

IN THE SUPREME COURT OF FLORIDA

CASE NO. 96,990

**CALVIN DONNELL HUNT,**

Petitioner,

-vs-

**STATE OF FLORIDA,**

Respondent.

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**BRIEF OF PETITIONER ON MERITS**

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

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**INTRODUCTION**

This is the initial brief on the merits of petitioner/defendant Calvin Hunt on certified conflict jurisdiction from the Third District Court of Appeal.

Citations to the record are abbreviated as follows:

(R) - Clerk's Record on Appeal

(T) - Transcript of Proceedings

(ST) - Supplemental Transcript of Sentencing on July 10, 1998,  
from Third District record on appeal

(A) - Appendix with Third District's decision

### STATEMENT OF THE CASE AND FACTS

The petitioner/defendant was charged by information on May 23, 1996, and October 16, 1996, with 11 counts of assorted burglaries, robberies and thefts that occurred during a cocaine-fueled burglary binge that took place in southwest Miami Dade County as the defendant went house-to-house looking for items to steal for cocaine. Specifically, the defendant was charged with one count of burglary with an assault, one count of robbery, four counts of burglary of an occupied dwelling, one count of burglary of an unoccupied conveyance, grand theft of a car, grand theft of personal items, and petit theft.

(R: 14-24) All these crimes took place on May 2, 1996. (R: 14-24)

Jury trial began on May 5, 1998. (T: 1) The evidence at trial was that the defendant, a cocaine addict, stole the Sikkema's car from the front of their house, opened

their automatic garage door with the opener, then went inside the kitchen and took a purse, then drove the car to Mrs. Schneider's house where he went into her open garage but fled when she came out, then he drove to Mrs. Stier's house where he walked into her kitchen through the open garage door and grabbed a gold chain from her neck and fled, drove to the Gooding's house where he entered through the unlocked garage door, took a purse, and ran out, then drove to the Cornell's house and took a compressor from the open garage, lugged it to the car and drove away. (T: 128-129, 152-154, 177-179, 188, 195-209, 225, 307-323, 335-346) The jury convicted him of all charges. (R: 158; T:479-481)

The sentencing hearing took place on July 10, 1998. (ST: 1) The recommended guidelines sentence was 15 years 11 months to 26 years 7 months. (R: 174-175) The state sought to have the defendant sentenced outside the guidelines as a violent career criminal under the Gort Act, §775.084(1)(c), Fla. Stats. (1995). (T: 483; ST: 4) The state presented the defendant's prior convictions and the judge found the defendant qualified to be sentenced as a Gort career criminal and declared him such. (ST: 6-25) The judge sentenced him to life in prison without parole on count 1, burglary with an assault or battery, sentenced him to 40 years on count 2, strong arm robbery, to run concurrently with count 1, sentenced him to 40 years on counts 3, 4, 5 and 11, burglaries of an occupied dwelling, to run consecutive to count 2, sentenced him to 15 years on

counts 6, 7 and 8, burglary of a conveyance and grand theft, to run concurrent with count 1, and suspended sentence for counts 9 and 10, the petit thefts. (R: 164, 176-181) The sentence for counts 2, 3, 4, 5 and 11 were as a violent career criminal with a 30-year mandatory minimum before release. (R: 179) The sentence for counts 6, 7 and 8 were as a violent career criminal with a 10-year mandatory minimum before release. (R: 180) Thus, the maximum total sentence is life without parole plus 40 years (as a violent career criminal with a 30 year mandatory minimum) consecutive to the life.

The defendant appealed his conviction and sentence and on October 20, 1999, the Third District Court of Appeal affirmed his conviction and sentence but certified direct conflict with the Second District Court of Appeal on the violent career criminal sentencing issue in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), rev. granted, 717 So.2d 538 (Fla. 1998), presently pending in this Court. (A: 1)

## SUMMARY OF ARGUMENT

The Gort Act violent career criminal provisions of §775.084(4)(c), Fla. Stats. (1995), are unconstitutional because the session law that created it, chapter 95-182, Laws of Florida, violates the single subject provisions of the Florida Constitution as it addresses two distinct subjects: career criminal sentencing and civil remedies for victims of domestic violence. Since these two subjects are not reasonably related, chapter 95-182 addresses more than one subject and is therefore invalid.

