

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

FRANK H. MILLS,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 2D03-490

Opinion filed August 29, 2003.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Lee County; Thomas S. Reese, Judge.

DAVIS, Judge.

Frank H. Mills appeals the summary denial of his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). In his motion, Mills alleged that his habitual violent felony offender (HVFO) sentences are illegal based on this court's opinion in Taylor v. State, 818 So. 2d 544 (Fla. 2d DCA), review dismissed, 821 So. 2d 302 (Fla. 2002), which held chapter 99-188, Laws of Florida, unconstitutional. In its response, the State conceded that Mills qualified as a HVFO under the amendments to section 775.084, Florida Statutes (Supp. 1998), in chapter

99-188, but he did not qualify as a HVFO under the valid version of section 775.084 in effect at the time of the offenses. Compare ch. 99-188, § 3, at 1043, Laws of Fla., with § 775.084(1)(b)(2)(b), Fla. Stat. (Supp. 1998). The State asserts that the HVFO designations should be stricken from Mills' sentences. We agree. Therefore, we reverse the trial court's order of denial and remand for correction of Mills' sentences. On remand, if Mills does not qualify as a HVFO under the 1998 version of section 775.084, the trial court shall strike the HVFO designations and minimum mandatory terms from Mills' sentences. We recognize conflict with the Third District in State v. Franklin, 836 So. 2d 1112 (Fla. 3d DCA 2003); and as we did in Taylor, 818 So. 2d at 552, we certify the following questions of great public importance:

1. DOES CHAPTER 99-188, LAWS OF FLORIDA, VIOLATE ARTICLE III, SECTION 6, FLORIDA CONSTITUTION, WHICH PROVIDES THAT EVERY LAW SHALL EMBRACE BUT ONE SUBJECT AND MATTER PROPERLY CONNECTED THEREWITH?
2. IF SO, WHAT IS THE WINDOW PERIOD FOR CHALLENGING THE ACT BASED ON THAT CONSTITUTIONAL INFIRMITY?

Reversed and remanded; conflict and questions certified.

WHATLEY and CANADY, JJ., Concur.