

IN THE SUPREME COURT OF FLORIDA

ISAAC HILL,

Petitioner,

v.

Case No. 96,348

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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SUMMARY OF ARGUMENTS

Petitioner challenges the constitutionality of Chapter 95-182 of the Laws of Florida, entitled the "Officer Evelyn Gort and Other Fallen Officers Career Criminal Act of 1995" ("Gort Act"). Specifically, petitioner contends that the Gort Act violates the single subject provision of the Florida Constitution. The State respectfully disagrees. There is a reasonable and rational relationship among the sections of the act. All the sections of the act are designed to control the criminal behavior of the recidivist offenders. Part of the act is designed to control violent career criminal offenders and the other part is designed to control continuing domestic violence offenders. The underlying theme of the legislation is criminal activity and its remedies whether those remedies are increased periods of incarceration or restitution measures. Thus, there is a natural and logical connection among the sections and therefore, the Gort Act does not violate the single subject provision.

ARGUMENT

POINT ON REVIEW

WHETHER CHAPTER 95-182 LAWS OF
FLORIDA VIOLATES THE SINGLE SUBJECT
REQUIREMENT OF FLORIDA'S
CONSTITUTION.

The issue before this Court is whether the legislature violated the single subject provision of Article III Section 6 of the Florida Constitution when it passed Chapter 95-182 Laws of Florida.

Jurisdiction

This Court has jurisdiction over this issue pursuant to Article V §3(b)(3) as there exists express and direct conflict between the decision of the lower tribunal and the decision of Thompson v. State, 708 So.2d 315 (Fla. 2d DCA), rev. granted, 717 So.2d 538 (Fla. 1998).

General Principles Applicable to the Case

Standing

Only a defendant who committed his offense within the period of unconstitutionality has standing to challenge the constitutionality of the Gort Act. 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 reencated 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 Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), rev. granted, 717 So.2d 538 (Fla. 1998), the district court held that the chapter law violated the single subject provision. It also stated that the "window" period for challenging the Gort Act, chapter 95-182, Laws of Florida, on the basis that it violates the single subject provision of the Florida Constitution is from the effective date of the law, which was October 1, 1995, until May 24, 1997, which was the date the Gort Act was reenacted. Thompson v. State, 708 So.2d 315, n.1 (Fla. 2d DCA 1998). The Gort Act was reenacted as part of the Florida Statutes' biennial adoption. See Chapter 97-97, Laws of Florida.

In Salters v. State, 731 So.2d 826 (Fla. 4th DCA 1999), the district court held that the window period closed on October 1, 1996, when chapter 96-388, Laws of Florida, became effective. It held that in chapter 96-388, the Florida legislature readdressed the provisions of the habitual offender statutes and that this repassage of the provisions of the violent career criminal section (the Gort Act) without the arguably civil provisions identified in Thompson, cured the single subject problem found in Chapter 95-182

Laws of Florida. In the instant case, Petitioner committed his offense on July 8, 1996, which was within the window period regardless of whether this Court finds that the period ended on October 1, 1996, or May 24, 1997. Petitioner therefore has standing to challenge the act.

Preservation

The issue of whether Chapter 95-182, Laws of Florida, violates the single subject requirement was not argued in the trial court and therefore was not preserved. However, it appears that the error would constitute fundamental error and therefore could be raised for the first time on appeal. State v. Johnson, 616 So.2d 1 (Fla. 1993). §924.051, Fla. Stat. (1997).

The Presumption of Constitutionality

Legislative acts are presumed constitutional. See State v. Kinner, 398 So.2d 1360, 1363 (Fla. 1981). Courts should resolve every reasonable doubt in favor of the constitutionality of a statute. Florida League of Cities, Inc. v. Administration Com'n, 586 So.2d 397, 412 (Fla. 1st DCA 1991). An act should not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt. Todd v. State, 643 So.2d 625, 627 (Fla. 1st DCA 1994). Single subject challenges like all constitutional challenges are governed by these principles. State v. Physical Therapy Rehabilitation Center of Coral Springs, Inc., 665 So.2d 1127, 1130 (Fla. 1st DCA 1996)(noting, in the context of a

constitutional challenge to a statute alleging a defective title, a presumption exists in favor of the validity of the statute).

