IN THE SUPREME COURT OF FLORIDA

XZAVIER TRAPP,

Petitioner,

v. **CASE NO. SC96-074**

STATE OF FLORIDA,

Respondent.
_____/

SUPPLEMENTAL INITIAL BRIEF OF PETITIONER

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I. PRELIMINARY STATEMENT

Petitioner will refer to the parties and the record in the same manner utilized in his *Initial Brief Of Petitioner On The Merits* dated August 26, 1999. Reference to the initial brief will be by use of the symbol "IB" followed by the appropriate page number in parentheses.

The undersigned certifies this brief was prepared with Courier New, a non-proportional 12-point font.

II. STATEMENT OF THE CASE AND FACTS

In addition to *Statement Of The Case* (IB-6-11) and *Statement Of The Facts* (I-B-2-5), set forth in the initial brief, petitioner notes that the offense involved in his case was committed on January 10, 1997 (R:Vol I, 147).

By *Order For Expedited Supplemental Briefing* dated February 15, 2000, the Court ordered the parties to file supplemental briefs addressing the proper window period applicable to a single subject rule challenge to chapter 95-186, Laws Of Florida, citing to ***Heggs v. State***, 718 So.2d 263, 264 n.1 (Fla. 2d DCA 1998)("***Heggs I***"), and ***Bortel v. State***, 743 So.2d 595, 597 (Fla. 4th DCA 1999). ***Heggs*** ruled that the window closed on May 24, 1997, when chapter 97-97, Laws Of Florida, reenacted the provisions of chapter 95-184 as part of the Legislature's biennial adoption of the Florida Statutes. On the other hand, in ***Bortel***, the Fourth District held that the window closed on October 1, 1996, when the "sentencing guidelines at issue here were reenacted in 1996, thereby curing the constitutional defect...." ***Bortel***, 743 So.2d at 596. The ***Bortel*** court in turn relied upon ***Salters v. State***, 731 So.2d 826 (Fla. 4th DCA 1999) and ***Scott v. State***, 721 So.2d 1245 (Fla. 4th DCA 1998).

On February 17, 2000, the Court issued its opinion in ***Heggs***

v. State, 25 F.L.W. S137a ("***Heggs II***"), which held that chapter 95-184, Laws Of Florida, violated Article III, Section 6, Constitution Of The State Of Florida, the so-called "single subject" provision. The Court, however, expressly left open the issue of when the window period for making a single subject attack ended.

As petitioner's offense was committed on January 10, 1997 (R:Vol I, 147), which is within the window period of ***Heggs I*** but outside of the window period recognized in ***Bortel***, the instant case requires the Court to rule on when the window period closes for a single subject attack on chapter 95-184, Laws Of Florida.

On petitioner's sentencing guidelines scoresheet, he was assessed 92 points under "primary offense" because the offense of attempted first degree murder is a level 9 offense. Also, under "prior record," petitioner was assessed 14 points for aggravated battery conviction, a level 7 offense (R:Vol I, 201-202).

Under the 1994 guidelines, petitioner would have received 91 points rather than 92 points under "primary offense," and he would have received 5.6 points rather than 14 points under "prior record." Florida Rule of Criminal Procedure 3.390.

III. SUMMARY OF THE ARGUMENT

In ***Heggs II***, the Court found chapter 95-184, Laws Of

Florida, was unconstitutional as violative of Article III, Section 6, Constitution Of The State Of Florida, the so-called "single subject" provision. Thus, the only issue remaining in the instant case is whether petitioner has standing to make a single subject challenge.

In ***Heggs I***, the second district held the window closed on May 24, 1997. If the Court were to adopt the rationale of ***Heggs I*** in this case, petitioner is entitled to relief.

On the other hand, if the Court were to adopt the view expressed by the fourth district in ***Bortel*** that the window closed October 1, 1996, petitioner would not have standing.

