IN THE SUPREME COURT OF FLORIDA

XZAVIER TRAPP,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC96-074

RESPONDENT'S SUPPLEMENTAL ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, the State of Florida, adopts the designations set forth in its Answer Brief, filed September 15, 1999.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The State readopts the statement of the case and facts as set forth in its answer brief filed September 15, 1999.

SUMMARY OF ARGUMENT

This Court has ordered supplemental briefing on the question of how the window period for challenges to the sentencing guidelines effects this case.

The petitioner does not have standing to challenge both the original and the amended versions of the sentencing guidelines, since he was sentenced on 10-3-97 for a crime committed on 1-10-97, **after** the reenactment of the guidelines, effective October 1, 1996. Thus, any constitutional defect was cured and the defendant is without a right of complaint.

ARGUMENT

ISSUE I

WHETHER THE LEGISLATURE'S REENACTMENT OF THE SENTENCING GUIDELINES, EFFECTIVE OCTOBER 1, 1996, CURES ANY CONSTITUTIONAL DEFECT, PRECLUDING ANY COMPLAINT OF THE PETITIONER REGARDING HIS SENTENCE? (Restated)

This Court has ordered supplemental briefing in this case addressing the window period as raised in Heggs v. State, 718 So.2d 263, 264 fn.1 (Fla. 2d DCA), rev. granted, 720 So.2d 518 (Fla. 1998) and Bortel v. State, 743 So.2d 595, 597 (Fla. 4th DCA 1999).

The State first notes that this Court accepted review of the Second District Court of Appeals decision in Heggs. In its February 17, 2000 decision in that case, this Court declined to address the window issue. Thus, that decision does not effect the issue discussed herein. The State also notes that while this Court found in Heggs that the statute violated the single subject rule, that decision is currently pending rehearing and therefore is not yet final.

Finally, the State notes that the question of the window period is currently pending before this Court in Leo Salters v. State, 731 So.2d 826 (fla. 4th DCA 1999), rev. granted, Case No. 95,663 and in Lashawn Martez Crawford v. State, 743 So.2d 1136 (Fla. 1st DCA 1999), rev. granted, Case No. 96,711. The State therefore adopts its answer brief in those cases in their entirety.

Standing

The single subject provision applies only to chapter laws; Florida Statutes are not required to conform to the provision. State v. Combs, 388 So.2d 1029 (Fla. 1980). Once reenacted as a portion of the Florida Statutes, a chapter law is no longer subject to challenge on the grounds that it violates the single subject provision of Article III, § 6, of the Florida Constitution. State v. Johnson, 616 So.2d 1, 2 (Fla. 1993). The reenactment of a statute cures any infirmity or defect. State v. Carswell, 557 So.2d 183, 184 (Fla. 3d DCA 1990); Honchell v. State, 257 So.2d 889 (Fla. 1972); Alterman Transport Lines, Inc. v. State, 405 So.2d 456 (Fla. 1st DCA 1981).

In State v. Johnson, 616 So.2d 1 (Fla. 1993), the Supreme Court held that the re-enactment of the amendment cured the single-subject violation. The Court noted that the "window" period for attacking a chapter law as violative of single-subject provision runs from the effective date of law to the date of reenactment. Defendants who committed their offenses after the enactment date did not have standing to challenge the amendments. However, those defendants who committed their offenses before the date of the reenactment did have standing to challenge the amendments and were entitled to resentencing. Johnson, 616 So.2d at 4.

In Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), *rev. granted*, State v. Thompson, 717 So.2d 538 (Fla. 1998), the Second District held that the Gort Act, chapter 95-182, violated

the single subject provision of the Florida Constitution. The Thompson Court identified the window period for challenging the Gort Act, chapter 95-182, LAWS OF FLORIDA, from October 1, 1995 until May 24, 1997. Thompson, 708 So.2d 315, n.1. According to the Second District, the "window" period opens on the effective date of the law, which was October 1, 1995 and closes on the date the Gort Act was reenacted as part of the Florida Statutes' biennial adoption which was May 24, 1997. Chapter 97-97, LAWS OF FLORIDA. Thus, according to the Thompson Court, only those defendants who committed their offenses prior to May 24, 1997 have standing to challenge the constitutionality of the Gort Act on the basis that it violates the single subject provision.

