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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 "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, 750 So. 643 (Fla. 2000).

Respondent's brief on the merits does not live up to its party designation, as that brief does not in any manner "respond" to the "window period" arguments submitted by Petitioner in his initial brief on the merits. Instead, Respondent contends that Petitioner can obtain no relief from any change wrought to his sentencing guidelines scoresheet by Chapter 95-184, Laws of Florida (1995), a statutory provision discussed in Heggs v. State, Case No. SC 93,851 (May 4, 2000).

Needless to say, Respondent's Heggs reference is a confusing nonsequitor, as Petitioner does not make any claim based on his sentencing guidelines scoresheet, which was rendered irrelevant by his sentencing as an habitual violent felony offender. Petitioner's actual challenge was/is to Chapter 95-182, Laws of Florida (1995), which amended the habitual offender statute, Section 775.084, to require a sentencing court to impose a habitual offender sentence if a criminal defendant qualifies for such designation:

775.084 (1)(d)(6) -For an offense committed on or after October 1, 1995, the Court must sentence a defendant who meets the criteria for a habitual felony offender to imprisonment ... unless the Court finds that such sentence is not necessary for the protection of the public . . . .

Previously, under the 1994 habitual felony offender statute, see 775.084 (4) (e)(1993), habitual offender sentencing, as compared to designation, was optional. Hence, Petitioner clearly was adversely affected by the amendments made to Section 775.084 by Chapter 95-182. Since this Court voided that Chapter in its entirety in Thompson, 750 So.2d at 649, Petitioner remains entitled to the relief previously sought, remand for resentencing "in accordance with the valid laws in effect [at the time Petitioner] committed [his] offenses," Id. at 649.

CONCLUSION

Johnson v. State, 25 Fla. L. Weekly D587 (Fla. 4th DCA, March 8, 2000) must be vacated and remanded with proper directions.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Steven 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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