In this brief, petitioner contends he has standing to make a single subject attack on chapter 95-184, for four primary reasons.

First, petitioner asserts the fourth district has misconstrued the case law from the Court it relied upon in determining the window period closed October 1, 1996.

Second, petitioner contends that, since the portions of chapter 95-184 that affected him were not changed in any manner when the legislature later enacted chapter 96-388, Laws Of Florida, the rationale of cases such as ***Bortel*** does not apply to him.

Third, even if chapter 96-388 somehow affects petitioner's situation, that chapter also violates the single subject rule contained in Article III, Section 6, Constitution of the State of Florida.

Fourth, assuming *arguendo* that chapter 96-388 is applicable and does not violate the state constitution, to apply the ***Bortel*** window period to petitioner violates his right to due process of law under the holding of ***Bouie v. Columbia***, 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d 894 (1964).

IV. ARGUMENT

ISSUE PRESENTED:

> WHETHER THE WINDOW PERIOD FOR RAISING A SINGLE SUBJECT ATTACK ON CHAPTER 95-184, LAWS OF FLORIDA, CLOSED ON MAY 24, 1997, AS RULED BY THE SECOND DISTRICT IN ***HEGGS I***, OR WHETHER IT CLOSED ON OCTOBER 1, 1996, AS RULED BY THE FOURTH DISTRICT IN ***BORTEL***.

Petitioner asserts that, since the offense in his case was committed January 10, 1997, he has standing to raise a single subject attack with respect to chapter 95-184, Laws Of Florida. Put differently, petitioner contends the second district was correct in ***Heggs I***, and the fourth district was incorrect in ***Bortel***.

Petitioner's argument is four-fold. Petitioner first contends that fourth district misconstrued the Court's opinion in ***State v. Johnson***, 616 So.2d 1 (Fla. 1993), for ruling in ***Bortel*** and ***Salters*** that the window closed October 1, 1996.

Petitioner next contends that, since the portions of chapter 95-184 that affected him were not changed in any manner when the legislature later enacted chapter 96-388, Laws Of Florida, the rationale of cases such as ***Bortel*** does not apply to him.

Third, even if chapter 96-388 somehow affects petitioner's situation, that chapter also violates the single subject rule contained in Article III, Section 6, Constitution of the State of Florida.

Fourth, assuming *arguendo* that 96-388 is applicable and does

not violate the state constitution, to apply the ***Bortel*** window period to petitioner violates his right to due process of law under the holding of ***Bouie v. Columbia***, ***supra***.

The Fourth District Has Misconstrued *State v. Johnson*

In ***State v. Johnson***, the Court said:

> Chapter 89-280 was enacted effective October 1, 1989. Chapter 91-44, Laws of Florida, reenacted the 1989 amendments contained in chapter 89-280 as part of the biennial adoption of the Florida Statutes. The reenactment has the effect of adopting as the official statutory law of the state those portions of statutes that are carried forward from the preceding adopted statutes. ***Once reenacted as a portion of the Florida Statutes, a chapter law is no longer subject to a challenge on the grounds that it violates the single subject requirement of article III, section 6, of the Florida Constitution***. *See* ***Loxahatchee River Envtl. Control Dist. v. School Bd.*** 515 So.2d 217 (Fla. 1987).

(emphasis supplied).

Thus, the facts and holding of ***Johnson*** is that when a chapter law violates the single subject requirement, the window for making a single subject attack closes upon the effective date of the biennial adoption of the Florida Statutes.

Yet in ***Salters***, the fourth district quoted from the language emphasized above and held that reenactment of a portion of a chapter law that violates the single subject requirement in *any*

subsequent chapter law closes the single subject window. Petitioner contends this is not what ***Johnson*** held. ***Johnson*** held the window remains open until the chapter law is reenacted pursuant to the biennial adoption of the Florida Statutes. And as will be further developed in the portion on ***Bouie v. Columbia***, *infra*, The rule of ***Johnson*** has been the law of this state since at least 1945.

