

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC 99-6

ROLANDO GONZALEZ,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

FILED
DEBBIE CAUSSEAU
FEB 07 2000
CLERK, SUPREME COURT
BY _____

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, THIRD DISTRICT

PETITIONER'S AMENDED INITIAL BRIEF ON THE MERITS

ROLANDO GONZALEZ
D.C.# **M05497/A-79**
EVERGLADES CORRECTIONAL INST.
1601 S.W. 187th AVENUE
MIAMI, FLORIDA 33185

Petitioner/Pro Se

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES.....ii

STATEMENT OF THE CASE AND **FACTS**.....1-2

SUMMARY OF ARGUMENT.....3

ARGUMENT4-7

THE 1995 SENTENCING GUIDELINE PROVISIONS OF
FLA.R.CRIM.P. RULE 3.991(a) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-184 VIOLATED THE SINGLE SUBJECT PROVISION ON THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND PETITIONER'S SENTENCE PURSUANT TO THE 1995 SENTENCING GUIDELINES REVERSED FOR RESENTENCING

CONCLUSION7

CERTIFICATE OF SERVICE8

TABLE OF AUTHORITIES

CASES	PAGE(S)
GONZALEZ V. STATE, 24 FLW [D] 2393	1
HAGG V. STATE, 591 So.2d 614 (Fla. 1992).....	8
HEGGS V. STATE, 718 So.2d 263 (Fla. 2d DCA 1998) <u>rev. granted</u> , 720 So.2d 518 (Fla. 1998)..	4,5,6
HIGGS V. STATE, 659 So.2d 872 (Fla. 3d DCA 1997).....	6
LINDER V. STATE, 711 So.2d 1340 (Fla. 3d DCA 1998).....	6
STATE V. SHEARER, 628 So.2d 1102 (Fla. 1994).....	8
THOMPSON V. STATE, 708 So.2d 315 (Fla. 2d DCA 1998), rev. <u>granted</u> , (Fla. Case No. 92,831)...	1,6
 <u>OTHER AUTHORITIES</u>	
FLA.R.CRIM.P RULE 3.990 (1994).....	5
FLA.R.CRIM.P RULE 3.991(a) (1995)"	4,5,7
§92. 525, FLA. STAT. (1999)	8
CHAPTER 95-184, LAWS OF FLORIDA.....	4,6
CHAPTER 89-280, LAWS OF FLORIDA	5
CHAPTER 95-182, LAWS OF FLORIDA.....	6
18 U.S.C.A. § 1621 *.*.****.*"-	8
26 U.S.C.A. § 7206	*. 8
28 U.S.C.A. § 1746	8
5775.084, FLA STAT. (1989)	5
 <u>FLORIDA CONSTITUTION</u>	
FLA. CONST. ART. III, SECTION 6.....	3,4,6

STATEMENT OF THE CASE AND FACTS

On March 12th, 1996, the petitioner, Rolando Gonzalez, was arrested and charged with burglary with assault, false imprisonment and petit theft.

Petitioner was tried and convicted by jury on September 18th, 1996, by the Circuit Court of Dade County, Florida.

A sentencing hearing was held on November 1st, 1996. At the time of sentencing the state presented a guideline sentence under the 1995 sentencing guidelines where petitioner was sentenced to ten (10) years imprisonment.

On June 29th, 1999, Petitioner filed in the Eleventh Judicial Circuit Court, in and for Dade County, Florida, a motion to correct an illegal sentence, pursuant to the provisions of Fla.R.Crim.P., Rule 3.800 (a) (1999) stressing upon the court that his sentence under the 1995 sentencing guidelines were unconstitutional, being denied on August 5th, 1999.

August- 22nd, 1999, a timely notice of appeal was filed in the Circuit Court of the Eleventh Jtticial Circuit, Dade County, Florida.