Consequently, defendants whose offenses were committed between the date the Gort Act took effect on October 1, 1995, and May 24, 1997, when the legislature reenacted the Gort Act, are entitled to relief from such violent career criminal sentencing. Since the defendant in the present case committed the crimes on May 2, 1996, during this window period, he is entitled to relief from his violent career criminal sentences. The decision of the Third District must be quashed, the defendant's sentences must be reversed, and this case remanded to the trial court for a resentencing.

This precise issue is presently pending in this Court in State v. Thompson, Case No: 92,831, and the defendant fully adopts the defense brief filed in this Court in Thompson for the initial brief in this case.



## ARGUMENT

THE GORT ACT VIOLENT CAREER CRIMINAL PROVISIONS OF §775.087(4)(c) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-187, VIOLATED THE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S SENTENCES PURSUANT TO THE GORT ACT MUST BE REVERSED FOR RESENTENCING.

The issue before this Court is whether the Gort Act, creating the violent career criminal sentencing enhancement in §775.084(4)(c), Florida Statutes (1995), is unconstitutional on the ground that the session law that enacted it, chapter 95-182, Laws of Florida, violated the single subject provision of the state constitution, so that the defendant's sentences as a violent career criminal pursuant to that act are illegal.

This precise issue is presently pending before this Court in State v. Thompson, Case No: 92,831. In Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), the Second District Court of Appeal held that chapter 95-182 was unconstitutional for violation of the single subject requirement of article III, section 6, of the Florida Constitution, and invalidated a violent career criminal sentence under the Gort Act on that basis. The effect of that ruling is to invalidate a violent career criminal disposition for crimes committed between the time the Gort Act was enacted on October 1, 1995, to the legislative

reenactment of the Gort Act on May 24, 1997. As noted, the Thompson case is now pending before this Court on this issue.

In the present case, the defendant committed the crimes on May 2, 1996, and thus he came within the window period during which the Gort Act was found unconstitutional in Thompson. The defendant was found to be a violent career criminal and was sentenced pursuant to the Gort Act to enhanced sentences of 40 years in prison with a 30-year mandatory minimum before release on counts 2, 3, 4, 5 and 11, and to 15 years in prison with a 10-year mandatory minimum before release on counts 6, 7 and 8. (R: 164, 176-181) The Third District certified conflict to this Court with State v. Thompson, Case No: 92,831. (A: 1-2)

The defendant has reviewed the arguments made by the defense in the Thompson case and has determined they are fully applicable to this case. In the interest of judicial economy, the defendant therefore fully adopts the arguments made in the defense answer brief filed in this Court in State v. Thompson, Case No: 92,831 for the initial brief in this case.

In conclusion, chapter 95-182 creating the Gort Act violates the single subject provision of the Florida Constitution. Since the crimes committed in this case occurred during the window period during which the Gort Act was unconstitutional, the defendant's sentencing as a violent career criminal under the Gort Act was illegal and his

enhanced violent career criminal sentences of 40 years and 15 years concurrent in prison must be reversed.

CONCLUSION

Based upon the foregoing, the defendant requests that this Court quash the decision of the Third District and reverse his violent career criminal sentences with directions to remand the case to the lower court for a new sentencing.

Respectfully submitted,

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CERTIFICATE OF FONT

I hereby certify that the type used in this brief is 14 point proportionately spaced Times New Roman.

By: \_\_\_\_\_  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to the Office of the Attorney General, Criminal Division, 444 Brickell Ave., #950, Miami, Florida 33131, this \_\_\_\_\_ day of November, 1999.

By: \_\_\_\_\_  
MARTI ROTHENBERG  
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