As ***Salters*** and ***Bortel*** are predicated upon a faulty interpretation of ***Johnson***, petitioner urges the Court to reject the approach taken by the fourth district.

Chapter 96-388 Did Not Affect Petitioner

In ***Scott***, the defendant alleged that chapter 95-182, Laws Of Florida, violated the single-subject rule. Chapter 95-192, Laws of Florida, enacted the "Officer Evelyn Gort And All Fallen Officers Career Criminal Act" ("Gort Act") In a footnote, the fourth district noted that the state argued that the window period closed on October 1, 1996, but expressly did not rule on that issue. The footnote reveals the state's argument was that the 1996 enactment of chapter 96-388, Laws of Florida, effective October 1, 1996, cured any alleged single subjection violation of chapter 95-192.

Subsequently, in ***Salters***, the defendant also made a single

subject argument, but the opinion does not identify which chapter law was involved. However, the opinion does mention the defendant was sentenced "as a violent career criminal" and thus ***Salters*** appears to be a Gort Act case involving chapter 95-192. In ***Salters***, the fourth district held that the window period closed on October 1, 1996, citing to ***Scott***.

In ***Bortel***, where the fourth district was dealing with an unrepresented litigant and the state's appearance was not required, the fourth district cited to ***Scott*** and ***Salters*** for its holding that the window closed on October 1, 1996. Unlike ***Scott*** and ***Salters***, ***Bortel*** involved in the same chapter law that is involved here, chapter 95-18***4***.

In other words, ***Bortel*** was not a Gort Act case but the fourth district applied its own Gort Act law in determining the window closed on October 1, 1996.

Bortel is silent on precisely which portions of 95-184 adversely affected the defendant, and is likewise silent on how any of the changes made to 95-184 that affected Mr. Bortel were amended in 96-388.

Petitioner believes it is important to bear in mind precisely how chapter 95-184 affected ***his*** case. Chapter 95-184 affected petitioner in two ways.

First, on petitioner's sentencing guidelines scoresheet, he was assessed 92 points under "primary offense" because the offense of attempted first degree murder is a level 9 offense. Secondly, under "prior record," petitioner was assessed 14 points for aggravated battery conviction, a level 7 offense (R:Vol I, 201-202).

By contrast, under the 1994 guidelines, petitioner would have received 91 points rather than 92 points under "primary offense," and he would have received 5.6 points rather than 14 points under "prior record." Florida Rule of Criminal Procedure 3.390.

Thus, under the 1995 guidelines per chapter 95-194, petitioner had a total point total of 152.6 points, which established an upper limit of 155.75 months in prison (R:Vol I, 201-202). Under the 1994 guidelines, however, petitioner's point total would be 143.2 points, with an upper limit of 144 months.

Petitioner notes that ***nothing*** in chapter 96-388, Laws Of Florida, affected in any manner those portions of chapter 95-184 that impacted upon the defendant. In other words, under 96-322, petitioner still would have been assessed 92 points under "primary offense," and he was still have been given 14 points under "prior record." Thus, while 96-388 may have changed or

amended the Gort Act, it had no affect at all on petitioner's situation.

Petitioner also points out that lack of a meaningful analysis by the fourth district in ***Scott***, ***Salters***, or ***Bortel***. ***Scott*** just mentioned the state's argument, but the court gave none of the state's reasoning, and it certainly did not give any of its own. ***Salters*** merely cited to ***Scott***. ***Bortel*** merely referenced ***Salters*** and ***Scott***, and no mention was made of the fact that ***Bortel*** was, unlike ***Salters*** and ***Scott***, a Gort Act case.

