

IN THE SUPREME COURT OF FLORIDA

FILED
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DEC 13 1999

CASE NO. 96,657

CLERK, SUPREME COURT

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LEROI RICARDO LEVAN,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY JURISDICTION FROM
THE DISTRICT COURT OF **APPEAL** OF FLORIDA,
THIRD DISTRICT

Respondent
BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

Petitioner, LEROI RICARDO LEVAN, was the Defendant in the trial court and the Appellant in the District Court of Appeal of Florida, Third District. Respondent, THE STATE OF FLORIDA, was the prosecution in the trial court and Appellee in the District Court of Appeal. The parties shall be referred to as they stood in the trial court and/or as they stand before this Court. The symbol "R" denotes the original record on appeal and the symbol "T" denotes the transcript of the trial court proceedings. The transcript of the sentencing hearing which was filed as a supplemental record and which appears to be omitted from the record transmitted to this Honorable Court, is attached hereto as Exhibit "A".

CERTIFICATE OF FONT AND TYPE SIZE

Counsel for Respondent, the State of Florida, hereby certifies this brief is printed in 12 point Courier New font as required by this Court's administrative order of July 13, 1998.

STATEMENT OF THE CASE AND FACTS

On March 7, 1997, in lower case number 96-15641 Defendant was charged by Amended Information with unlawful possession of a

firearm/weapon by a violent career criminal in violation of section 790.235, Florida Statutes (1995), a first degree felony. The date of the offense was May 19, 1996. (R. P.3).

On June 25, 1997, Defendant was convicted by a jury as charged. (R. P.75). The trial court adjudicated Defendant in accordance with the jury's verdict. (R. P.77-78).

A sentencing hearing was held on January 16, 1998. (Ex. A). The sentencing judge commented Defendant had one of the lengthiest records she had seen and this was precisely the reason why the legislature passed the Gort Bill. The court found Defendant qualified to be sentenced as a violent career criminal and sentenced him to life in prison with a fifteen (15) year minimum mandatory. (A:23; R. Pp.141-43).

Petitioner filed an appeal in the Third District Court of Appeal, DCA Case No. 98-1130, alleging the trial court erred by denying defense requests to excuse prospective jurors for cause, and that the violent career criminal provisions of section 775.084, Florida Statutes, violate the single-subject proscriptions of the Florida Constitution. As for his second point on appeal, Defendant argued his single-subject challenge to section 775.084, Florida Statutes was timely because the offense was committed within the "window period" of October 1, 1995, to May 24, 1997, that is, after

enactment but before reenactment.

The Third District Court of Appeal affirmed Defendant's conviction and sentence and on the authority of their holding in Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997), rejected Defendant's constitutional challenge to his sentence. In light of Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA), review granted, 717 So. 2d 538 (Fla. 1998), the Third District certified conflict with Thompson. (R. Pp.161-64).

This petition for discretionary review followed.

QUESTION PRESENTED

WHETHER THE THIRD DISTRICT COURT OF APPEAL
CORRECTLY RULED **THAT** CHAPTER 95-182, LAWS OF
FLORIDA, DID NOT VIOLATE THE SINGLE SUBJECT
PROVISION OF ARTICLE III, SECTION 6 OF THE
FLORIDA CONSTITUTION.

SUMMARY OF THE ARGUMENT

There is a natural and logical connection among the 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 provisions have a cogent relationship to each other. Thus, the Gort Act does not violate the single subject provision of Florida's Constitution. This Honorable Court should affirm the decision below.

As the issue in the instant case is the precise issue presently pending before this Court in State v. Thompson, Case No. 92,831, and since Petitioner has fully adopted the defense brief filed in this Court in Thompson for his initial brief, Respondent fully adopts the State's merits briefs filed in Thompson as its Brief on the Merits in the instant **case**.

ARGUMENT

THE **THIRD** DISTRICT COURT OF APPEAL CORRECTLY RULED THAT CHAPTER 95-182, LAWS OF FLORIDA, DID NOT VIOLATE THE SINGLE SUBJECT PROVISION OF ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

In the instant case, on June 25, 1997, Defendant was convicted by a jury of unlawful possession of a firearm/weapon, a first degree felony, as charged. (R. Pp.3, 75). On January 16, 1997, the trial court found Defendant qualified to be sentenced as a violent career criminal and sentenced him pursuant to section 775.084, Florida Statutes (1995) (as amended by chapter 95-182), to life in prison with a fifteen (15) year minimum mandatory for the offense he committed on May 19, 1996. Sec. 775.084(4)(b)1, Fla. Stat. (1995), the "Gort Act."

The Third District has previously held chapter 95-182 did not violate the single subject requirement of the Florida Constitution. Higgs v. State, 635 So. 2d 872 (Fla. 3d DCA 1997). Contra Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), review granted, 717 so. 2d 538 (Fla. 1998). Hence, although the Third District affirmed the instant case on the authority of Higgs, in light of Thompson, the Third District certified conflict with Thompson. See also Holloway v. State, 712 So. 2d 439 (Fla. 3d DCA 1998). review granted, Case No. 93-437 (Fla. October 12, 1998); and Heggs v.

State, 718 So. 2d 263 (Fla. 2d DCA 1998), review granted, 720 So. 2d 518 (Fla. 1998) (Case No. 93,851).

This case is before the Court for review of the conflict certified by the Third District Court of Appeal on the issue of whether Chapter 95-182, Laws of Florida, the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995," (the Gort Act), violates Article III, section 6, the single subject rule, of the Florida Constitution.

This issue is presently pending before this Court in State v. Thompson, Case No. 92,831. Since Petitioner has adopted the arguments made in the defense brief ("Answer Brief of Respondent on the Merits") filed in this Court in State v. Thompson as its brief on the merits, in the interest of judicial economy, Respondent adopts the State's merits briefs filed in Thompson as its Brief on the Merits in the instant case.

CONCLUSION

WHEREFORE, based upon the foregoing, Respondent submits the Third District Court of Appeal properly held Chapter 95-182 did not violate the single subject provision of the Florida Constitution and this case should be affirmed.

Respectfully submitted,

ROBERT A BUTTERWORTH
Attorney General
Tallahassee, Florida



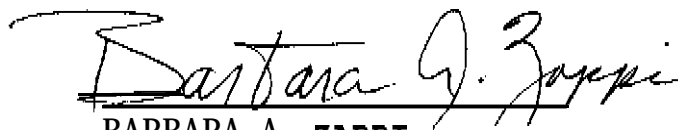
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **BRIEF OF Respondent ON THE MERITS** was furnished by mail to **Harvey** J. Sepler, Esquire, Assistant Public Defender, OFFICE OF THE PUBLIC DEFENDER, Eleventh Judicial Circuit Court, 1320 N.W. **14th** Street, Miami, Florida 33125 on this 9th day of December 1999.

A handwritten signature in black ink that reads "Barbara A. Zappi". The signature is written in a cursive style with a horizontal line drawn across the middle of the name.

BARBARA A. ZAPPI

Assistant Attorney General