

IN THE SUPREME COURT OF FLORIDA

RONALD CARSON,

Petitioner,

v.

Case No. 95,765

STATE OF FLORIDA,

Respondent.

_____ /

RESPONDENT'S MERITS BRIEF

On Review from the District Court of Appeal
of the State of Florida
Fifth District

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
CERTIFICATE OF FONT	iv
SUMMARY OF ARGUMENT	1
ARGUMENTS	2

POINT ON APPEAL

THE AMENDMENT TO THE 1994 SENTENCING GUIDELINES WAS PROPERLY AND CONSTITUTIONALLY ENACTED AND CONTAINS COGENT, INTERRELATED PROVISIONS WHICH ARE ALL DIRECTED TOWARD THE DEFINITION, PUNISHMENT AND PREVENTION OF CRIME AND THE ANCILLARY RIGHTS OF CRIME VICTIMS	2
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CONCLUSION	9
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

CASES:

In re Advisory Opinion to the Governor,
509 So. 2d 292 (Fla. 1987) 4

Bonvento v. Board of Public Instruction of Palm Beach County,
194 So. 2d 605 (Fla. 1967)B 5

Burch v. State,
558 So. 2d 1 (Fla. 1990) 3, 4, 5, 6

Chenoweth v. State,
396 So. 2d 1122 (Fla. 1981) 4

Knight and Wall Co. v. Bryant,
178 So. 2d 5 (Fla. 1965) 5

Maddox v. State,
708 So. 2d 617 (Fla. 5th),
rev. granted 719 So. 2d 169 (Fla. 1998) 2, 3

Smith v. City of St. Petersburg,
302 So. 2d 756 (Fla. 1974) 4, 5

Smith v. Department of Insurance,
507 So. 2d 1080 (Fla. 1987) 4

Speights v. State,
711 So. 2d 167 (Fla. 1st DCA 1998) 2

State v. Kinner,
398 So. 2d 1360 (Fla. 1981) 5

State v. Lee,
356 So. 2d 276 (Fla. 1978) 4

State v. McDonald,
357 So. 2d 405 (Fla. 1978) 4

OTHER AUTHORITIES:

Art. III, §6, Fla. Const.	3
Ch. 95-184, Laws of Fla.	5, 8
Ch. 95-184, §6, Laws of Fla.	6
Ch. 95-184, §6, Laws of Fla.	6
Ch. 95-184, §6, Laws of Fla.	21
Ch. 95-184, §6, Laws of Fla.	22
Ch. 95-184, §6, Laws of Fla.	29
Ch. 95-184, §6, Laws of Fla.	37
Ch. 95-184, §6, Laws of Fla.	38

CERTIFICATE OF FONT

Undersigned counsel hereby certifies that the brief filed herein is produced in **COURIER NEW, 12 point**.

Rebecca Roark Wall
Of Counsel

SUMMARY OF ARGUMENTS

The fact that the scope of legislation is broad and comprehensive is not fatal under the single subject rule, so long as the matters included in the enactment have a natural or logical connection. The enactment under attack in the instant case, Chapter 95-184, Laws of Florida, can and should be held constitutional since it is a comprehensive piece of legislation updating interrelated components of the criminal justice system.

The fact that several statutes are amended does not mean more than one subject is involved. The subject of the act in question is the definition, punishment, and prevention of crime and the protection of the rights of crime victims. The act does not violate the single subject rule and it should be upheld.

ARGUMENT

POINT ON REVIEW

THE AMENDMENT TO THE 1994 SENTENCING GUIDELINES WAS PROPERLY AND CONSTITUTIONALLY ENACTED AND CONTAINS COGENT, INTERRELATED PROVISIONS WHICH ARE ALL DIRECTED TOWARD THE DEFINITION, PUNISHMENT AND PREVENTION OF CRIME AND THE ANCILLARY RIGHTS OF CRIME VICTIMS.

At the outset, the State disputes the Defendant's assertion that this Court has "given notice in *Speights v. State*, 711 So. 2d 167 (Fla. 1st DCA 1998), *quashed*, case no. 93,207 (Fla. May 14, 1999), that it proposes to reverse *Maddox*"¹. (Petitioner's Brief on the Merits, p. 1). There is absolutely no precedential authority to support that assertion. Even if this Court determines that the law established by *Maddox* must be reversed, then the proper relief for the Defendant is to go back to the lower court to determine whether his claim is fundamental, since the Defendant has conceded that he never properly preserved the issue for appellate review.

When the Defendant was initially sentenced, he failed to raise any objection to the sentencing guidelines based on

¹Petitioner refers to *Maddox v. State*, 708 So. 2d 617 (Fla. 5th DCA), *rev. granted* 719 So. 2d 169 (Fla. 1998).

constitutionality. The 5th District Court of Appeal sent the Defendant's case back for resentencing after striking points that were wrongly scored. At the second sentencing, the Defendant **still** did not raise the claim as to the constitutionality of the guidelines. He failed to ever present the claim in any form until his appeal from the second sentence. The issue clearly was never preserved for appellate review.

Until this court determines the issues raised in *Maddox*, there is no need to reach the issue of constitutionality of the guidelines in this case. If *Maddox* is ultimately reversed, then the Defendant can raise his claim pursuant to a 3.850 motion for post-conviction relief. Therefore, this Court should decline to address the merits of the constitutionality issue. If, however, this Court determines that it is necessary to reach the merits of that claim, the Court should find the amendment to the sentencing guidelines was properly and constitutionally enacted.

