

IN THE SUPREME COURT OF FLORIDA

JAMES OSBORNE)
)
 Petitioner,)
)
 vs.) CASE NO. SC00-475
)
 STATE OF FLORIDA)
)
 Respondent)
 _____)

PETITIONER'S BRIEF ON THE MERITS

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CHAPTER 95-182, THE VIOLENT CAREER CRIMINAL ACT, VIOLATED THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION. THE DEFECT WAS NOT CURED UNTIL THE CHAPTER WAS INCLUDED IN THE BIENNIAL ADOPTION OF THE FLORIDA STATUTES ON MAY 24, 1997. CHAPTER 95-184, UNDER WHICH PETITIONER'S GUIDELINE SCORESHEET WAS PREPARED, WAS ALSO ENACTED IN VIOLATION OF THE SINGLE SUBJECT RULE. APPELLANT MUST BE SENTENCED IN ACCORD WITH THE VALID LAWS IN EFFECT ON FEBRUARY 5, 1997.	5
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PRELIMINARY STATEMENT

Petitioner, James Osborne, 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 symbols will be used:

"R" Record on Appeal

"T" Transcript of Trial

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 Petitioner 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

Petitioner, James Osborne, was charged by information with burglary of a dwelling and grand theft. The offenses were alleged to have occurred on February 5, 1997 (R. 3-4). He was convicted of burglary and petty theft (R. 19-20, T. 178-179). Petitioner's guideline scoresheet indicated a permissive sentencing range of 121.8 months to 203 months in prison (R. 129-131). It was stipulated that he qualified for sentencing as a violent career criminal (T2. 276-277). The trial court declared petitioner a violent career criminal and imposed a sentence of forty years in prison with a thirty year minimum mandatory (R. 135-137, T2 276-278, 282).

On appeal to the Fourth District Court, petitioner challenged the sufficiency of the evidence and the constitutionality of the violent career criminal statute. (See Petitioner's Initial Brief). The District Court found the sufficiency argument to be without merit. While recognizing this Court's decision in State v. Thompson, 25 Fla. L. Weekly S1 (Fla. December 22, 1999), holding Chapter 95-182, Laws of Florida (1995), the session law which created the violent career criminal designation and sentencing scheme, unconstitutional as violative of the "single subject" clause of Article 3, Section 6 of the Florida Constitution, (25

Fla. L. Weekly at S1-2), the Fourth District upheld petitioner's violent career criminal sentence based on its earlier decision in Salters v. State, 731 So. 2d 826 (Fla. 4th DCA 1998) *review granted* N. 95,663 (Fla. December 3, 1999). In Salter, the Fourth District found that the "window period" for single subject challenges to Chapter 95-182 closed on October 6, 1996. Because petitioner was convicted of crimes committed on February 5, 1997, the Fourth District Court found he was without standing to challenge his sentence. Osborne v. State, Fourth DCA No. 4D98-1706, Slip opinion filed February 16, 2000. In its ruling, the Fourth DCA recognized the decision in Thompson v. State, 708 So. 2d 315, 317, n.1 (Fla. 2nd DCA 1998) *affirmed* 25 Fla L. Weekly S1 (Fla. December 22, 1999) which held the "window period" for standing closed on May 24, 1997. The Fourth DCA certified conflict with the Second DCA decision in Thompson on the issue of standing and the "window period." Osborne, *supra*.

Petitioner filed his Notice of Intent to Invoke Discretionary Jurisdiction on February 25, 2000.

SUMMARY OF THE ARGUMENT

Chapter 95-182, also known as the Gort Act, was the session law which created the violent career criminal designation and sentencing scheme. The law, which took effect on October 1, 1995 was found to violate the single subject rule of the Florida Constitution in Thompson v. State, 25 Fla. Law Weekly S1-2 (December 22, 1999). The Fourth District Court of Appeal has held this constitutional defect was cured when an amended version of the violent career criminal statute was adopted in Chapter 96-388 which became effective October 6, 1996. This was error. The constitutional defect was not cured until the chapter law was included in the biennial adoption of the Florida Statutes on May 24, 1997.

Appellant was convicted of committing a burglary on February 5, 1997. The date of offense was before Chapter 95-182 was included in the biennial adoption. Appellant's sentence must be reversed and remanded for resentencing. On remand the trial court may not resentence based on the scoresheet prepared for his original sentencing. The scoresheet was prepared pursuant to Chapter 95-184, which this Court has also found to violate the single subject requirement. Petitioner must be resented under the valid law in effect on February 24, 1997.

