

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 PETITIONER ON THE MERITS

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1958

JOHN E. MORRISON
Assistant Public Defender
Florida Bar No. 072222

Counsel for Harold Williams, Petitioner

TABLE OF CONTENTS

	PAGE(S)
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
I.	
CHAPTER 95-182, LAWS OF FLORIDA, WHICH CREATED THE SENTENCING CATEGORY OF VIOLENT CAREER CRIMINAL, VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION	6
II.	
THE THIRD DISTRICT’S DECISION READING “ <i>AN</i> OFFENSE” AS “ <i>ANY</i> OFFENSE” VIOLATES THE FUNDAMENTAL RULE OF CONSTRUING CRIMINAL STATUTES	9
CONCLUSION	16
CERTIFICATE OF SERVICE	17
CERTIFICATE OF FONT AND TYPE SIZE	17

TABLE OF CITATIONS

CASES	PAGE(s)
<i>Chicone v. State</i> , 684 So. 2d 736 (Fla. 1996)	11
<i>Feller v. State</i> , 637 So. 2d 911 (Fla. 1994)	9
<i>Grappin v. State</i> , 450 So. 2d 482 (Fla. 1984)	13
<i>Higgs v. State</i> 695 So. 2d 872 (Fla. 3d DCA 1997)	7
<i>Izadi v. Machado (Gus) Ford, Inc.</i> , 550 So. 2d 1135 (Fla. 3d DCA 1989)	11
<i>Jacobson v. State</i> , 476 So. 2d 1282 (Fla. 1985)	9
<i>Lamont v. State</i> , 610 So. 2d 435 (Fla. 1992)	12
<i>Roberts v. Carter</i> , 350 So. 2d 78 (Fla. 1977)	11
<i>Savoie v. State</i> , 422 So. 2d 308 (Fla. 1982)	9
<i>State v. Emmund</i> , 698 So. 2d 1318 (Fla. 3d DCA 1997)	11
<i>State v. Hamilton</i> , 660 So. 2d 1038 (Fla. 1995)	12

<i>State v. Hershkowitz</i> , 714 So. 2d 545 (Fla. 3d DCA 1998)	11
<i>State v. Johnson</i> , 616 So. 2d 1 (Fla. 1993)	8
<i>Thompson v. State</i> , 695 So. 2d 691 (Fla. 1997)	12
<i>Thompson v. State</i> , 708 So. 2d 315 (Fla. 2d DCA 1998)	6,8
<i>United States Fidelity and Guaranty Co. v. State Farm Mutual Automobile Insurance Co.</i> , 369 So. 2d 410 (Fla. 3d DCA 1979)	11,12
<i>Wallace v. State</i> , 724 So. 2d 1176 (Fla. 1998)	12,13
<i>Wilder v. Wright</i> , 269 So. 2d 434 (Fla. 2d DCA 1972)	11

OTHER AUTHORITIES

Florida Constitution	
Article III, section 6	6
Florida Statutes	
§ 775.084(1)(a)1 (1997)	14
§ 775.084(1)(c) (1997).	6
§ 775.084(3)(b) (1997).	6
§ 775.084(4)(c) (1997).	6
§ 775.084(c)1(1997)	9
§ 775.084(1)(c)1.a(1997)	9,10
§ 775.084(1)(c)1 (1999)	13
§ 775.084(1)(d)1	13
Florida Laws	

Chapter 97-97	8
Chapter 95-182	6,7,8
Chapter 99-188	13

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 PETITIONER ON THE MERITS

INTRODUCTION

This is a petition for discretionary review based on certified conflict with *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998), which is presently pending in this Court on a petition for discretionary review in *State v. Thompson*, Case No. 92,831. In this brief the symbols “R.” “SR” and “TR.” indicate the record and supplemental record on appeal and the trial transcript respectively. The appendix, consisting of a copy of the Third District Court of Appeal’s decision, is designated as “A.” All emphasis is supplied unless indicated to the contrary.

STATEMENT OF THE CASE AND FACTS

Harold Williams, the petitioner, was convicted of burglary with an assault or battery while armed (R. 118; TR. 303). *See* 810.02(4)(a), Fla. Stat. (1997). The offense was committed on January 20, 1997. (R. 1).

At the sentencing hearing, the state proved that Mr. Williams had two prior convictions for burglary, and one prior conviction each for firearm offenses¹ and escape (R. 213-16). The trial court found Mr. Williams qualified as a violent career criminal under section 775.084(1)(c) of the Florida Statutes (R. 195, 228-30). Accordingly, the trial court then sentenced him to life in prison (R. 201, 230). *See* § 775.084(4)(c)1, Fla. Stat. (1997).