The Standard of Review

The constitutionality of a statute is a question of law that an appellate court reviews *de novo*. See United States v. Cardoza, 129 F.3d 6, 10 (1st Cir. 1997); United States v. Bailey, 115 F.3d 1222, 1225 (5th Cir. 1997); United States v. Wilson, 73 F.3d 675, 678 (7th Cir.1995); United States v. Crawford, 115 F.3d 1397, 1400 (8th Cir. 1997); United States v. Michael R., 90 F.3d 340, 343 (9th Cir. 1996). An appellate court reviews the constitutionality of all statutes, including sentencing statutes, *de novo*. United States v. Quinn, 123 F.3d 1415, 1425 (11th Cir. 1997). Thus, the standard of review is *de novo*. Philip J. Padovano, Florida Appellate Practice § 9.4 (2d ed. 1997).

Merits

Petitioner contends that Chapter 95-182, Laws of Florida, violates the single subject provision of the Florida Constitution. In Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997), the Third District rejected a contention that the Gort Act violated the single subject provision of the Florida Constitution and affirmed the defendant's sentence. The Higgs Court held that there is a reasonable and rational relationship among each of the sections of the Gort Act. See Holloway v. State, 712 So.2d 439 (Fla. 3d DCA 1998)(affirming under the controlling authority of Higgs v. State,

695 So.2d 872 (Fla. 3d DCA 1997) and certifying conflict with the Second District's decision in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998)).

In Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), rev. granted, 717 So.2d 538 (Fla. 1998),¹ the Second District held that the Gort Act violated the single subject provision of the Florida Constitution. The court reversed Thompson's sentence and remanded for imposition of a sentence in accordance with the valid laws in effect at the time of her sentencing. The court noted that sections one through seven of the chapter create and define violent career criminal sentencing whereas sections eight through ten deal with civil remedies for domestic violence.

The Fifth District Court of Appeal in the instant case below agreed with the Third District Court's decision in Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997). Hill v. State, 24 Fla. L. Weekly D1736 (Fla. 5th DCA July 23, 1999). Respondent contends that the Higgs and Hill courts correctly found that there is a reasonable and rational relationship between each of the sections of the act. Sections one through seven of the Gort Act deal with criminal law. Sections eight through ten embrace both civil and criminal law because they deal with civil remedies for repeated criminal behavior.

The single subject provision, Article III, Section 6 of the

¹Thompson is currently pending in this Court.

Florida Constitution provides:

“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 this constitutional prohibition against a plurality of subjects in a single legislative act 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 a practice wherein several 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).

An act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection. Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981); Board of Pub. Instruction v. Doran, 224 So.2d 693, 699 (Fla. 1969). Broad and comprehensive legislative enactments are not in violation of the single subject provision. See Smith v. Department of Ins., 507 So.2d 1080 (Fla. 1987). The test to determine whether legislation meets the single subject provision is based on common sense. Smith, 507 So.2d at 1087.

This Court has accorded great deference to the legislature in the single subject area and the Court has held that the legislature has wide latitude in the enactment of acts. State v. Lee, 356 So.2d 276 (Fla. 1978); State v. Leavins, 599 So.2d 1326, 1334 (Fla.

1st DCA 1992). Examples abound where this Court has held that acts covering a broad range of topics do not violate the single subject provision. The single subject provision is not violated when an act provides for the decriminalization of traffic infractions and also creates a criminal penalty for willful refusal to sign a traffic citation, State v. McDonald, 357 So.2d 405 (Fla. 1978); the provision is not violated where an act covers both automobile insurance and tort law, State v. Lee, 356 So.2d 276 (Fla.1978); nor is the provision violated where an act covers a broad range of topics dealing with medical malpractice and insurance because tort litigation and insurance reform have a natural or logical connection, Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981), Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987); nor is the provision violated where an act establishes a tax on services and includes an allocation scheme for the use of the tax revenues. In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987). Finally, the Florida Supreme Court has found that an act which deals with (1) comprehensive criminal regulations, (2) money laundering, and (3) safe neighborhoods is valid since each of these areas bears a logical relationship to the single subject of controlling crime. Burch v. State, 558 So.2d 1 (Fla. 1990).

