

Supreme Court of Florida

No. SC94474

GILBERT EDWARD SPANN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[March 23, 2000]

PER CURIAM.

We have for review Spann v. State, 719 So. 2d 1031 (Fla. 3d DCA 1998), in which the Third District Court of Appeal affirmed Gilbert Edward Spann's violent career criminal sentence based on its prior decision in Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997). In so affirming, the Spann court certified conflict with the Second District Court of Appeal's decision in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. Based on our decision in State v. Thompson, 25 Fla. L. Weekly S1 (Fla. Dec. 22, 1999), in

which we held unconstitutional chapter 95-182, Laws of Florida, as violative of the single subject rule, we quash the decision below and remand for resentencing in accordance with the valid laws in effect on September 12, 1996, the date on which Spann committed the underlying offense in this case.¹ See Thompson, 25 Fla. L. Weekly at S3 (remanding for resentencing in accordance with the valid laws in effect at the time the defendant committed her offenses).

It is so ordered.

HARDING, C.J., and SHAW, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.
WELLS, J., dissents.

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

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

Third District - Case No. 3D97-2498

(Dade County)

¹ We note that Spann has standing to raise a single subject rule challenge to chapter 95-182, Laws of Florida, even assuming the window period for raising such a challenge closed on October 1, 1996, as determined by the Fourth District Court of Appeal in Salters v. State, 731 So. 2d 826, 826 (Fla. 4th DCA), review granted, No. 95,663 (Fla. Dec. 3, 1999). Further, even though Spann failed to raise a single subject rule challenge in the trial court, we find that such challenge may be properly addressed in this case for the first time on appeal. Cf. Heggs v. State, 25 Fla. L. Weekly S137, S138, S140 n.4 (Fla. Feb. 17, 2000); Nelson v. State, 24 Fla. L. Weekly S250, S251 (Fla. May 27, 1999), cert. denied, 120 S. Ct. 950 (2000); State v. Johnson, 616 So. 2d 1, 3-4 (Fla. 1993).

Bennet H. Brummer, Public Defender, and Howard K. Blumberg, Assistant Public Defender, Eleventh Judicial Circuit, Miami, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and Wendy Benner-Leon, Assistant Attorney General, Fort Lauderdale, Florida,

for Respondent