

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. 96,657

**LEROI RICARDO LEVAN,**

Petitioner,

-vs.-

**THE STATE OF FLORIDA,**

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF PETITIONER ON THE MERITS

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**INTRODUCTION**

This is a brief on the merits submitted by the Petitioner/defendant LEROI RICARDO LEVAN in support of his petition for discretionary review based on certified conflict with *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998), *review granted*, 717 So. 2d 538 (No. 92, 831 Fla. May 26, 1998).

References to the record are abbreviated as follows:

(R.) = Record on Appeal

(T.) = Transcript of Proceedings

(S.R.)= Supplemental Record on Appeal

(App) = Appendix (attached)

## STATEMENT OF THE CASE AND FACTS

The Petitioner, Leroi Ricardo Levan, was convicted of unlawful possession of a firearm by a convicted felon and sentenced to life imprisonment as a violent career criminal. (R. 77, 141; T. 288-89). The offense was committed on May 18, 1996. (T. 73, 86-90).

At the sentencing hearing, the state proved that Mr. Levan had two prior convictions for burglary, and one prior conviction carrying a concealed firearm and 1 prior conviction for possession of cocaine. (S.R. 7-8). The trial court found Mr. Levan qualified as a violent career criminal under section 775.084(1)(c) of the Florida Statutes and sentenced him to life imprisonment, with a 15-year minimum-mandatory. (S.R. 8).

The Third District Court of Appeal affirmed Mr. Levan's conviction and sentence, but certified direct conflict with *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA 1998) on the issue of whether the law creating the violent career criminal provisions, Chapter 95-182, Laws of Florida, violates the single-subject requirement of the Florida Constitution (App. 1-2). In her special concurrence, Judge Green, constrained by prior third district decisions, reiterated her belief that the statute violates article III, section 5, of the Florida Constitution. (App. 4).

In this petition, Mr. Levan challenges the constitutionality of chapter 95-182.

## 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 petitioner’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 respondent/Thompson’s brief filed in this Court for the merits brief in this case.

## ARGUMENT

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. Levan 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). 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. Levan’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*, No 92,831, *review granted*, 717 So. 2d 538 (Fla. May 26, 1998).<sup>1</sup> The Second District Court of Appeal had held, in *Thompson v. State*, 708

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<sup>1</sup>

*See also* *Cyrus v. State*, 717 So. 2d 619 (Fla. 3d DCA 1998), *review granted*, No. 95,050 (Fla. Aug. 19, 1999) and *Williams v. State*, 731 So. 2d 99 (Fla. 3d DCA 1999),

So. 2d 315 (Fla. 2d DCA 1998), 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. Levan'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 decision in *Thompson*.

As noted above, *Thompson* is now pending before this Court on petition for discretionary review. Undersigned counsel 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. Levan's violent career criminal sentence was imposed for an offense committed on May 18, 1996, 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. \_\_\_\_\_  
*review granted*, No. 95, 647 (Fla. Aug. 16, 1999).



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 is illegal and must be reversed.

**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,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered by mail to Barbara Zappi, Assistant Attorney General, Office of the Attorney General, 110 S.E. 6th Street, 10th Floor, Ft. Lauderdale, Florida 33301, this 26th 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.

\_\_\_\_\_  
HARVEY J. SEPLER  
Assistant Public Defender





## **APPENDIX**