

STEVEN MCGREGOR,

Petitioner,

v.

CASE NO. SC00-1215

STATE OF FLORIDA,

Respondent.

PETITIONER'S INITIAL BRIEF ON THE MERITS

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SECOND JUDICIAL CIRCUIT

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IN THE FLORIDA SUPREME COURT

STEVEN MCGREGOR,

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v.

SC00-1215

STATE OF FLORIDA,

Respondent.

_____ /

PETITIONER'S INITIAL BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, Steven McGregor, was the defendant in the trial court, and the appellant in the district court of appeal. He will be referred to in this brief as petitioner or by his proper name. Respondent, the State of Florida, was the prosecution in the trial court, and the appellee in the district court. The state will be referred to in this brief as respondent or the state.

The record on appeal consists of two consecutively numbered volumes and will be referred to by use of the symbol "V," followed by the appropriate volume and page numbers.

All emphasis is supplied unless the contrary is indicated.

Petitioner certifies that this brief is typed in 12 point Courier New font.

STATEMENT OF THE CASE

Petitioner was charged by information with armed robbery with a firearm, felony fleeing to elude a police officer, and possession of a firearm by a convicted felon¹ (V1-24).

The case was tried before a jury, and petitioner was found guilty of Counts I and II, as charged (V1 59-60; V2-189).

Thereafter, the state sought to have petitioner sentenced as a prison releasee reoffender (V1-12). Petitioner objected to being sentenced under that statute and argued, inter alia, that the statute had been unconstitutionally adopted in violation of the single subject requirement of the Florida Constitution (V1 61-82).

The trial court disagreed; found that petitioner qualified for sentencing as a prison releasee reoffender (V1 99-102), and sentenced him in Count 1 to a mandatory term of life in prison without parole, and to a concurrent five year term of imprisonment in Count II (V1-95-98).

On appeal to the First District Court, petitioner again contested the constitutionality of the Prison Releasee Reoffender Act (the Act), Section 775.082, Florida Statutes, but that court rejected each of his arguments. The district court certified the question of whether the Act violated petitioner's right to equal

¹ Before trial, the possession of a firearm by a convicted felon charge was severed from Counts I and II. That charge was not pressed after sentencing on the remaining counts (V1-125).

protection under the law. See, McGregor v. State, 25 Fla. L. Weekly D1354 (Fla. 1st DCA, June 1, 2000). Attached as appendix 1.

Since the certified question confers jurisdiction on this Court, and since this Court has de novo review powers, see, State v. Tait, 387 So. 2d 338 (Fla. 1980) ("we should not limit ourselves to consideration of the certified question only, but should also review this other ground for the decision below"), the Court should consider whether the PRR Act was unconstitutionally enacted in violation of the single subject requirement of the Florida Constitution.²

² It appears that this Court resolved all other challenges to the Act in Cotton v. State, 25 Fla. L. Weekly S463 (Fla., June 15, 2000).

STATEMENT OF THE FACTS

The evidence showed that petitioner entered a liquor store, and after brandishing a firearm, robbed the cashier of \$86. He was apprehended later the same day after a high speed auto chase. The jury found him guilty of armed robbery with a firearm and felony fleeing to elude an officer.

Before sentencing on September 17, 1998 (V1-93), the state filed a Notice of Intent to Classify Defendant as a Prison Releasee Reoffender (V1-12). Petitioner countered with a Motion to Declare Section 775.082(8), Florida Statutes (1997) Unconstitutional (V1 61-82).

In his motion, petitioner argued, inter alia, that the PRR Act was adopted in violation of the single subject requirement of Article III, Section 6, of the Florida Constitution (V1-62).

Both the trial court and district court rejected this argument. The district court certified the following question as being one of great public importance:

DOES THE PRISON RELEASEE REOFFENDER
PUNISHMENT ACT, CODIFIED AS SECTION
775.082(8), FLORIDA STATUTES (1997) VIOLATE
THE SEPARATION OF POWERS CLAUSE OF THE
FLORIDA CONSTITUTION?

SUMMARY OF ARGUMENT

Article III, Section 6 of the Florida Constitution provides in pertinent part:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

The legislation creating the Prison Releasee Reoffender Act violates the single subject restriction of Article III, Section 6, of the Florida Constitution by including such diverse subjects as whether a youthful offender shall be committed to the custody of the department, to when a court may place a defendant on probation or community control if the person is a substance abuser, and expands the category of persons authorized to arrest a probationer or person on community control.