The Third District Court of Appeal acknowledged said appeal, assigned under 3d DCA Case No: 99-2309, Thereafter, on October 20th, 1999, the Third District Court of Appeal issued an opinion. Please see: Gonzalez v. State, 24 Fla. L. Weekly [D] 2393, addressing the certified question based in Thompson v. State, 708 So.2d 315 (Fla. 2nd DCA 1998), review granted, Case No: 92,831 (Fla. May 26th, 1998 and affirmed petitioner's sentence.

A timely notice to invoke discretionary jurisdiction was then filed by the petitioner on November 15th, 1999, in which this Court accepted jurisdiction in this matter.

On January 11th, 2000, the petitioner received at his permanent institution, Everglades Correctional Institution, an order from this Court postponing decision on jurisdiction and briefing schedule ordering petitioner to file his initial brief on the merits on or before January 31st, 2000, assigned under case no: SC 99-6, Lower Tribunal Case No: 3099-2309.

On January 27th, 2000, Petitioner received an order from this Court acknowledging petitioner's initial brief on the merits with a filing date of January 14th, 2000 and advising the petitioner that his brief was not in compliance with the Florida Rules of Appellate Procedure, Rule 9.220, and to immediately file an amended brief which complies with the rule 9.220.

SUMMARY OF ARGUMENT

The 1995 sentencing guidelines are unconstitutional due to a single subject violation. Laws of Florida, ch. 95-184, violates the provisions of the Florida Constitution specifically, article III, section 6, due to the facts that it addresses two separate and distinctly different subject-s. i.e. **1. Career Criminal Sentencing,** and **2, Civil remedies for victims of domestic violence.**

Since these two (2) subjects are not reasonably related, chapter 95-184, addresses more than one subject and is therefore invalid.

Consequently, defendants' whose offense(s) occurred between October 1st, 1995, and May 24th, 1997, when this amendment to the guidelines took affect are entitled to relief from the erroneous sentencing guidelines which were enacted under the single subject rule.

Is is also established that all prisoners who are elegible to earn state statutory "gain-time" from the provisions of the statute that was in effect prior to the 1995 amendment should receive "all" gain-time as they are entitled to.

Furthermore, maintains that his offense occurred on March 12th, 1996, which was within the "window" period for t-he purpose of relief in this matter.

Therefore, the petitioner sentencing under the 199.5 sentencing guidelines is an illegal sentence unauthorized by law and is therefore subject to being vacated, and must be resentenced to the guidelines in effect prior to the amendment.

ARGUMENT

THE 1995 SENTENCING GUIDELINE PROVISIONS OF
FLA.R.CRIM.P. RULE 3.991 (a) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-184 VIOLATED THE SINGLE SUBJECT PROVISION ON THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND PETITIONER'S SENTENCE PURSUANT TO THE 1995 SENTENCING GUIDELINES REVERSED FOR RESENTENCING

The issue before this Court is whether the 1995 sentencing guidelines pursuant to Fla.R.Crim.P. Rule 3.991(a) (1995), is unconstitutional on the ground that the session law that enacted it, chapter 95-184, Laws of Florida, violated the single subject provision of the state constitution, so that the petitioner's sentence under the 1995 sentencing guidelines amendment is illegal.

The precise issue is presently pending before this Court in Heggs v. State, 718 **So.2d** 263 (Fla. 2d DCA 1998) rev. granted, 720 **So.2d** 518 (Fla. 1998), the Second District Court of Appeal held that chapter 95-184 was unconstitutional for violation of the single subject requirements of article III, section 6, of the Florida Constitution, and invalidated a sentence under the 1995 sentencing guidelines on that basis. The effect of that ruling is to invalidate a sentence disposition for crimes committed between the time the sentencing guidelines, Rule **3.991(a)** (1995) was enacted on October 1st, 1995 to the legislative re-enactment of this 1995 sentencing guidelines on May 24th, 1997.

As noted, the Heggs Case is now pending before this Court on this issue.

