

IN THE SUPREME COURT OF FLORIDA

ANDREW BUSBY,)
)
 Petitioner,)
)
 vs.) CASE NO. SC00-402
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
)
)
 _____)

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, ANDREW BUSBY, was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Before the Fourth District Court of Appeals, Respondent was Appellee, and Petitioner was Appellant. In the brief, the respective parties will be identified as they appear before this Court.

The following symbol will be used:

"R" Record on Appeal

"T" Transcript on Appeal.

CERTIFICATE OF TYPE AND SIZE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2 (d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for Respondent hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that has 10 characters per inch.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information with "felony causing bodily injury," attempted second degree murder with a deadly weapon, armed burglary of a structure, robbery with a deadly weapon, dealing in stolen property, and grand theft auto (R 7-9). The jury found him guilty as charged on all six counts (R 41-46; T. 675-677). Petitioner's sentencing guidelines scoresheet reflected a permitted range of 198.52 to 230.87 months imprisonment (R 54-55). Instead, Petitioner was sentenced to life imprisonment on Counts I-IV, 30 years prison on Count V, and 10 years prison on Count VI; he was designated a "violent career criminal" as to Counts I-IV, and a habitual violent felony offender as to Counts V and VI; all sentences were ordered to run concurrently (R 60-61, 63-77; T. 710-712).

On Appeal to the Fourth District Court of Appeal (DCA), Petitioner raised three guilt-phase issues, as well as a challenge to the constitutionality of the "violent career criminal" statute on "single-subject" grounds, see Petitioner's Initial Brief to Fourth DCA. That Court denied Petitioner relief on all grounds; specifically to this appeal, the Fourth DCA recognized this Court's intervening decision in State v. Thompson, 25 Fla. L. Weekly S1 (Fla. December 22, 1999), which found that Chapter 95-182, Laws of Florida (1995), the Session Law creating "violent career criminal"

sentencing, indeed violated the "single subject" clause of Article 3, Section 6 of the Florida Constitution, 25 Fla. L. Weekly at S1-2. However, the Fourth DCA in Busby followed its previous decision in Salters v. State, 731 So.2d 826 (Fla. 4th DCA 1998) review granted No. 95,663 (Fla. December 3, 1999) finding that the "window period" for single subject challenges to Chapter 95-182 closed on October 6, 1996; since Petitioner's crimes occurred on December 13, 1996, the Fourth DCA in Busby found that Petitioner's "single subject" challenge was unavailing, Busby v. State, Fourth DCA No. 4D-98-2784, Slip Opinion, at pp. 4. The Fourth DCA noted that the Second DCA in Thompson v. State, 708 So.2d 315, 317, n.1 (Fla. 2d DCA 1998) reversed 25 Fla. L. Weekly S1 (Fla. December 22, 1999), contrary to the Fourth DCA's Salter decision, held that the "window period" involved in this case closed on May 24, 1997. In this regard, the Fourth DCA certified conflict with the Second DCA's Thompson decision concerning the "window" issue, Busby supra. at p.4. Thereafter, Petitioner filed Notice of Intent to Invoke this Court's Discretionary Jurisdiction on February 17, 2000.

SUMMARY OF ARGUMENT

POINT ON APPEAL

The Fourth DCA erred in Busby v. State, 4D-98-2784 (4th DCA, February 16, 2000) in finding that the "window period" for "single subject" challenges to Chapter 95-182, Laws of Florida (1995) ended on October 1, 1996, as the enactment of Chapter 96-388, Laws of Florida (1996) did not affect the "window period" for challenging Chapter 95-182, as Chapter 96-388 did not reenact Chapter 95-182, and Chapter 96-388 itself violates Article III, Section 6 of the Florida Constitution.

ARGUMENT

POINT ON APPEAL

THE ENACTMENT OF CHAPTER 96-388 DID NOT EFFECT THE WINDOW PERIOD FOR CHALLENGING CHAPTER 95-182. AS A RESULT, PETITIONER IS ENTITLED TO RELIEF FROM HIS "VIOLENT CAREER CRIMINAL" SENTENCING ON COUNTS I-IV OF THE INFORMATION FILED AGAINST HIM, BASED ON THIS COURT'S DECISION IN STATE V. THOMPSON, 25 FLA. LAW WEEKLY S1,2 (FLA. DECEMBER 22, 1999).

In Busby v. State, 4D98-2784 (Fla. 4th DCA, February 16, 2000), the Fourth DCA rejected Petitioner's "single subject" challenge to Chapter 95-182, Laws of Florida (1995), the Session Law upon which "violent career criminal" sentencing was based, pursuant to the Fourth DCA's decision in Salters v. State, 731 So.2d 826 (Fla. 4th DCA 1998) review granted No.95,663 (Fla. December 3, 1999), which found that the "window period" closed on October 1, 1996; since Petitioner's crimes occurred on December 13, 1996, the Fourth DCA in Busby ruled Petitioner was not entitled to relief pursuant to Thompson. This was error.