Petitioner accordingly argues the second district in ***Heggs I*** was correct in ruling that the window period for challenging chapter 95-184, on single subject grounds closed on May 24, 1997, when 95-184 was reenacted in chapter 97-97, Laws Of Florida, as part of the Legislature's biennial adoption of the Florida Statutes. *See* ***Heggs I***, 718 So.2d at 264 n.1. Likewise, the fourth district was incorrect in ***Bortel*** since the cases relied upon in ***Bortel***, ***Scott*** and ***Salters***, are Gort Act cases that do not concern the provisions of chapter 95-184 at issue in petitioner's case. Petitioner accordingly urges the Court to adopt the window period recognized in ***Heggs I***.

Chapter 96-388 Also Violates Article III, Section 6.

Even assuming the fourth district was correct in ***Bortel***, the

longer window period still applies because chapter 96-388 also violates the provisions of Article III, Section 6.

Chapter 96-388 begins by asserting it is "[a]n act relating to public safety"; it then continues on for approximately four full pages, to include a summary of all of its contents. Chapter 96-388 contains 74 sections, which may be briefly summarized as follows:

> Section 1 -- creates a new Section 775.0121, which requires the legislature to revise and update the Florida criminal statutes on a regular basis.
>
> Section 2 -- amends Section 187.201, which deals with the "State Comprehensive Plan" for the criminal justice system.
>
> Section 3 -- amends Section 943.06 regarding the membership of the "Criminal and Juvenile Justice Information Systems Council."

Sections 4-16 -- amends and creates several statutes dealing with the membership and the duties of the "Criminal and Juvenile Justice Information Systems Council" and its relation to other government organizations.

Section 17-21 -- amends several statutes regarding juvenile criminal history records.

Section 22 -- amends the statutory provisions regarding the preparation of sentencing guidelines scoresheets.

Section 23 -- repeals Section 6 of Chapter 94-209, Laws of Florida, which had imposed duties on the Juvenile Justice Advisory Board.

Section 24 -- requires the "Justice Administrative Commission [to] report to the Legislature no later than January 1, 1997, itemizing and explaining each of its duties and functions."

Section 25 -- amends Section 27.34(4) by eliminating the provision that allowed the Insurance Commissioner to contract with the "Justice Administrative Commission for the prosecution of criminal violations of the Workers' Compensation Law . . . ."

Section 26 -- repeals Section 27.37, which had created the "Council on Organized Crime" and detailed its membership and duties.

Section 27 -- repeals Sections 282.501 and .502, which had directed the Department of Education to establish the "Risk Assessment Coordinating Council", which was to "develop a population-at-risk profile for purposes of identifying at an early age, and tracking for statistical purposes, persons who are probable candidates for entering into the criminal justice system so as to develop

education and human resources to direct such persons away from criminal activities", and providing for membership and duties of this council.

Section 28 -- repeals Sections 648.25(2), .265, and .266, which had established the "Bail Bond Advisory Council", which was to monitor and make recommendations regarding pre-trial release procedures.

Section 29 -- amends Sections 648.26(1) and (4) to eliminate the Bail Bond Advisory Council from the regulatory process over bail bond agents.

Section 30 -- repeals the "Florida Drug Punishment Act of 1990", which had attempted to identify offenders whose criminal activity was the result of drug problems and divert those offenders into treatment programs.

Section 31 -- repeals Section 827.05, which had created the offense of "negligent treatment of children."

Section 32 -- repeals Section 943.031(6), which had provided for automatic repeal of Section 943.031, which in turn created, provided for membership, and imposed duties upon, the "Florida Violent Crime Council."

Sections 33-43 -- amends Sections 39.053, 893.138, 895.02, and Chapter 874 regarding the prosecution of offenders who are members of a "Criminal Street Gang", including new definitions, the creation of new offenses, and provisions for punishment and forfeiture.

Sections 44-46 -- amends the habitualization sentencing statutes in minor ways.

Sections 47-48 -- amends the definitions of burglary and trespass.

Section 49 -- amends the definition of theft.

Sections 50-53 -- amends the sentencing guidelines in minor ways.

Section 54 -- significantly amends Section 893.135(1), regarding the offense of trafficking in controlled substances.