In Salters v. State, 731 So.2d 826 (Fla. 4th DCA 1999), the Fourth District identified a different window period. The Salters Court held that a defendant's standing to challenge his violent career criminal sentence ended on October 1, 1996 because the Gort Act was reenacted on that date. Chapter 96-388, LAWS OF FLORIDA. The Fourth District reasoned that when the legislature reenacted the violent career criminal section as part of chapter 96-388, without the civil provision identified in Thompson as the single subject violation, the legislature cured the single subject violation.[1] In short, the passage of chapter 96-388

[1] In Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), *rev. granted*, State v. Thompson, 717 So.2d 538 (Fla. 1998), the Second District held that the Gort Act violated the single subject provision of the Florida Constitution. The Thompson Court noted that sections one through seven of the chapter create

without the objectionable civil provisions addressing domestic violence injunctions cured the single subject violation found in chapter 95-182. The Fourth District in Salters certified conflict with Second District's decision in Thompson regarding the appropriate dates for the window.[2]

In Bortel v. State, 743 So.2d 595 (Fla. 4th DCA 1999), the Fourth District addressed a defendant's challenge to a sentence imposed pursuant to the 1995 sentencing guidelines for offenses committed between October 26, 1996 and November 24, 1996, asserting that the sentences were illegal because the enacting legislation for the 1995 sentencing guidelines, Chapter 95-184, Laws of Florida, violated the single subject rule of Article III, Section 6, Florida Constitution. Applying its prior decision in

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and define violent career criminal sentencing whereas section eight through ten deal with civil remedies for domestic violence. The Court recited a brief legislative history of the Gort Act noting that sections eight through ten began as three house bills which died in committee. When the three house bills were engrafted on to the original Senate bill creating violent career criminal sentencing, the three house bills became law. The Court stated: "[i]t is in circumstances such as these that problems with the single subject rule are most likely to occur". Furthermore, the Thompson Court reasoned that the two parts have no natural or logical connection because the Gort Act embraces both criminal and civil provisions. The Court analogized the Gort Act to the cases of State v. Johnson, 616 So.2d 1 (Fla. 1993) and Bunnell v. State, 453 So. 2d 808 (Fla. 1984). The Court also expressed concern that nothing in sections two through seven addresses domestic violence and nothing in sections eight through ten addresses career criminals.

[2] Salters is pending in this Court in case no. 95,663.

Salters, the Fourth District concluded that Bortel was not entitled to relief because the sentencing guidelines at issue were reenacted in 1996 pursuant to Chapter 96-388, Laws of Florida, with an effective date of October 1, 1996, thereby curing the constitutional defect raised in this case and Bortel's offenses occurred after the statute was reenacted.

There is no dispute regarding the date the "window" period opens which is the effective date of the statute, October 1, 1995. However, contrary to the Thompson and Heggs Courts' reasoning, the window to challenge chapter 95-184 closed not on May 24, 1997 but approximately one year earlier on October 1, 1996. While the Gort Act and sentencing guidelines were reenacted in 1997 as part of the Florida Statutes' biennial adoption, they were also reenacted earlier in 1996. Chapter 96-388, LAWS OF FLORIDA. This earlier reenactment, while not part of the biennial adoption, was an equivalent legislative action which closed the window for the exact same reasons the biennial adoption normally closes the window.

In Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991), this Court held that a chapter law that consisted of two separate subjects, *i.e.*, workers' compensation and international trade, violated the single subject requirement. However, prior to the Court's decision, the legislature separated the international trade and workers' compensation provisions into two distinct bills and reenacted them both. This Court held that this action by the legislature "clearly cured" the single subject objection.