Consequently, this Court must find that the Act was unconstitutionally enacted. The Court must also strike petitioner's designation as a prison releasee reoffender, and order that he be resentenced without the application of that law.

ARGUMENT

ISSUE PRESENTED

BY INCLUDING MULTIPLE UNRELATED SUBJECTS IN ONE ACT, THE LEGISLATION WHICH BECAME THE PRISON RELEASEE REOFFENDER LAW VIOLATED ARTICLE III, SECTION 6, OF THE FLORIDA CONSTITUTION.

The Prison Releasee Reoffender Act, codified in Section 775.082(8), Florida Statutes (1997), was enacted in violation of Article III, Section 6, of the Florida Constitution, which provides in pertinent part:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

The legislation challenged in this case was passed as Chapter 97-239, Laws of Florida. It became law without the signature of the Governor on May 30, 1997. Chapter 97-239 created the Prison Releasee Reoffender Act (the Act), and was placed in Section 775.082(8), Florida Statutes (1997). In addition, the session law amended or created Sections 994.7005, 947.141, 948.06, 948.01, and 958.14, Florida Statutes (1997). These provisions concern matters ranging from whether a youthful offender shall be committed to the custody of the department, to when a court may place a defendant on probation or community control if the person is a substance abuser. See. Sections 948.01 and 958.14, Florida Statutes (1997). Other subjects included expanding the category of person authorized to arrest a

probationer or person on community control for violations. See, Section 948.06, Florida Statutes (1997).

The only portion of the legislation that relates to the same subject matter as sentencing prison releasee reoffenders is Section 944.705, Florida Statutes (1997), which requires the Department of Corrections to notify every inmate of the provisions relating to sentencing if the Act is violated within three years of release. None of the other subjects in the Act is reasonably connected or related, or part of a single subject.

In Bunnell v. State, 453 So. 2d 808 (Fla. 1994), this Court struck an act for containing two subjects. The Court, citing Kirkland v. Phillips, 106 So. 2d 909 (Fla. 1959), noted that the purpose of the constitutional requirement was to give fair notice concerning the nature and substance of the legislation. However, even if the title of the Act gives fair notice, as did the legislation in Bunnell, another requirement is to allow intelligent lawmaking and to prevent log-rolling of legislation. State ex. Rel. Landis v. Thompson, 120 Fla. 860, 163 So. 270 (1935), and Williams v. State, 100 Fla. 1054, 132 So. 186 (1930). Legislation that violates the single subject rule can become a cloak within which dissimilar legislation may be passed without being fairly debated or considered on its own merits. State v. Lee, 356 So. 2d 276 (Fla. 1978).

Burch v. State, 558 So. 2d 1 (Fla. 1990), does not apply

because, although complex, the legislation there was designed to combat crime through fighting money laundering and providing education programs to foster safer neighborhoods. The means by which this subject was accomplished involved amendments to the several statutes, which by itself does not violate the single subject rule. Id.

Chapter 97-239, Laws of Florida, not only created the Act, it also amended Section 948.06, Florida Statutes (1997), to allow "any law enforcement officer who is aware of the probationary or community control status of [a] probationer or offender in community control" to arrest said person and return him or her to the court granting such probation or community control. This provision has no logical connection to the creation of the Act and, therefore, violates the single subject requirement of Article III, Section 6, Constitution of Florida.

An act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection. Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981). See also, State v. Johnson, 616 So. 2d 1 (Fla. 1993)(chapter law creating habitual offender statute violated single subject requirement). Giving any law enforcement officer who is aware that a person is on community control or probation the authority to arrest that person has nothing to do with the other purpose of the Act. Chapter 97-239, Laws of Florida, therefore, violates

the single subject requirement and this issue remained ripe until the 1999 biennial adoption of the Florida Statutes, reenacting the releasee reoffender statute.