Sections 55-59 -- amends various statutes regarding enhanced offenses and a defendant's eligibility for gain-time or early release.

Sections 60-67 -- creates the "Jimmy Ryce Act", which significantly amends the Florida Sexual Predators Act and establishes provisions regarding the release of public records regarding missing children.

Section 68 -- creates Section 943.15(3), which requires "the Florida Sheriffs Association and the Florida Police Chiefs Association [to] develop protocols establishing when injured apprehendees will be placed under arrest and how security will be provided during any hospitalization [and] address[ing] the cost to hospitals of providing unreimbursed medical services . . . ."

Section 69 -- amends Section 16.56 to give the statewide prosecutor jurisdiction over violations of "s. 847.0135, relating to computer pornography and child exploitation prevention . . . ."

Sections 70-71 -- amends definitions and creates new offenses regarding computer pornography.

Section 72 -- amends Section 776.085 regarding the provision of a civil damages action against perpetrators of forcible felonies.

> Sections 73-74 -- provides for an effective date.

Article III, Section 6 provides in pertinent part: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." These provisions are interrelated, and are designed to serve three purposes:

> (1) to prevent hodge podge or "log rolling" legislation, i.e., putting two unrelated matters in one act; (2) to prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (3) to fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

State ex. rel. Flink v. Canova, 94 So. 2d 181, 184 (Fla. 1957).

The single subject case law was discussed at length in petitioner's initial brief. That discussion may be summarized as follows: Provisions in a chapter law will be considered as covering a single subject if they have a cogent, logical, natural, or intrinsic relation to each other; a tenuous relation-ship is insufficient. The legislature will be given some latitude to enact a broad law, provided that law is intended to be a comprehensive approach to a complex and difficult problem that is currently troubling the public. However, separate subjects cannot

be artificially connected by the use of broad and vague labels like "the criminal justice system" or "crime control".

The title requirement is primarily a notice provision. It is designed to "prevent the evil of matters being inserted in a body of an act whose title does not properly put the people on notice of such content." ***State ex. rel. Flink, supra***, 94 So. 2d at 184. The title "define[s] the scope of the act." ***County of Hillsborough v. Price***, 149 So. 2d 912, 914 (Fla. 2d DCA 1963). The title cannot be an "inartificial expression of the subject matter to be dealt with therein . . . ." ***City of Ocoee v. Bowness,*** 65 So. 2d 7, 11 (Fla. 1953):

> The title need not be an index to the body of an act, nor need it embrace every detail of the subject matter. All that is required is that the propositions embraced in the act shall be fairly and naturally germane to that recited in the title. But if the title is deceptive or misleading, or if by recourse thereto a reader of normal intelligence is not reasonably apprised of the contents of the act, the title is defective . . . .

Boyer v. Black, 18 So. 2d 886, 887 (Fla. 1944).

Two questions need to be answered at this point: What is the subject of Chapter 96-388 and what is its title? Since the subject must be contained in the title, it appears there are two ways to begin to answer these questions.

The first is to assume that the title is the first six words in the chapter: "[a]n act relating to public safety." The second is to assume that the entire four pages of summary is the title. Under either assumption, Chapter 96-388 violates the provisions of Article III, Section 6.

If we assume the title is "[a]n act relating to public safety", it is clear that such a broad and vague title cannot qualify as a single subject; if it could, the single subject requirement would be meaningless. Basic principles of due process inform us that the legislature has no authority to enact a statute unless it can reasonably be said that the statute promotes the public health, safety, or welfare. ***In Re Forfeiture of 1969 Piper Navajo,*** 592 So. 2d 233, 235 (Fla. 1992). Thus, if promotion of the public health, safety, or welfare is a valid single subject, then any combination of statutory provisions the legislature has the authority to enact would satisfy the single subject requirement. This would effectively eliminate that requirement, leaving as the only limitation on legislative power

the substantive limitation that the legislation must promote the public health, safety, or welfare.