Article III, section 6 of the Florida Constitution provides that:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

The purpose of the constitutional prohibition of multiple subjects

in a single legislative act is "to prevent a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter." *Burch v. State*, 558 So. 2d 1 at 2 (Fla. 1990). However, it is not intended to "deter or impede" the Legislature by requiring that laws be unnecessarily restrictive in scope and operation. *Id.*; *State v. Lee*, 356 So. 2d 276 (Fla. 1978). This court has repeatedly held that the Legislature should be given wide latitude in the enactment of laws. *See Burch; Lee, supra.*

When the matters included in a legislative enactment have a natural or logical connection, the fact that the scope of the enactment is broad and comprehensive is not fatal under the single subject rule. *In re Advisory Opinion to the Governor*, 509 So. 2d 292 (Fla. 1987); *See also Smith v. Department of Insurance*, 507 So. 2d 1080 (Fla. 1987); *Chenoweth v. State*, 396 So. 2d 1122 (Fla. 1981). The test for determining "duplicity" of subject matter "is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort." *Burch at 2, supra p. 3.*

The mere fact that a statute embraces more than one subject does not make it unconstitutional if the title is sufficiently broad to connect it with the general subject matter of the

enactment. *State v. McDonald*, 357 So. 2d 405 (Fla. 1978). In *Smith v. City of St. Petersburg*, 302 So. 2d 756 (Fla. 1974), this Court reasoned:

For a legislative enactment to fail, the conflict between it and the Constitution must be palpable, however, where by reasonable intent the title can be determined to be sufficiently broad as to include a provision that can be deemed to reasonably connect it with the subject matter of an enactment, then it should not be declared inoperative and unconstitutional. In other words, the title should reasonably and fairly give notice of what one may expect to find in the body of the enactment.

Id. at 758. When the title gives reasonable and fair notice to both the Legislature and the public as to the subject of the enactment, the purpose of the "single subject rule" is met -- to give adequate notice as to what the law encompasses.

There is a long-standing presumption in favor of the constitutionality of statutes. *State v. Kinner*, 398 So. 2d 1360 (Fla. 1981). This Court has stated that "[i]t is well-established that all doubt will be resolved in favor of the constitutionality of a statute". *Bonvento v. Board of Public Instruction of Palm Beach County*, 194 So. 2d 605 (Fla. 1967). An act will be found to be constitutional unless it is determined to be invalid **beyond a**

reasonable doubt. *Knight and Wall Co. v. Bryant*, 178 So. 2d 5 (Fla. 1965).

When Chapter 95-184 is tested by that standard, it clearly does not violate the single subject rule. Analysis shows that it is a comprehensive piece of legislation which updates interrelated components of the criminal justice system. The fact that several different statutes are amended by one enactment does not mean that more than one subject was involved. *Burch* at 3. This Court has acknowledged that it may be "awkward and unreasonable" to expect the Legislature to enact each and every provision of a comprehensive and connected act by separate pieces of legislation. *Id.*

The instant act, just like the enactment in *Burch*, is "a comprehensive law in which all of its parts are directed toward meeting the crisis of increased crime." *Id.* Its provisions are cogent and interrelated and directed toward one primary object -- the definition, punishment, and prevention of crime and the collateral protection of the rights of crime victims. It defines and clarifies substantive offenses, prescribes punishment through the amendment of various statutes, and attempts to protect victims' rights by amending statutes relating to supplemental civil restitution liens and domestic violence.

The first seven sections of the act amends the sentencing guidelines statute. The act re-structures the levels of crimes and the formula for determining the sentence, among other things. It includes an amended sentencing guideline scoresheet worksheet as well as a section addressing departure sentences. Ch. 95-184, §§6 & 7, Laws of Fla. Each section clearly relates to sentences for crimes.

The next twenty sections directly address specific crimes and/or the punishment for specific crimes. Some of the sections amend definitions of the particular crime, while other sections address certain enhancements to crimes. For instance, the act includes sections which address enhancement for taking a police officer's gun and for wearing a mask during the commission of a crime. Ch. 95-184, §§21 & 22, Laws of Fla. In short, sections 8-27 clearly relate to the definition, punishment, and/or enhancement of particular crimes.

Sections 28 through 35 clearly address the Legislature's determination that the former provisions of criminal restitution statutes fail to provide adequate compensation to victims of crime.

Ch. 95-184, §29, Laws of Fla. Those sections create a provision by which a victim of crime can get a restitution lien in order to more fully accomplish the purpose of criminal restitution -- to

make the victim whole to the greatest extent possible. Because each of those sections addresses the needs and rights of crime victims and how the judicial system can better serve the victim, those sections are clearly within the related matters of the entire act.

Finally, sections 36-38 address a specific victim of crime -- the victim of repeat domestic violence. Those sections provide further alternatives for the victims to be protected and made whole. They provide for criminal sanctions for some acts as well as providing other avenues in the judicial system for becoming whole. Ch. 95-184, §§37 & 38, Laws of Fla. Again, each of those sections relates to the purpose and subject matter of the entire act -- defining and punishing crime, and making crime victims whole.

The rights of crime victims are inextricably intertwined with the chapter's goal of punishing and preventing crime. There clearly is a natural, logical connection between the two. All of the provisions of the act are rationally related to each other, and all are directed to the same object -- updating components of the criminal justice system. Therefore, this Court should uphold Chapter 95-184 as a law which was properly and constitutionally enacted.

CONCLUSION

Based on the arguments and authorities presented herein, the State respectfully asks this court to uphold the decision of the Fifth District Court of Appeal in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Respondent's Merits Brief has been furnished by delivery to **Nancy Ryan**, Assistant Public Defender for Petitioner, this ____ day of October, 1999.

Rebecca Roark Wall
Of Counsel

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APPENDIX

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INDEX TO APPENDIX

INSTRUMENT:

Carson v. State,
731 So. 2d 157 (Fla. 5th DCA 1999) A