The statute here is less comprehensive in total scope than the one approved in Burch, but its subject is broader. It violates the single subject rule because the provisions dealing with probation violations, the arrest of violators, and forfeiture of gain time for violations of controlled release are matters that are not reasonably related to the specific mandatory punishment provisions for person convicted of certain crimes within three years of release from prison. If the single subject rule means only that "crime" is a subject, then the legislation can pass review, but that is not the rationale consistently utilized by this Court. The proper manner of review is to consider the purpose of the various provisions and the means provided to accomplish those goals. When so viewed, it is apparent that several subjects are contained in the legislation.

The session law at issue here was enacted in violation of the single subject rule just as the one which created the violent career criminal penalty violated the single subject rule.

In Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998), the court held that the session law which created the violent career criminal sentencing scheme, Chapter 95-182, Laws of Florida, was unconstitutional as a violation of the single subject rule in

Article III, Section 6, Florida Constitution, because it combined the creation of the career criminal sentencing scheme with civil remedies for victims of domestic violence:

Sections 1 through 7 of Chapter 95-182, known as the Gort Act, create and define the violent career criminal sentencing category and provide sentencing procedures and penalties. Sections 8 through 10 of chapter 95-182 deal with civil aspects of domestic violence. Section 8 creates a civil cause of action for damages for injuries inflicted in violation of a domestic violence injunction. Section 9 creates substantive and procedural rules regulating private damage actions brought by victims of domestic abuse. Section 10 imposes procedural duties on the court clerk and the sheriff regarding the filing and enforcement of domestic violence injunctions.

Likewise, chapter 95-182 embraces criminal and civil provisions that have no "natural or logical connection." See, State v. Johnson, 616 So. 2d 1, 4 (quoting Martinez v. Scanlon, 582 So. 2d 1167 (Fla. 1991)). Nothing in sections 2 through 7 addresses any facet of domestic violence and, more particularly, any civil aspect of that subject. Nothing in sections 8 through 10 addresses the subject of career criminals or the sentences to be imposed upon them. It is fair to say that these two subjects "are designed to accomplish separate and dissociated objects of legislative effort." State v. Thompson, 120 Fla. 860, 892-93, 163 So. 270, 283 (1935). Neither did the legislature state an intent to implement comprehensive legislation to solve a crisis. Cf. Burch v. State, 558 So. 2d 1 (Fla. 1990)(upholding comprehensive legislation to combat stated crisis of increased crime rate). Harsh sentencing for violent career criminals and providing civil remedies for victims of domestic violence, however laudable, are nonetheless two distinct

subjects. The joinder of these two subjects in one act violates article III, section 6, of the Florida Constitution; thus, we hold that chapter 95-182, Laws of Florida, is unconstitutional. In so holding, we acknowledge conflict with the Third District's opinion in Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997). We reverse Thompson's sentences and remand for resentencing in accordance with the valid laws in effect at the time of her sentencing on May 21, 1996.

The situation is similar to that which occurred when the 1989 legislature amended the habitual violent offender statute in the same session law with statutes concerning the repossession of personal property. The courts held that the 1989 session law violated the single subject rule. Johnson v. State, 5889 So. 2d 1370 (Fla. 1st DCA 1991), approved, 616 So. 2d 1 (Fla. 1993); Claybourne v. State, 600 So. 2d 516 (Fla. 1st DCA 1992), approved, 616 So. 2d 5 (Fla. 1993); and Garrison v. State, 607 So. 2d 473 (Fla. 1st DCA 1992), approved, 616 So. 2d 993 (Fla. 1993).

Petitioner argued this issue in the trial court (V1 61-80; 116), and on direct appeal to the district court. See, appendix 2, Initial Brief of Appellant. Therefore, the issue is preserved for review by this Court. Based on the argument and authorities cited above, this Court must vacate petitioner's life sentence, and remand this cause to the lower court for resentencing in accordance with the laws which were valid, and in effect at the time petitioner was sentenced.

CONCLUSION

Based on the foregoing argument, reasoning, and citation to authority, this Court must declare the Prison Releasee Reoffender Act to have been unconstitutionally enacted. Consequently, the Court must also vacate petitioner's sentence that was imposed pursuant to the Act, and direct that he be resentence pursuant to the valid laws that were in effect at the time he was sentenced.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Kristen Davenport, Assistant Attorney General, by mail to 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118, and a copy has been mailed to Steven McGregor, DOC# 276364, Baker Corr. Institution, P. O. Box 500, Sanderson, FL 32087, on this ____ day of July, 2000.

Respectfully submitted,

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