The Third District Court of Appeal affirmed Mr. William's conviction and sentence, but certified direct conflict with the Second District Court of Appeal's opinion in *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998). The issue is whether the law creating the violent career criminal provisions, Chapter 95-182, Laws of Florida, violates the single subject requirement of the Florida Constitution (A. 2).

The Third District Court of Appeal also rejected Mr. William's argument that the state must prove three convictions of "an offense" before he would qualify as a violent

¹The conviction involving firearm offenses included two separate counts for violations of chapter 790: carrying a concealed firearm, and possession of a firearm by a convicted felon (R. 215).

career criminal. The District Court of Appeal held that “the term ‘*an* offense’ unambiguously means ‘any’ offense and is specifically not restricted in the way the defendant claims.” (A. 2) (emphasis in original).

This petition follows.

SUMMARY OF THE ARGUMENT

Chapter 95-182 of the Laws of Florida, which created the sentencing category of “violent career criminal,” was enacted in violation of the single subject requirement of Article III, section 6, of the Florida Constitution. Chapter 95-182 embraces two separate subjects – violent career criminal sentencing and civil remedies for victims of domestic violence – that have no logical or natural connection, and accordingly could not be joined in the same act. Because the appellant’s sentence was imposed for an offense committed before the biennial reenactment of the provisions originally contained in chapter 95-182, his sentencing as a violent career criminal was unconstitutional. The decision of the Third District must be quashed, and the defendant’s sentence reversed with directions to remand to the trial court for resentencing.

This issue is presently pending before this Court in *State v. Thompson*, Case No 92,831. The petitioner fully adopts the defense answer brief filed in this Court in *Thompson* for the initial brief on this issue in this case.

Additionally, the Third District’s holding that “an means any” is based on a case broadly reading a statute to expand insurance protection. Such broad interpretation is directly contrary to a multitude of cases adopting strict construction of criminal statutes and the rule of lenity. The Third District’s opinion is also directly contrary to this Court’s opinion in *Wallace v. State*, 724 So. 2d 1176 (Fla. 1998), which acknowledged a “crucial

difference” between “a” and “any” in criminal statutes. “Any offense” allows various types of convictions to be grouped together, while “an offense” requires the requisite number of convictions for a specific offense. If the legislature wants previous convictions grouped together for purposes of enhanced sentencing, the legislature is fully capable of saying so in unambiguous language. The legislature has done exactly that in the habitual offender and the new three-strike violent felony offender sentencing schemes.

Because of the severe consequences of expanding the availability of the violent career criminal sentencing scheme, this Court should exercise its discretion to decide this issue. This Court should reverse the Third District now before increasingly large numbers of defendants are incorrectly given lengthy sentences as violent career criminals.

ARGUMENT

I.

CHAPTER 95-182, LAWS OF FLORIDA, WHICH CREATED THE SENTENCING CATEGORY OF VIOLENT CAREER CRIMINAL, VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

Mr. Williams was sentenced as a violent career criminal to serve life in prison pursuant to sections 775.084(1)(c), (3)(b) &(4)(c), Florida Statutes (1997). (R. 154-56). Chapter 95-182 (the “Gort Act”), which created these violent-career-criminal provisions, was enacted in violation of the single subject requirement of Article III, section 6 of the Florida Constitution. Chapter 95-182 embraces two distinct and unrelated subjects – career criminal sentencing and civil remedies for victims of domestic violence – which have no logical or natural connection, and accordingly could not constitutionally be joined in the same act. Because Mr. Williams’s offense occurred on January 20, 1997, before the biennial reenactment of the provisions originally contained in 95-182, his sentencing as a violent career criminal was unconstitutional.

The same issue of the constitutionality of the Gort Act is presently pending before this Court in *State v. Thompson*, Case No 92,831. In *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998), the Second District Court of Appeal held that chapter 95-182 was unconstitutional because it violated the single subject requirement, and invalidated a

violent career criminal sentence on that basis. In the present case, the Third District Court of Appeal affirmed Mr. William's life sentence as a violent career criminal based on its previous decision in *Higgs v. State*, 695 So. 2d 872 (Fla. 3d DCA 1997), but certified direct conflict with the Second District's opinion in *Thompson* (A. 2).

As noted above, *Thompson* is now pending before this Court on petition for discretionary review. Undersigned counsel for petitioner has reviewed the arguments made by the defense in *Thompson* and has determined that they are fully applicable to this case. In the interests of judicial economy, the petitioner therefore fully adopts the arguments made in the defense brief (Answer Brief of Respondent on the Merits) filed in this Court in *State v. Thompson* for the initial brief on this issue.

