

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

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CASE NO. SC99-6

ROLANDO GONZALEZ

Petitioner,

-VS-

THE STATE OF FLORIDA,

Respondent.

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

RESPONDENT'S BRIEF ON THE MERITS

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INTRODUCTION

Petitioner, **ROLANDO GONZALEZ** was the defendant in the trial court and the Appellant before the Third District Court of Appeal. The Respondent, **THE STATE OF FLORIDA**, was the prosecution in the trial court and the Appellee before the Third District Court of Appeal. The parties shall be referred to as they stood in the trial court. The symbol "R" designates the original record on appeal. The symbol "T" to the transcript of the trial court proceedings. References to documents in the Respondent's appendix to this brief will be designated by the symbol, "App".

CERTIFICATE OF SIZE AND STYLE OF TYPE

Undersigned counsel hereby certifies that the size and style of type used in the brief is 12 point Courier New, a font that is not proportionately spaced.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's Statement of the Case and Facts as set forth in his brief on the merits as a non-argumentative statement of the relevant facts. The State of Florida would only elaborate the fact that on October 20, 1999, the Third District Court of Appeal issued a per curiam opinion in which the Court stated as follows:

"Although we do not believe that chapter 95-184 violates the single-subject requirement found in Article III, section 6 of the Florida Constitution, see Trapp v. State, 736 So. 2d 736 (Fla. 1st DCA **1999**) , we follow Trap and Heqqs v. State, 728 So. 2d DCA, rev. granted, 720 So. 2d 518 (Fla. 1998) in certifying the issue to the Florida Supreme Court as a matter of great public importance. The judgment entered below is affirmed." (App. 1-2).

On January 6, 2000, this Court issued an order postponing the decision on jurisdiction and established a briefing schedule in this cause. As such, the State herein files the respondent's brief on the merits in this cause and will not take a position on whether or not jurisdiction in this case is proper given the fact

that the Third District Court of Appeal certified the issue involved in this cause already to this Court, as a matter of great public importance.

QUESTION PRESENTED

WHETHER CHAPTER 95-184 IS UNCONSTITUTIONAL AS IT VIOLATES THE SINGLE-SUBJECT REQUIREMENT FOUND IN ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION? (RESTATED) .

SUMMARY OF THE ARGUMENT

This Court in State v. Thompson, 25 Fla. L. Weekly S1 (Fla. Dec. 22, 1999), and Heggs v. State, 25 Fla. L. Weekly S137 (Fla. February 17, 2000), held that chapters 95-182 and 95-184 respectively violate the single subject rule and invalidated the laws in their entirety. This Court in Hecrss and Thompson, consequently reversed the sentences imposed in the cases and remanded the causes for re-sentencing in accordance with the valid laws in effect on the dates on which Heggs and Thompson committed their respective offenses. Since the defendant herein committed his criminal offense on or after October 1, 1995, and before May 24, 1997¹ and was sentenced pursuant to the 1995 sentencing guidelines, just as in Heggs, this Court should

¹ Defendant was charged by information with committing the crimes on March 12, 1996. (R. 6-10). Defendant was sentenced based on the 1995 sentencing guidelines, on November 1, 1996. (R. 474-479).

reverse the sentences imposed in this **case**, and remand this cause for resentencing in accordance with the valid laws in effect on March 12, 1996, the date on which the defendant committed his respective offenses.

ARGUMENT

**CHAPTER 95-184 IS UNCONSTITUTIONAL AS IT VIOLATES
THE SINGLE-SUBJECT REQUIREMENT FOUND IN ARTICLE
III, SECTION 6 OF THE FLORIDA CONSTITUTION (RESTATED)**

The defendant argues that Chapter 95-184 violates the single subject rule contained in article III, section 6 of the Florida Constitution, which provides, in pertinent part, that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The defendant argues that his sentence is illegal, as a result of the violation. The Third District Court of Appeal in deciding the appeal of the denial of defendant's Rule 3.800 motion, certified the issue to this Court as a matter of great public importance. The Third District followed the Second District's decision in Heggs v. State, 718 So. 2d 263 (Fla. 2d 1998), and per curiam affirmed the trial court's denial of the defendant's motion. The Third District also certified the issue to this Court as a matter of great public importance. The State of Florida has not addressed the propriety of the instant appeal

given the fact that the Third District certified the issue to this Court, as this Court has decided to postpone the decision on jurisdiction in this cause.

The **State** would respectfully submit that as this Court has already decided the issue presented herein, this Court should follow the decision in Heggs v. State, 25 Fla. L. Weekly S137 (Fla. February 17, 2000). In Heggs, this Court held that chapter 95-184 violates the single subject rule and invalidated the law in its entirety. This Court in so doing, reversed the appellant's sentences since the appellant had committed his criminal offense on or after October 1, 1995, and before May 24, 1997, and was sentenced pursuant to the 1995 sentencing guidelines. This Court remanded the cause to the trial court for re-sentencing in accordance with the valid laws in effect on the date on which the appellant committed his respective offenses.

This Court should reach a similar conclusion in this case. The defendant was charged by information with committing the crimes on March 12, 1996. (R. 6-10). He **was** sentenced based on the 1995 sentencing guidelines, on November 1, 1996. (R. 474-479). This Court in Heggs, held that, the window period for challenging chapter 95-184 on single subject rule grounds opened on October 1, 1995. This determination applied to persons such

as the defendant who claim that their guideline sentences are invalid due to the changes in the guidelines within chapter 95-184. Thus, the applicable window period in this case opened on October 1, 1995, and the defendant clearly committed his offense after that date. as such, this Court should remand this cause for re-sentencing in accordance with the valid laws in effect on March 12, 1996, the date on which the defendant committed his respective offenses.

CONCLUSION

Based upon the foregoing argument and citations of authority, this Court should reverse the decision of the Third District Court of Appeal and remand the cause for re-sentencing in accordance with the valid laws in effect on March 12, 1996, the date on which the defendant committed his respective offenses.

Respectfully submitted

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S BRIEF was furnished by mail to **ROLANDO GONZALEZ**, pro se, Everglades Correctional Institution, P.O. Box 659001, Miami, Florida 33265-9001, on this 7th day of March, 2000.



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