Approving a title like "[a]n act relating to public safety" would also render the constitutional title requirement meaningless. If the title is to define the scope of the act and provide some reasonable notice about the act's contents, "the public safety" tells us nothing except that the legislature is intending to enact some statute that is within the limits of its substantive constitutional authority.

We run into the opposite problem if we consider the title of Chapter 96-388 to be the four pages of summary. Does a four page title satisfy the constitutional requirement of brevity? And, since the title must contain the subject, what is the "single" subject of an act whose title requires four pages to summarize its contents?

Chapter 96-388 violates Article III, Section 6 because it contains a variety of provisions that can be related to each other only by the use of a broad and vague "subject" like "the public safety", "crime control", or "the criminal justice system." Chapter 96-388 is not a "comprehensive law" for single subject purposes, as that term is understood in cases such as ***Burch v. State***, 558 So. 1 (Fla. 1990). Chapter 96-388 contains no

legislative findings of fact regarding any crisis and its various sections are not designed to be a "comprehensive[,] systematic [and] coordinate[d] . . . effort[] toward a unified attack on a common enemy, crime . . . ." Id. at 2-3 (citation omitted). Rather, Chapter 96-388 is a much bloated version of the laws found invalid in ***State v. Johnson,*** 616 So.2d 1 (Fla. 1993) and ***Bunnell v. State,*** 453 So. 2d 808 (Fla. 1984).

In ***Johnson***, the Court held that "the habitual offender statute, and . . . the licensing of private investigators and their authority to repossess personal property" do not comprise a single subject because "it is difficult to discern a logical or natural connection between [the two]." 616 So. 2d at 4 (citation and internal quotes omitted). The Court said these were "two very separate and distinct subjects" that had "absolutely no cogent connection [and were not] reasonably related to any crisis the legislature intended to address." ***Id.*** Noting "no reasonable explanation exists as to why the legislature chose to join these two subjects within the same legislative act", the Court "re-ject[ed] the State's contention that these two subjects relate to the single subject of controlling crime." ***Id***.

In ***Bunnell***, the Court voided a chapter law that created a new offense of "obstruction by false information" and amended

statutes that detailed the membership of the "Florida Council on Criminal Justice" (which was an advisory board composed of various officials in the criminal justice system). Rejecting the district court's conclusion that the law was valid because "the general subject of the act [is] the `Criminal Justice System'" this Court asserted the two sections "ha[d] no cogent relationship" because they addressed "separate and disassociated . . . object[s] . . . ." 453 So. 2d at 809. ***Bunnell*** implicitly accepted the logic of ***Williams v. State***, 459 So. 2d 319 (Fla. 5th DCA 1984), which had disagreed with the district court's ***Bunnell*** decision, ***State v. Bunnell,*** 447 So.2d 228, 230 (Fla. 2d DCA 1983), because "such a general subject [as the 'Criminal Justice System'] for a non-comprehensive law would write completely out of the constitution the anti-logrolling provision of article III, section 6." ***Id***. at 321.

Like the chapter law in ***Bunnell***, Chapter 96-388 contains both provisions relating to administrative bureaucracies and provisions that create, amend, and repeal substantive criminal statutes that bear no logical relation to the affected bureaucracies. Like the chapter law in ***Johnson***, Chapter 96-388 contains both sentencing provisions and civil regulatory provisions. There simply is no cogent and inherent relation among

such things as juvenile criminal history records, the prosecution of criminal violations of the Workers' Compensation Law, the development and tracking of a "population-at-risk" profile, the regulation of pretrial release procedures, treatment for drug offenders, the prosecution of criminal street gangs, the definition of "curtilage" in the burglary statute, drug trafficking, the civil commitment of sexual predators, the costs of hospitalizing injured apprehendees, and civil damages action for victims of violent crimes; and this, of course, only covers maybe half of the provisions in Chapter 96-388. Chapter 96-388 violates the provisions of Article III, Section 6, which in turn means that all defendants affected by Chapter 95-184 get the benefit of the longer window period of ***Heggs I***.