Salters held that the window period for challenging Chapter 95-182 closed on October 6, 1996, when Chapter 96-388 took effect. Section 44 of Chapter 96-388 contains an amended version of the violent career criminal statute. However, it is not a biennial adoption of the Florida Statutes. Like Chapter 95-182, Laws of Florida, Chapter 96-388 violates the single subject clause of Article III, Section 6 of the Florida Constitution, which states:

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

The purpose of this constitutional limitation is to prevent "subterfuge, surprise, hodgepodge and log rolling in legislation," Santos v. State, 380 So.2d 1284, 1285 (Fla. 1980). In analyzing whether a Session Law covers only one subject, this Court has granted the legislature "wide latitude . . . in the enactment of laws, and this Court will strike down a statute only when there is a plain violation of the constitutional requirement that each enactment be limited to a single subject. . .," State v. Lee, 356 So.2d 276, 282 (Fla. 1978). In this regard, a bill's subject may be broad as long as there is a "natural and logical connection" among the matters contained within the Session Law, id. at 282.

Despite the deference given the legislature by this Court in enacting legislation, the Court has nonetheless seen fit to declare some legislative pronouncements unconstitutional on single subject grounds. For example, in Colonial Investment Company v. Nolan, 131 So.2d 178 (Fla. 1930), provisions concerning tax returns and a provision prohibiting deed recording without the stating of the grantor's address were held insufficiently related. Similarly, the prohibition of the manufacturer of liquor and provisions criminalizing voluntary intoxication were found in violation of the "single subject" requirement in Albritton v. State, 89 So.2d 360

(Fla. 1921). Also, in Bunnell v. State, 453 So.2d 808 (Fla. 1984), this Court analyzed Chapter, 82-150 Laws of Florida, which both created a new crime "obstruction by false information" and changed the membership of the Florida Counsel on Criminal Justice, finding a single subject violation. Finally, in State v. Johnson, 616 So.2d 1 (Fla. 1993), this Court found that Chapter 89-280, Laws of Florida, violated the single subject requirement in addressing both the habitual offender statute and the licensing of private investigators concerning their authority to repossess personal property, 616 So. 2d at 4, as the two areas constituted "two very separate and distinct subjects . . . [having] absolutely no cogent connection reasonably related to any crises the legislature intended to address".

In sum, the aforementioned cases from this Court generally provide that a statute would be considered as properly covering a single subject if its provisions have a logical or an actual connection, and/or the statute is intended to comprehensively cover a single broad subject. Judged by these standards, Chapter 96-388, Laws of Florida, violates the single subject clause of Article III, Section 6 of the Florida Constitution. First, the title of this legislation, "public safety" is simply too vague to give fair notice of the legislation's contents, since its seventy four sections run the gamut from implementing a continuous revision

cycle for the criminal code to coordinating information system resources to enacting the street gang prevention act and "Jimmy Ryce Act" concerning sexual predators, as well as redefining various crimes and punishments. Thus, Chapter 96-388 encompasses a multitude of unrelated subjects having separate and disassociated objectives insufficiently connected by the broad term "public safety," see e.g. Albritton v. State, 89 So. 2d 360 (Fla. 1921). This Court in Bunnell and Williams separately rejected arguments by the state in those cases that many separate matters may be included together in one bill if all relate to a broad general subject, such as "criminal justice" or "crime prevention control".

As a consequence, since the violent career criminal sentencing regime was unconstitutionally enacted by both Chapters 95-182 and 96-388, the window period to challenge the constitutionality of such sentencing remained open to May 24, 1997, the date of the biennial adoption of the Amendments to the Florida Statutes, See State v. Johnson, 616 So.2d at 2. In this case, since the crimes charged against Petitioner occurred on December 13, 1996, he is entitled to attack the facial constitutionality of his career criminal sentence, and the Fourth DCA's conclusion in Busby must be quashed and remanded with directions that Petitioner's "violent career criminal" sentence be vacated with directions to the trial

court to resentence Petitioner as to Counts I-IV of the
Information.

CONCLUSION

Busby v. State, 4D 98-2784 (Fla. 4th DCA, February 16, 2000)

must be vacated and remanded with proper directions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to
Leslie Campbell, Assistant Attorney General, 1655 Palm Beach Lakes
Boulevard, Suite 300, West Palm Beach, Florida by courier this
_____ day of March, 2000.

Attorney for Andrew Busby