The Gort Act contains ten sections. Section one is the title. Section two created and defined a new category of offender for sentencing purposes, *i.e.*, the violent career criminal. Section

two also added aggravated stalking to the list of qualifying offenses for habitual violent felony offenders and the newly created list of qualifying offenses for violent career criminals. Sections three through seven then deal with the sentencing of, legislative findings regarding, enforcement policies concerning and prohibitions against the possession of firearms of the newly created classification of violent career criminals. Section eight amended the husband and wife statute providing for restitution for the misdemeanor offense of violating a domestic violence injunction. Section nine amended the negligence statute providing for a private cause of action for domestic violence. Section ten amended the assault and battery statute, providing for clerk's duties; that only a law enforcement officer may serve a domestic violence injunction; requiring the reporting of the injunction to law enforcement agencies; and, restoring criminal contempt for a violation of a domestic violence injunction.

The domestic violence statute, §741.28(1), Florida Statutes (1997), defines domestic violence as:

"Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnaping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

It is clear from the definition of domestic violence that it is a crime. The legislature has expressly declared its intention that

"domestic violence be treated as a criminal act." §741.2901(2), Fla. Stat. (1997). Thus, it is incorrect to suggest that the measures dealing with domestic violence are purely civil. Both sections eight and nine are more properly viewed as restitutional in nature. Restitution is viewed as part of the criminal law process. Strickland v. State, 681 So.2d 929 (Fla. 3d DCA 1996)(holding that a trial court's imposition of additional restitution after sentencing was an increased sentence and therefore, violated double jeopardy). The purpose of restitution is to compensate the victim and to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system. Glaubius v. State, 688 So.2d 913, 915 (Fla. 1997).

Moreover, the Crime Control Act of 1995, Chapter 95-184 Laws of Florida, placed the same language that is in sections eight through ten of the final Gort Act as part of numerous restitution measures. §28-38, ch. 95-184. The legislature clearly viewed sections eight through ten of the Gort Act as restitution measures.

Section eight of the Gort Act amends §741.31(1), Fla. Stat. (Supp 1994), by creating subsection (2). The already existing subsection (1) provided that a violation of an injunction for protection against domestic violence is a misdemeanor. The new subsection allows a victim of domestic violence to recover damages and attorneys fees for that misdemeanor. §741.31(2), Fla, Stat. (1995). This is clearly a prototypical restitution statute.

Section nine amends the negligence statute and creates a private cause of action for repeated instances of domestic violence. Given that domestic violence is a crime, this measure should be viewed as both civil and criminal. The purpose is to compensate the victim and to punish the offender because it includes both compensatory and punitive damages. Therefore, this section is also a type of restitution. Glaubius v. State, 688 So.2d 913, 915 (Fla. 1997).

Section ten, while dealing with clerk's and law enforcement duties, amended the assault and battery statutes. Section ten also restores the power of trial courts to enforce domestic violence injunctions with criminal contempt. This is clearly a criminal matter. Even the "civil" parts of the final Gort Act are criminal in nature.

While the three original House bills that comprise sections eight, nine and ten of the Gort Act died in committee, the substance of one of these bills was not in fact engrafted onto the Senate Bill 168. Only minor, limited portions of the original House bill actually became part of the final Gort Act. House Bill 1251, which became section ten of the final Gort Act, originally provided that a trial court must consider requiring a perpetrator to participate in a certified batterers program, provided for a statement of legislative intent that every victim of domestic violence shall have access to shelter and counseling, and expanded

the conduct that constituted a violation of an injunction. None of these measure were engrafted onto the final Gort Act. Only the measures relating to the clerk's and law enforcement officer duties were engrafted onto the final Gort Act. These were the most minor measures of the original House Bill. While significant portions of the other two house bills were engrafted onto the final Gort Act, as discussed below, this engrafting was natural and logical.

This is not evidence of logrolling; rather, it is the normal legislative process. Bills that die in one form are resurrected in another form and thereafter become law. The legislative process is messy and the average statute is the product of compromise. L. H. LaRue, STATUTORY INTERPRETATION: LORD COKE REVISITED, Special Issue on Legislation: Statutory and Constitutional Interpretation, 48 U. Pitt. L. Rev. 733 (1987).

The legislative history of the House bill reveals the natural and logical connection among the sections of the Gort Act. The major connection is aggravated stalking. Section two addresses a form of domestic violence, *i.e.*, aggravated stalking. Section two added aggravated stalking to the list of qualifying offenses for habitual violent felony offenders and to the newly created list of qualifying offenses for violent career criminals.