In the present case the petitioner crime was alleged to have happen on March 12th, 1996, and thus he came within the window period during the 1995 sentencing guidelines was found unconstitutional in **Heggs at 264**. The petitioner was sentenced to ten (10) years pursuant to the 1995 sentencing guidelines, Rule 3.991(a) Fla.R.Crim.P., (1995), where infact the petitioner should of have been sentenced under the 1994 sentencing guidelines, **Rule 3.990 Fla.R.Crim.P. (1994)** to 7.5 years imprisonment.

The single subject violation was also established in a like situation in chapter 89-280, when the legislature attempted to pass the bill concerning an amendment to the habitual violent felony offender act § 775.084 (1989).

In this amendment aggravated assault was added as a predicate offense, as well as the state being able to utilize out-of-state convictions as prior offenses. The second subject was concerning repossession of personal property, also two unrelated subjects. Hereto, a window period was established and various defendants were granted relief accordingly, A number of which who had their sentence vacated and were subsequently sentenced to the provisios of the statute in effect prioif to amendment.

The window period from October 1st, 1995 and May 24th, 1997, is established to confine only those offenders who were immediately effected by the amended portion of the statute which changed the 1994 guidelines.

Petitioner maintains that his being force to serve the 85% of his sentence is in violation of his constitutional rights and therefore must be terminatedat once. The1994 guidelines had "no"

provisions for requiring an offender to serve 85% of his sentence.

In, Linder v. State, 711 So.2d 1340 (Fla. 3d DCA 1998), the Third District acknowledged that a defendant would be entitled to sentencing relief on this "single subject" issue if his case acknowledged in Linder, that it had previously rejected this identical single subject challenge to chapter 95-182 in Higgs v. State, 659 So.2d 872 (Fla. 3d DCA 1997).

However, in view of the Second District's later contrary decision in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998) rev. granted (Fla. Case No. 92,831), the Third District certified conflict to this Court both in Linder, and in the present case, **Whether the single subject provision of the state constitution, as the 1995, sentencing guidelines statutes are unconstitutional.**

Heggs and its progeny **hold** that the 1995 sentencing guidelines are unconstitutional because the enacting legislation, chapter 95-184 laws of Florida violated the single subject rule contained in Article III, Section 6 of the Florida Constitution. **Heggs at 264.**

Petitioner had reviewed the arguments made by the defense in Thompson and Heggs case(s) and has determined they are fully applicable to this case.

In the interest of judicial economy, the petitioner therefore fully adopts the arguments made in the defense answer brief filed in this Court in State v. Thompson and Heggs v. State, for the initial brief on the merits.

In conclusion chapter 95-184 creating the 1995 sentencing guidelines violates the single subject provision of the Florida constitution. Since the crime the petitioner committed in this

case occurred during the window period which the 1995 sentencing guideline was unconstitutional, the petitioner's sentencing under Fla.R.Crim.P., Rule 3.991(a) (1995) was illegal and his scoresheet under the sentencing guideline2 must be reversed,

CONCLUSION

Based upon the foregoing, the petitioner request that this Court quash the decision of the Third District Court of Appeal and reverse his sentence with directions to remand the case to the lower court for a new sentencing.

Respectfully submitted,

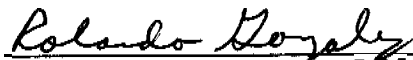
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, Petitioner's Amended Initial Brief On The Merits, has been retained by the affiant. The original and seven (7) copies have been furnished to the authorities at this institution, pursuant to the Hagg v. State, 591 So.2d 641 (Fla. 1992), for mailing on this 3d day of February, 2000 To: Mrs. Debbie Causseaux, Acting Clerk, Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927, and Robert A. Butterworth, Attorney General. 110 S.W. 6th Street, Fort Lauderdale, Florida 33301.

Under the Penalty of Perjury, I declare that I have read the foregoing, Certificate of Service, and the facts and matters stated therein are true and correct. This oath is pursuant to F.S. 92.525 (1999). State v. Sheard, 628 So.2d 1102 (Fla. 1992); 18 U.S.C.A. § 1621, 26 U.S.C.A. § 7206 and 28 U.S.C.A. § 1746.

Executed this 3d day of February 2000.



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