Mr. Williams's violent career criminal sentence was imposed for an offense committed on January 20, 1997, before the reenactment of the provisions originally contained in chapter 95-182. The effective date of chapter 95-182 was October 1, 1995. On May 24, 1997, the Legislature reenacted the 1995 provisions contained in chapter 95-182 as part of the biennial adoption of the Florida Statutes. *See* Ch. 97-97, Laws of Fla. Therefore, sentences imposed pursuant to the violent career criminal provisions violate the single subject requirement if the offenses were committed between October 1, 1995, and May 24, 1997. *See Thompson*, 708 So. 2d at 317 n.1; *see also State v. Johnson*, 616 So. 2d 1, 2-3 (Fla. 1993).

Because the offense in this case was committed during the period during which the Gort Act was unconstitutional, the defendant's life sentence as a violent career criminal was illegal and must be reversed.

II.

THE THIRD DISTRICT'S DECISION READING "AN OFFENSE" AS "ANY OFFENSE" VIOLATES THE FUNDAMENTAL RULE OF CONSTRUING CRIMINAL STATUTES.

Regardless of the outcome of the single subject issue, the District Court of Appeal's opinion presents another issue this Court should decide. Once this Court has jurisdiction over a case, it may decide all issues in the case. *See, e.g., Feller v. State*, 637 So. 2d 911, 914 (Fla. 1994); *Jacobson v. State*, 476 So. 2d 1282, 1285 (Fla. 1985); *Savoie v. State*, 422 So. 2d 308, 310 (Fla. 1982). Additionally, the Third District Court of Appeal's decision directly conflicts with numerous decisions from this Court and other District Courts of Appeal and therefore this Court should exercise its jurisdiction to resolve this conflict.

The statutory definition of a violent career criminal requires that "[t]he defendant has previously been convicted as an adult three or more time for *an offense* in this state or other qualified offense that is:" § 775.084(c)1, Fla. Stat. (1997). The statute then goes on to list seven offenses² such as forcible felonies, aggravated stalking, aggravated child abuse, firearm offenses, and escape. *See id.* The state proved only that

²By statute, some of the qualifying offenses are really groups of offenses, such as forcible felonies and firearms offenses. *See* § 775.084(1)(c)1.a. (forcible felonies) & 1.g. (firearm offenses), Fla. Stat. (1997). This brief will refer to these groups of offenses as one offense because that is how the statute refers to them.

Mr. Williams had two prior convictions for burglary (a forcible felony), one conviction involving firearm offenses, one conviction for escape, and convictions for offenses that are not on the list, such as grand theft (R. 213-16). The state never proved that he had three convictions for forcible felonies or any other specific crime. The state could only reach that number of convictions by grouping all of his convictions together.

Mr. Williams argued below that the use of the singular “an offense” and the rule of lenity required that before he qualifies as a violent career criminal the state must prove three convictions for the same offense, not merely three convictions for three different crimes. Specifically Mr. Williams argued: “The state’s use of any three convictions on the list effectively amends the statute to read ‘any offense’ rather than ‘an offense.’” (Initial Brief of Appellant in the Third District Court of Appeal, p. 7). The Third District responded: “To the contrary, in this context, the term ‘an offense’ unambiguously means ‘any’ offense and is specifically not restricted in the way the defendant claims.” (A. 2) (emphasis in original).

The cases the Third District cited for support of this proposition reveal the error in this judicial expansion of the violent career criminal law. The court cites *United States Fidelity and Guaranty Co. v. State Farm Mutual Automobile Insurance Co.*,

369 So. 2d 410 (Fla. 3d DCA 1979), and its progeny.³ *United States Fidelity* involved a statute providing for attorney fees if “an insured” person has to sue his or her own insurance company. The court held that “[i]n this sense, the word ‘an’ means ‘any.’” *Id.* at 412. That decision is based on a policy of discouraging insurance companies from contesting valid claims by those they insure. *See id.* (quoting *Roberts v. Carter*, 350 So. 2d 78, 79 (Fla. 1977), which was in turn quoting *Wilder v. Wright*, 269 So. 2d 434, 436 (Fla. 2d DCA 1972)).

This policy of broadly reading civil statutes to provide insurance benefits is the exact opposite of the approach to criminal statutes. “[S]tatutes defining crimes are to be strictly construed against the State and most favorably to the accused.” *Chicone v. State*, 684 So. 2d 736, 741 (Fla. 1996). The Third District’s decision applying the broad rules for reading civil statutes to a criminal statute expressly and directly conflicts with strict construction and the rule of lenity established by a multitude of cases from this Court and

³The lower court also cites *State v. Hershkowitz*, 714 So. 2d 545 (Fla. 3d DCA 1998). *Hershkowitz* merely cites *Izadi v. Machado (Gus) Ford, Inc.*, 550 So. 2d 1135, 1138 n.3 (Fla. 3d DCA 1989), which in turn merely cites *United States Fidelity*, which is apparently the grandfather case for “an” means “any.”

