second District has held to the contrary. Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998). Hence, although the Third District affirmed in the instant case on the authority of Higgs, in light of Thompson, the Third District also certified conflict with Thompson.

The issue in the instant case is the exact issue currently pending before this Court in State v. Thompson, No. 92,831. Since the Defendant has adopted the defense brief in State v. Thompson, and in the interest of judicial economy, the State will therefore adopt the State's brief in State v. Thompson for the answer brief in this case.

II.

THE DEFENDANT WAS PROPERLY SENTENCED AS A VIOLENT CAREER CRIMINAL WHERE THE THREE PRIOR CONVICTIONS REQUIRED ARE NOT REQUIRED TO BE FOR THE SAME CRIME OR GROUP OF CRIMES AS THE INSTANT CONVICTION.

The Defendant alleges that the Third District's reading "an offense" as "any offense" violates the fundamental rule of construing criminal statutes. As he alleged below, the Defendant argues that the three prior convictions required under the violent career criminal statute, Section 775.084(1)(c), Fla. Stat. (1997), must be for the same crime or group of crimes and that because he did not have convictions for the same crime or group of crimes, he does not qualify under the statute. However, the State submits that the Defendant does qualify as a violent career criminal since he met all of the statutory requirements and that the statute does not require that the prior convictions be for the same crime or group of crimes as the instant conviction.

The Defendant's argument that because he did not have convictions for the same crime or group of crimes he does not qualify under the statute is erroneous. The statute requires that "[t]he defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense..." § 775.084(c)1, Fla. Stat. (1997). As held by the

Third District below, "in this context, the term 'an offense' unambiguously means 'any' offense and is specifically not restricted in the way the defendant claims.

Under the statute, to qualify as a violent career criminal the defendant must have prior convictions or adjudications of delinquency for three enumerated **felonies**, and must have previously been incarcerated in state or federal prison.

State v. Emmund, 698 So. 2d 1318 (Fla. 3d DCA 1997)(emphasis added). There is nothing in the statute to indicate that the enumerated felonies must be the same crime or group of crimes as the instant crime.

The Legislature discusses the definition of a "career criminal" as a person who is convicted of burglary, robbery, any other forcible felony, or a felony violation of any provision of Chapter 790, and must have been previously convicted as an adult three or more times for forcible **felonies** committed on different occasions in this state or in any other jurisdiction and must have been incarcerated in a state or a federal prison. Senate Staff Analysis and Economic Impact Statement 168 at 2 (February 14, 1995). Thus, the legislative intent is clear that the legislature was not seeking a violent career criminal classification for only those criminals who have been convicted previously three or more times for the same crime or group of crimes as the instant crime.

In the instant case, the Defendant has prior convictions for burglary of a dwelling and grand theft third degree in Case No. 89-46386B, burglary of a structure and grand theft third degree in Case No. 89-46525, grand theft motor vehicle in Case No. 89-4536, grand theft third degree, unlawful possession of a firearm by a convicted felon, obstructing justice and carrying a concealed firearm in Case No. 89-34377, burglary of a conveyance and grand theft second degree in Case No. 87-13126, escape in Case No. 88-30919, grand theft auto and burglary of a structure or conveyance in Case No. 91-16982, and possession with intent to sell or purchase cocaine in Case No. 89-14899C. (R. 213-218). Further, the Defendant has not received any clemency on those cases. (R. 218). The Defendant has been to state prison on at least one occasion and his release date of his most recent incarceration in the state prison system is June 21, 1996. (R. 219).

The Defendant's argument that the prior convictions must be for the same crime or group of crimes is without merit. The statute read as a whole is unambiguous. Thus, the Defendant was properly sentenced as a violent career criminal.

CONCLUSION

Based upon the foregoing, the State submits that Third District properly held that Chapter 95-182 did not violate the single subject provision of the Florida Constitution and that the statute is unambiguous in that it does not require that the prior offenses be of the same type or kind as the present one. This Court should therefore affirm.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed this ____ day of _____, 1999, to JOHN E. MORRISON, Assistant Public Defender, 1320 N.W. 14th Street, Miami, Florida, 33125.

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