

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. 96,657

**FILED**  
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**LEROI RICARDO LEVAN,**

Petitioner,

-vs.-

**THE STATE OF FLORIDA,**

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

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REPLY BRIEF OF THE PETITIONER

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**INTRODUCTION**

**This** is a reply brief by the Petitioner/defendant LEROI RICARDO LEVAN in furtherance of his review in this Court. References to **the** record are abbreviated as follows:

(R.) = Record on Appeal

(T.) = Transcript of Proceedings

## **STATEMENT OF THE CASE AND FACTS**

The Petitioner, Leroi Ricardo Levan, was convicted on June 30, 1997 for unlawful possession of a firearm by a convicted felon and sentenced on January 28, 1998 to life imprisonment as a violent career criminal pursuant to Chapter 95-182, Laws of Florida. (R. 77, 141; T. 288-89). The offense was committed on May 18, 1996. (T. 73, 86-90).

## **SUMMARY OF THE ARGUMENT**

The Petitioner was sentenced as a violent career criminal, pursuant to Chapter 95-182 of the Laws of Florida. In *State v. Thompson*, Case No. 92,831 (Fla. Dec.22, 1999), this Court held Chapter 95-182 violates the single-subject protections of the Florida Constitution.

The instant offense was committed within the window period recognized for challenging the statute's single-subject violation.

As a result, the sentence was illegal and must be reversed.

CHAPTER 95-182, LAWS OF FLORIDA, WHICH  
CREATED THE SENTENCING CATEGORY OF  
VIOLENT CAREER CRIMINAL, VIOLATES THE  
SINGLE-SUBJECT REQUIREMENT OF ARTTICLE III,  
SECTION 6 OF THE FLORIDA CONSTITUTION.

The Third District Court of Appeal affirmed the instant sentence, but certified conflict with *Thompson v. State*, 708 So. 2d 315 (Fla. 2d DCA), **cert. granted**, 717 So. 2d 538 (Fla. 1998). Both the Petitioner and the Respondent have conceded that the resolution of Thompson is determinative of the outcome here.

On December 22, 1999, this Court decided Thompson and held that Chapter 95-182, Laws of Florida violates the single-subject rule of the Florida Constitution. *State v. Thompson*, No. 92,831 (Fla. Dec. 22, 1999).

This Court specifically found that Chapter 95-182 -- the forerunner of the provisions of Fla. Stat. 775.084, under which both Thompson and the Petitioner here were sentenced -- contains both violent career criminal sentencing and domestic violence provisions. Slip op. at 1. As such, the statute violates the single-subject protections of the constitution. Slip op. at 4.

The only question remaining is whether the Petitioner timely challenged the above **infirmity**, i.e., whether his challenge falls within the window period between

enactment and reenactment of the statute.

Chapter 95-182 became effective on October 1, 1995. See Ch. 95-182, s. 12 at 1675: **Thompson**, slip op. at 2. The statute was reenacted on May 24, 1997. See Ch. 97-97; **Thompson**, slip op. at 2. This Court specifically declined to decide when the window period for single-subject challenges to the statute began and ended, however, it referenced the window periods in **Thomson** (lower court opinion) and **Salters v. State**, 731 So. 2d 826 (Fla. 4th DCA 1999). **Thompson**, slip op. at 2, 5 n. 4.

In the second district decision in **Thompson**, the window period was to run from October 1, 1995 (enactment) until May 24, 1997 (reenactment). In **Salters**, the window period was held to run from October 1, 1995 until October 1, 1996 (enactment of Ch. 96-388, Laws of Florida).

Using either of the two cases, the instant challenge clearly fell within the window period. The instant offense was committed on May 18, 1996 -- a little less than 12 months before the close of the window in **Thompson** (district court opinion) and less than 5 months before the close of the window in **Salters**.

Because the statute violates the single-subject provisions of the Florida Constitution and the challenge was timely raised, the sentence 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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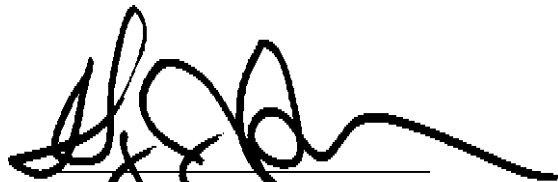
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered by mail to Barbara A. Zappi, Assistant Attorney General, Office of the Attorney General, 110 S.E. 6th Street, 9th Floor, Ft. Lauderdale, Florida 33301, this 12th day of January, 2000.

**CERTIFICATE OF TYPE SIZE**

I hereby certify that this brief is printed in 14 point CG Times, a font similar to Times Roman.

  
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