The Third District also cites *State v. Emmund*, 698 So. 2d 1318 (Fla. 3d DCA 1997), although that case does not discuss whether “an” can be broadened to mean “any.” *Emmund* upheld a trial court’s order restricting the state from calling a defendant a “violent career criminal” because it was unduly prejudicial. *See* 698 So. 2d at 1319-20. *Emmund*’s relevance to the issue in this case is difficult to discern.

other appellate courts. *See, e.g., Wallace v. State*, 724 So. 2d 1176 (Fla. 1998); *Thompson v. State*, 695 So. 2d 691, 693 (Fla. 1997); *State v. Hamilton*, 660 So. 2d 1038, 1044-45 (Fla. 1995); *Lamont v. State*, 610 So. 2d 435, 437-38 (Fla. 1992). The Third District’s decision is simply contrary to the well-established law and must be reversed.

After oral argument when questions from bench alerted counsel to the *United States Fidelity* line of cases,⁴ undersigned counsel provided the Third District with *Wallace v. State*, 724 So. 2d 1176 (Fla. 1998). The lower court’s opinion dutifully drops a “see also” cite to *Wallace* (A. 2), but its opinion directly conflicts with that decision. *Wallace* involved the question of whether the statute prohibiting resisting “any officer” can be violated multiple times if multiple officers are involved. Directly contrary to the Third District’s “an means any” holding, this Court in *Wallace* “acknowledged a *critical difference* between the use of the words ‘a’ and ‘any’ in construing the legislative intent of a statute.” *Wallace*, 724 So. 2d at 1178. The conflict could not be clearer.

This Court went on in *Wallace* to note that the use of the singular “a” unambiguously denotes “a separate unit of prosecution.” *See id.* (quoting *Grappin v. State*, 450 So. 2d 480, 482 (Fla. 1984)). Applying that rule to the violent career criminal statute, “convicted as an adult three or more times for *an* offense” means that each

⁴The state did not make this argument in its brief.

qualifying offense is a separate unit. By comparison, “any” offense allows convictions for different crimes to be grouped together. Therefore, *Wallace* held that the singular “a” unambiguously indicates a separate unit and is not the same as “any” while the Third District held that “an” means “any.” Again the conflict is self-evident.

When the legislature intends to allow different crimes to be grouped together, the legislature is fully capable of saying so in unambiguous language. For instance, the new “Three-Strike Violent Felony Offender Act” provides that someone qualifies for this new increased sentence if “two or more of [his or her previous felony] convictions were for committing, or attempting to commit, *any of the following offenses or combination thereof*” and then provided a list of qualifying offenses. Chap. 99-188, § 3, Laws of Fla. (to be codified as § 775.084(1)(c)1, Fla. Stat. (1999)).⁵ The definition of a habitual offender is similar: “The defendant has previously been convicted of *any combination of two or more felonies* in this state or other qualified offenses.” § 775.084(1)(a)1, Fla. Stat. (1997).

While the literal difference between “an” and “any” may be the addition of only a single letter, the practical effect is enormous. The violent career criminal sentencing scheme is the most severe sentencing scheme short of the death penalty. The Third

⁵The violent career criminal provision involved in the case at bar will be renumbered as section 775.084(1)(d)1.

District's ruling greatly expands the applicability of this sentencing scheme beyond what the legislature enacted. Whereas the legislature enacted a statute that reserves these extreme sanctions for individuals who make a "career" of committing the same crime, the Third District dramatically expands this statute to include individuals who commit several different types of crimes. The legislature has already provided for those individuals with the habitual offender, habitual violent offender, and three-strike violent offender sentencing schemes. As conceded below, Mr. Williams qualifies for sentencing as a habitual offender (R. 224). He does not qualify as a violent career criminal, however, except under the Third District's dramatic expansion of the statute.

This Court and other appellate courts created the body of precedent discussed above to prevent such judicial expansions of criminal statutes. The Third District's opinion directly conflicts with this established precedent. Given the severity of violent career criminal sentences, it is vital that this Court exercise its discretion and overrule the Third District's erroneous and dramatic expansion of the availability of such sentences.

CONCLUSION

Based on the foregoing, the petitioner requests that this Court quash the decision of the Third District Court of Appeal and reverse his violent career criminal sentence with directions to remand the case to the lower court for resentencing.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1958

BY: _____
JOHN E. MORRISON
Assistant Public Defender
Florida Bar No. 072222

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered by mail to Lara J. Edlestein, Assistant Attorney General, 110 S.E. 6th Street, Fort Lauderdale, Florida 33301, this first day of October 1999.

CERTIFICATE OF TYPE SIZE

I hereby certify that this brief is printed in 14 point CG Times, a font similar to Times Roman.

JOHN E. MORRISON
Assistant Public Defender

APPENDIX