

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-878

VINCENT PARRISH,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S ANSWER BRIEF ON THE MERITS

On review from the
District Court of Appeal, Fourth District

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL
Tallahassee, Florida

CELIA TERENCE
BUREAU CHIEF, WEST PALM BEACH
Florida Bar No. 656879

JOSEPH A. TRINGALI
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 134924
1655 Palm Beach Lakes Boulevard
Suite 300
West Palm Beach, FL 33401-2299
Telephone: (561) 688-7759

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF CONTENTS i

AUTHORITIES CITED ii-iii

PRELIMINARY STATEMENT iv

CERTIFICATE OF TYPE SIZE AND STYLE iv

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3-4

IN LIGHT OF THIS COURT’S RECENT OPINIONS
IN SALTERS AND THOMPSON, RESPONDENT
AGREES THAT PETITIONER’S SENTENCE AS
A VIOLENT CAREER CRIMINAL IS IMPROPER;
PETITIONER MAY BE RESENTENCED AS A HABITUAL
FELONY OFFENDER OF HABITUAL VIOLENT FELONY
OFFENDER (Restated)

CONCLUSION 5

CERTIFICATE OF SERVICE 6

TABLE OF AUTHORITIES

FEDERAL CASES

North Carolina v. Pearce,
395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969) . . . 4

STATE CASES

Bronson v. State,
Case No. SC00-709 4

Fasenmeyer v. State,
457 So. 2d 1361 (Fla. 1984) 4

Norton v. State,
731 So. 2d 762 (Fla. 4th DCA 1999) 4

Salters v. State,
25 Fla. L. Weekly S365 (May 11, 2000). 2

State v. Thompson,
750 So. 2d 643 (Fla. 1999) 2,3

STATE STATUTES

Section 775.084, Fla. Stat. (1994) 2

Section 775.084, Fla. Stat. (1994) 4

PRELIMINARY STATEMENT

Petitioner was the defendant in the trial court below and the appellant in the Fourth District Court of Appeal and will be referred to herein as "Petitioner." Respondent, the State of Florida, was the prosecution in the trial court below and the appellee in the Fourth District Court of Appeal and will be referred to herein as "Respondent" or "the State." Reference to the record on appeal will be by the symbol "R," reference to the transcripts will be by the symbol "T," and reference to Petitioner's brief will be by the symbol "IB," followed by the appropriate page numbers.

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Administrative Order of this Court dated July 13, 1998, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.

JOSEPH A. TRINGALI
Assistant Attorney General

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts for purposes of this appeal subject to the additions and clarifications set forth in the argument portion of this brief which are necessary to resolve the legal issue presented upon appeal.

SUMMARY OF THE ARGUMENT

POINT I In light of this Court's recent opinions in Salters¹ and Thompson², Respondent agrees that Petitioner's sentence as a violent career criminal is improper. However, Respondent submits that the trial court may, at resentencing, sentence Petitioner as either a habitual felony offender or habitual violent felony offender, pursuant to Section 775.084, Fla. Stat. (1994).

¹Salters v. State, 25 Fla. L. Weekly S365 (May 11, 2000).

²State v. Thompson, 750 So.2d 643 (Fla. 1999)

ARGUMENT

IN LIGHT OF THIS COURT'S RECENT OPINIONS IN SALTERS AND THOMPSON, RESPONDENT AGREES THAT PETITIONER'S SENTENCE AS A VIOLENT CAREER CRIMINAL IS IMPROPER; PETITIONER MAY BE RESENTENCED AS A HABITUAL FELONY OFFENDER OR HABITUAL VIOLENT FELONY OFFENDER (Restated).

In light of this Court's recent opinions in Salters and Thompson, Respondent agrees that Petitioner's sentence as a violent career criminal is improper. Based on Salters, Petitioner correctly argues that he has standing to challenge the constitutionality of the statute under which he was sentenced. Further, this Court recently held that Chapter 95-182, which includes the Violent Career Criminal provision under which Petitioner was sentenced, violated the single subject rule and, thus, is unconstitutional. Thompson. Further, since Respondent agrees that Petitioner has standing to challenge his sentence as a violent career criminal, Respondent submits that this Court need not determine the issue of whether Chapter 96-388, Laws of Florida is unconstitutional as violating the single subject rule. Salters.

Respondent submits that, consistent with Salters and Thompson, Petitioner must be resentenced in accordance with the valid laws in effect at the time that Petitioner committed his offense, i.e. November 22, 1996 (R 3-4). In this regard, Respondent notes the State submits that the trial court may, at resentencing, sentence Petitioner as either a habitual felony

offender or habitual violent felony offender, pursuant to Section 775.084, Fla. Stat. (1994).

Respondent submits the State properly served notice on Petitioner that it was seeking to have him sentenced as a habitual felony offender/habitual violent felony offender/violent career criminal (R 16-7). The record indicates that Petitioner clearly qualifies as either a habitual felony offender or habitual violent felony offender (T 459-460); and so long as the new sentence is not vindictive, an imposition of a habitual felony offender sentence would be proper. North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969); Fasenmeyer v. State, 457 So.2d 1361 (Fla. 1984); Norton v. State, 731 So.2d 762 (Fla. 4th DCA 1999).

Accordingly, Respondent agrees that Petitioner must be resentenced, and submits that, consistent with this Court's holdings in Salters and Thompson, he must be resentenced in accordance with the valid laws in effect at the time Petitioner committed his offense, including sentencing as a habitual felony offender or habitual violent felony offender.

CONCLUSION

Wherefore, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests that this Honorable Court AFFIRM Petitioner's convictions and remand for resentencing as aforesaid.

Respectfully submitted,

ROBERT BUTTERWORTH
ATTORNEY GENERAL
Tallahassee, Florida

CELIA TERENCE
BUREAU CHIEF, WEST PALM BEACH
Florida Bar No. 656879

JOSEPH A. TRINGALI
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0134924
1655 Palm Beach Lakes Blvd
Suite 300
West Palm Beach, FL 33401
(561) 688-7759
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Answer Brief on the Merits" has been furnished to: JOSEPH R. CHLOUPEK, Esq., Assistant Public Defender, Fifteenth Judicial Circuit of Florida, The Criminal Justice Building, 421 Third Street, 6th Floor, West Palm Beach, Fl 33401 on this ___ day of May, 2000.

Of Counsel

APPENDIX