One of the House bills that died in committee contained a measure that added aggravated stalking to the list of qualifying offenses for habitual violent offender sentencing. HB 1789. The

original Senate bill, SB 168, did not provide for the addition of aggravated stalking as a qualifying offense for habitual violent offender sentencing. However, a separate Senate bill, SB 118, did provide for the addition of aggravated stalking to the list of qualifying offenses for habitual violent offender sentencing. Thus, in both houses the issue of whether aggravated stalking should be a qualifying offense for habitual violent offender sentencing was being considered. Naturally and logically, once the new sentencing category of violent career criminal was being proposed, the issue of whether aggravated stalking should be a qualifying offense for a new category arose also. It was natural and logical for the legislature to combine the addition of aggravated stalking to both sentencing categories in the same bill.

The Staff Analysis of this house bill also noted that the current definition of domestic violence did not include aggravated stalking. HB 1789. The house bill was designed to address this situation by adding aggravated stalking to the definition. HB 1789. Thus, both the House bill and the final Gort Act concern controlling the criminal offense of aggravated stalking.

Aggravated stalking is a form of domestic violence. Aggravated stalking is defined as repeatedly following or harassing another person in violation of an injunction for protection against domestic violence entered pursuant to §741.30. Sections two through seven do address domestic violence in its most virulent

form.

Additionally, another connection among the sections is that several of the crimes that constitute domestic violence are also qualifying forcible felonies for the career criminal classification. These offenses include aggravated assault, aggravated battery, sexual battery, and kidnaping. Thus, there are numerous connections between the career criminal section of the act and the domestic violence section of the act.

Finally, another connection is all sections of the final Gort Act concern controlling and punishing the criminal behavior of recidivist offenders. The first part deals with sentencing of domestic violence in its most virulent form and the second part deals with additional remedies for this conduct. Thus, all the sections have a cogent relationship.

In Burch v. State, 558 So.2d 1 (Fla. 1990), this Court held that the Crime Prevention and Control Act did not violate the single subject provision of the Florida Constitution. The act dealt with (1) comprehensive criminal regulations, (2) money laundering, (3) drug abuse education, (4) forfeiture of conveyances, (5) crime prevention studies, and (6) safe neighborhoods. The Court held that there was a logical and natural connection among these subjects because all of the parts were related to its overall objective of crime control. The Court noted that the sections were intended to control crime, whether by

providing for imprisonment or through taking away the profits of crime. The taking away profits language is a reference to the forfeiture section of the act. A forfeiture proceeding is civil and independent of any criminal action. Kern v. State, 706 So.2d 1366 (Fla. 5th DCA 1998). All civil forfeiture cases are heard before a circuit judge of the civil division and the rules of civil procedure govern. §932.704(2), Fla. Stat. (1997). Thus, the legislature may combine criminal sentencing and civil remedies for crimes without violating the single subject provision.

Here, as in Burch, the legislature has combined criminal sentencing and civil remedies for criminal conduct in one Act. In Burch, the legislature controlled crime both by incarceration and by taking away the profits of crime. Here, the legislature provided for a private cause of action to control crime. The legislature may control crime by providing for imprisonment and civil remedies. When the legislature does so, the sections have a natural and logical connection and do not violate the single subject provision.

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 provision have a cogent relationship to each other. Thus, the Gort Act does not violate the single subject

provision of Florida's Constitution.

CONCLUSION

Based on the foregoing, the State respectfully submits the decision of the District Court of Appeal reported as Hill v. State, 24 Fla. L. Weekly D1736 (Fla. 5th DCA July 23, 1999), should be approved, and the judgment and sentence entered in the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on the Merits has been furnished by U.S. Mail to James R. Valerino, Esquire, Post Office Box 106, Sanford, Florida, 32772, this ____ day of October, 1999.

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IN THE SUPREME COURT OF FLORIDA

ISAAC HILL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 96,348

A P P E N D I X

Hill v.State, Case #98-1068 (Fla. 5th DCA July 23, 1999).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **APPENDIX** To Respondent's brief on the Merits has been furnished by U.S. Mail to James R. Valerino, Esquire, P.O. Box 106, Sanford, FL, 32772, this ____ day of October, 1999.

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