

IN THE SUPREME COURT OF FLORIDA

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

PETITIONER'S REPLY BRIEF ON THE MERITS

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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, 757 So. 2d 643, 649 (Fla. 1999).

Respondent's Brief on the Merits concedes that this Court's decision in Salters v. State, 25 Fla. Law Weekly S365, 366 (Fla. May 11, 2000) resolves the question of standing to challenge the constitutionality of Chapter 95-182 in Petitioner's favor, since this Court in Salters found that the appropriate "window period" for such a challenge, based on the Court's previous decision in State v. Thompson, 750 So.2d 643 (Fla. 1999) is between October 1, 1995 and May 24, 1997, Salters, supra. at S366. Since Petitioner's crimes occurred on December 13, 1996, he clearly is entitled to relief based on Thompson.

Although Respondent acknowledges the holding of this Court in Salters, Respondent attempts to avoid reversal by citing to this Court's decision in Heggs v. State, SC-93,851 (Fla. May 4, 2000), dealing with a similar constitutional challenge to the 1995 sentencing guidelines. Specifically, Respondent asserts that since Petitioner's sentencing guidelines scoresheet would not be changed by reference to the 1994 guidelines, any error below in sentencing

appellant was harmless. Of course, this argument is a complete nonsequitor, since Appellant received sentences as a "violent career criminal" based on the statutory authority found in Chapter 95-182, subsequently found unconstitutional by this Court in Thompson. Thus, since Petitioner did not receive a guideline sentence as to any of the counts of the information below, Respondent's citation to Heggs, is irrelevant. Instead, this Court in Thompson held that criminal defendants with standing to assert the result in Thompson must be resentenced pursuant to the "valid law in effect" at the time their crimes arose, 750 So.2d at 649.

As a consequence, Petitioner's convictions and sentences on Counts I-IV of the information filed below must be vacated and remanded to reentence him consistent with this Court's opinion in Thompson, 750 So.2d at 643, 649.

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 Steven A. Parrish, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida by courier this _____ day of May, 2000.

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