IN THE SUPREME COURT OF FLORIDA

CLIFTON JOHNSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC00-554
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Clifton Johnson, 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

Petitioner was charged by information with aggravated battery and strong armed robbery (R 6-7). He was found guilty as charged on Count I, and guilty of the lesser-included offense of attempted strong armed robbery on Count II, after a jury trial (R 17-18; T. 400). Petitioner's sentencing guidelines scoresheet reflected a permitted range of 52.65 to 87.75 months imprisonment (R 54-55). On Count I, Petitioner was sentenced to 25 years prison, including a 10 year mandatory minimum term of incarceration, as a habitual violent felony offender; on Count II, Petitioner was sentenced to 10 years prison, including a five year mandatory minimum term of incarceration, also as a habitual violent felony offender; these sentences were ordered to run concurrently (R 56-57, 59-61; T. 415-416).

On Appeal to the Fourth District Court of Appeal (DCA), Petitioner challenged the constitutionality of Chapter 95-182, Laws of Florida (1995), which modified Section 775.084 (1995), the statutory basis for appellant's designation as a habitual violent felony offender; Petitioner challenged this Session Law on "single-subject" grounds, See Petitioner's Initial Brief to Fourth DCA. That Court denied Petitioner relief on this ground, citing the Fourth DCA's previous decision in Salters v. State, 731 So.2d 826, 827 (Fla. 4th DCA 1998) review denied No. 95,663 (Fla. December 3,

1999), 25 Fla. L. Weekly D587 (Fla. 4th DCA, March 8, 2000). That Court certified conflict between Salter and Thompson v. State, 708 So.2d 315, 317 n.1 (Fla. 2d DCA 1998) reversed 25 Fla. L. Weekly S1 (Fla. December 22, 1999), as to the "window period" for raising single subject matter constitutional challenges. Thereafter, Petitioner filed a Notice of Intent to Invoke this Court's discretionary Jurisdiction on March 10, 2000.

SUMMARY OF ARGUMENT

POINT ON APPEAL

The Fourth DCA erred in Johnson v. State, 25 Fla. L. Weekly D587 (Fla. 4th DCA, March 8, 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 "HABITUAL VIOLENT FELONY OFFENDER" SENTENCING ON COUNTS I-II 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 Johnson v. State, 25 Fla. L. Weekly D587 (Fla. 4th DCA, March 8, 2000), the Fourth DCA rejected Petitioner's "single subject" challenge to Chapter 95-182, Laws of Florida (1995), the Session Law which modified Session 775.084 (1995), the statutory authority for Petitioner's habitual violent felony offender sentence, pursuant to that Court's decision in Salters v. State, 731 So.2d 826 (Fla. 4th DCA 1998) review granted No. 95,663 (Fla. December 13, 1999), which found that the "window period" closed on on October 1, 1996; since Petitioner's crimes occurred on November 1, 1996, the Fourth DCA in Johnson 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. However, Chapter 96-388 was not a biennial adoption of Florida Statutes. Like Chapter 95-182, Laws of Florida (1995), 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 the laws, and this Court will strike down a statute only when there is a plain violation of the constitutional requirement that each enactment shall 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, 356 So.2d 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 prohibiting deed recording without the stating of the grantor's address were held insufficiently related. Similarly, the prohibition of the manufacture 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 created a new crime of "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 habitual violent felony offender sentencing regime was unconstitutionally amended by enactment of 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 November 1,1996, he is entitled to attack the facial constitutionality of his habitual violent felony offender sentences, and thus the Fourth DCA's decision in Johnson must be quashed and remanded with directions that Petitioner's "habitual violent felony offender"

sentences be vacated with directions to the trial court to resentence Petitioner as to Counts I and II of the Information.

CONCLUSION

Johnson v. State, 25 Fla. L. Weekly D5887 (Fla. 4th DCA, March 8, 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 Rochelle Kirdy, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida by courier this _____ day of March, 2000.

_____
Attorney for Clifton Johnson