ARGUMENT

CHAPTER 95-182, THE VIOLENT CAREER CRIMINAL ACT, VIOLATED THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION. THE DEFECT WAS NOT CURED UNTIL THE CHAPTER WAS INCLUDED IN THE BIENNIAL ADOPTION OF THE FLORIDA STATUTES ON MAY 24, 1997. CHAPTER 95-184, UNDER WHICH PETITIONER'S GUIDELINE SCORESHEET WAS PREPARED, WAS ALSO ENACTED IN VIOLATION OF THE SINGLE SUBJECT RULE. APPELLANT MUST BE SENTENCED IN ACCORD WITH THE VALID LAWS IN EFFECT ON FEBRUARY 5, 1997.

Petitioner was convicted of burglary and petty theft. The offenses were committed on February 5, 1997. His guidelines scoresheet reflected a permissive sentencing range of 121.8 months to 203 months in prison (R. 129-131). However, he was declared a violent career criminal and imposed a sentence of forty years in prison with a thirty year minimum mandatory (R. 135-137, T2 276-278, 282).

In State v. Thompson, 25 Fla. Law Weekly S1-2 (December 22, 1999), this Court found Chapter 95-182, Laws of Florida, the Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995, violated the single subject rule of Article III, Section 6 of the Florida Constitution. However, once reenacted as a part of the Florida Statutes this chapter law were no longer subject to a constitutional single subject challenge. State v. Johnson, 616 So.2d 1-2 (Fla. 1993).

The only issue to be decided is whether petitioner has the standing to raise the single subject challenge. Chapter 95-182 became effective on October 1, 1995. In Salters v. State, 731 So. 2d 826 (Fla. 4th DCA 1999), *rev. granted* No. 95, 663 (Fla. Dec. 3 1999), the Fourth District Court held the window period for challenges ended October 1, 1996. The court affirmed petitioner's sentence holding he had no standing to challenge the constitutionality of the law because his offense were committed on February 5, 1997. Osborne v. State, case no. 4D98-1706 (February 16, 2000). The District Court certified conflict with the Second District Court's decision in Thompson v. State, 708 So. 2d 315 (Fla. 2nd DCA 1998) on the issue of standing. While this Court had previously affirmed the decision of the Second District in Thompson finding chapter law 85-182 unconstitutional, it expressly declined to address the standing issue.

In State v. Combs, 388 So. 2d 1029, 1030 (Fla. 1980), this Court held the single subject requirement applied to "laws", meaning acts of the legislature, only so long as they remained "laws". "Once reenacted as a portion of the Florida Statutes, a chapter law is no longer subject to challenge on the grounds that it violates the single subject requirement of Article III, section 6, of the Florida Constitution". State v. Johnson, 616 So. 2d 1,5

(Fla. 1993)(holding amendment to habitual offender statute unconstitutional for single subject violation). The Court found the chapter was reenacted, effective May 2, 1991 as part of the biennial adoption of the Florida statutes. Id at 5.

Once the violent career criminal "law" was reenacted as a part of the Florida Statutes it no longer needed to comply with the single subject requirement. Chapter 95-182 was reenacted as chapter 97-97 as part of the biennial adoption of the Florida Statutes on May 24, 1997. The single subject challenge may not be raised for offenses committed after that date. Petitioner's offenses were committed on February 5, 1997, before the chapter law was reenacted as part of the Florida Statutes, therefore his sentence must be reversed and remanded for resentencing.

In Heggs v. State, 25 Fla. L Weekly S137 (Fla. February 17, 2000), this Court ruled that Chapter 95-184, effective October 1, 1995, which amended the sentencing guidelines also violated the single subject requirement. Although the Fourth District Court of Appeals has held the "window period" for constitutional challenges to chapter 95-184 closed October 1, 1996, petitioner would argue that for the same reasons set forth above, the window period did not end until May 24, 1997, when 95-184 was reenacted as part of the Florida Statutes.

The decision of the Fourth District Court of Appeal must be reversed and petitioner's cause remanded with directions to resentence him in accord with the valid laws in effect on February 5, 1997.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court reverse his sentence and remand with directions to resentence him in accord with the valid laws in effect on February 5, 1997.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Darien Doe, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida, by courier this 30th day of March, 2000.

Counsel for James Osborne