Bouie v. Columbia

Even if the Court were to rule that the window closed on October 1, 1996, as ruled in ***Bortel***, petitioner argues it would be improper to apply the shorter window to him under the rationale of ***Bouie v. Columbia***.

In ***Bouie***, it was recognized that "an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law." ***Bouie***, 378 U.S. at 353. Therefore, "[i]f a state legislature is barred by the Ex

Post Facto Clause from passing such a law, it must follow that a State Supreme Court is barred from achieving precisely the same result by judicial construction." ***Id***. At 353-354. *See* ***State v. Snyder***, 673 So.2d 9 (Fla. 1996).

In ***State v. Johnson***, the Court ruled that the window for making a single subject attack did not close until the chapter law declared unconstitutional was reenacted as part of the biennial adoption of the Florida Statutes. The ***Johnson*** rule has been recognized in numerous decisions since ***Johnson***. *See* ***Lee v. State***, 739 So.2d 1175 (Fla. 1999); ***Thompson v. State***, 708 So.2d 315 (Fla. 2nd DCA 1998); ***State v. Braddy***, 687 So.2d 1338 (Fla. 1st DCA 1997); ***Brown v. State***, 662 So.2d 1358 (Fla. 3d DCA 1995); ***Moffett v. State***, 638 So.2d 125 (Fla. 1st DCA 1994); ***Marshall v. State***, 623 So.2d 1230 (Fla. 1st DCA 1993); and, ***Huston v. State***, 616 So.2d 1214 (Fla. 5th DCA 1993).

Not only has this rule been recognized since ***Johnson***, it was applied prior to ***Johnson***.

Johnson referenced the Court decision in ***Loxahatchee River Environmental Control District v. School Board Of Palm Beach County***, 515 So.2d 217 (Fla. 1987), where the Court held a law passed in violation of the constitutional requirement that each law embrace only one subject expressed in its title is invalid

until it is reenacted for codification into Florida Statutes.

In ***Thompson v. Intercounty Tel. & Tel. Co***, 62 So.2d 16 (Fla. 1952), the Court ruled that an act, the title of which is insufficient, may become valid by incorporation in a general revision of the law. Likewise, in ***State ex. Rel Badgett v. Lee***, 156 Fla. 291, 22 So.2d 804 (Fla. 1945), the Court opined that an act, the title of which is insufficient, becomes valid by incorporation in a general revision of the laws.

Thus, the rule expressed in ***Johnson*** can be traced back to at least 1945. To adopt the ***Bortel*** view, petitioner contends, would be quite an unforeseeable event. To apply it retroactively to the defendant would violate his due process rights under ***Bouie***. *See* ***State v. Snyder***.

Thus, even if the fourth district's approach is attractive to the Court and the Court wishes to change the window-period rule that has applied since at least 1945, a 55-year period, that brand new rule cannot, consist with due process, be applied to petitioner. As to petitioner, the "old" rule of ***Johnson*** is applicable.

V. CONCLUSION

Based upon the foregoing analysis and authorities,

petitioner contends he has demonstrated that he has standing to contest the constitutionality of chapter 95-184, recently held unconstitutional in ***Heggs II***. As a result, petitioner requests the Court to quash the decision in his case by the first district, and remand the cause to the trial court with directions to resentence him pursuant to the 1994 sentencing guidelines.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Giselle Rivera, Assistant Attorney General, by delivery to The Capitol, Criminal Appeals Division, Plaza Level, Tallahassee, Florida, 32301, and a copy has been mailed to Xzavier Trapp, DOC# 875462, Mayo Corr. Institution, P. O. Box 1805, Mayo, FL 32066, on this ____ day of February, 2000.

CARL S. McGINNES