Thus, the legislature can cure a single subject violation in a number of ways. The legislature can cure a single subject violation by biennial adoption or by breaking the two subjects into two separate bills and passing the as two separate chapter laws or, as in this case, by reenacted the substance of the statute without the offending disparate subject in a later chapter law.

The purpose of the single subject provision in the constitution is to prevent "logrolling". Martinez v. Scanlan, 582 So.2d 1167, 1172 (Fla. 1991); State v. Lee, 356 So.2d 276, 282 (Fla. 1978). Logrolling is where separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So.2d 1336, 1339 (Fla. 1994). Logrolling results in the passage of an unpopular issue simply because it is paired with a widely popular issue. Advisory Opinion to the Attorney Gen. re Fish & Wildlife Conservation Comm'n, 705 So.2d 1351, 1353 (Fla. 1998). The purposes of the provision is to prevent unpopular free riders becoming law. The provision obviously is not designed to prevent the passage of popular measures. If a Court could determine which of the issues was in fact the free rider, only the free rider should be held unconstitutional. However, courts invalidate the entire chapter because normally they cannot determine which is the popular measure and which is the free rider. *Cf.* Fine v. Firestone, 448 So.2d 984, 990 (Fla.

1984)(holding that the severability clause did not cure the violation of single subject requirement).

If two issues were originally enacted together, but later one of the issues is reenacted separately, the issue that was separately enacted cannot be said to have passed due to logrolling. It passed on its own, not because it was associated with a more popular measure. Specifically, if the sentencing guidelines and Gort Act and domestic violence measure were enacted together in chapter 95-182 but subsequently the sentencing guidelines and Gort Act were enacted separately without the domestic violence measures in chapter 96-388, then they did not pass because it was associated with the domestic violence measures. While the validity of the domestic violence measures is still subject to single subject challenge on the basis of logrolling, the sentencing guidelines and Gort Act are not properly challenged on the basis of logrolling. The sentencing guidelines passed regardless of any logrolling associated with passage of chapter 95-184. Basically, such a scenario proves either there was no logrolling in the original chapter or that the sentencing guidelines was the popular measure, not the unpopular one.

Thus, as the Fourth District held in Bortel and Salters, the window period closed on October 1, 1996 when the legislature reenacted the sentencing guidelines. Chapter 96-388, LAWS OF FLORIDA; Chapter 97-97, LAWS OF FLORIDA. Petitioner the offense in case no. 97-80CFA on January 10, 1997, after October 1, 1996, the

effective date of chapter 96-388. His offense was committed after the window closed to challenge 95-184 but before the window closed to raise a single subject challenge to chapter 96-388. Therefore, petitioner only has standing to challenge Chapter 96-388, not Chapter 95-184. He may challenge the amended version of the sentencing guidelines, but not the 95-184 version.

The State notes that also at issue is the sentence imposed following the Petitioner's violation of probation in case number 91-3640. However, that sentence was naturally not imposed pursuant to the 1995 sentencing guidelines and cannot properly be challenged. Additionally, even if the sentence in that case was subject to review and remand for resentencing, the ultimate sentence to be served would not be effected since the sentence in 91-3640 was imposed concurrently with that in 97-80CFA.

Merits

As to the merits of the constitutionality of the statute, while acknowledging the Heggs decision of this Court, the State adopts the motion for rehearing in Heggs and also readopts the argument set forth in its answer brief.

CONCLUSION

Based on the foregoing, the State respectfully submits that the Petitioner lacks standing to challenge his sentence which was imposed following the reenactment of the sentencing guidelines.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S SUPPLEMENTAL ANSWER BRIEF ON THE MERITS has been furnished by U.S. Mail to Carl McGuinnes, Assistant Public Defender, Leon County Courthouse, 301 South Monroe Street, Suite 401, Tallahassee, Florida, 32311 this _____ day of March, 2000.

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Giselle Lylen Rivera

Attorney for the State of Florida

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