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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,669

WILFREAD BEAUBRUM,

Petitioner,

vs .

THE STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE DISTRICT  
COURT OF APPEAL FOR THE THIRD DISTRICT, STATE OF FLORIDA

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BRIEF OF RESPONDENT

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INTRODUCTION

The State of Florida was the prosecution in the trial court and Wilfread Beaubrum was the defendant. The parties shall be referred to as they stood in the trial court.

The State of Florida was the appellee in the **District Court** of Appeal, Third District and Wilfread Beaubrum was the appellant.

STATEMENT OF THE CASE AND FACTS

The State accepts the defendant's Statement of the Case and Facts as an accurate reflection of the proceedings below sufficient for the issue on appeal here.

POINT ON APPEAL

WHETHER SECTION 775.084 (AMENDED 1989)  
FLORIDA STATUTES VIOLATES THE SINGLE  
SUBJECT RULE OF THE FLORIDA  
CONSTITUTION.

SUMMARY OF THE ARGUMENT

Defendant incorrectly contends that Section 775.084 is unconstitutional. Chapter 89-280 contains Section 493.321 which sets out the penalty for violation to be as provided in Section 775.084. The sections are therefore naturally and logically connected.

## ARGUMENT

SECTION 775.084 FLORIDA STATUTE'S DOES  
NOT VIOLATE THE SINGLE SUBJECT RULE OF  
THE FLORIDA CONSTITUTION.

The Constitution requires that the subject of a statute be expressed in its title. It provides that every statute must embrace only one subject and matter properly connected therewith, which subject must be briefly expressed in the title. Fla. Const. Article III section 6. This constitutional provision was intended to require that the general nature and substance of the content of the body of the statute be apparent to one who reads it. Kirkland v. Phillips, 106 So.2d 909 (Fla. 1958).

The constitutional provision is designed to prevent the use of misleading titles and the inclusion of unrelated matters in one statute. Defendant here has misconstrued the purpose of this provision. Senate Bill No. 582 discussed amendments to two separate statutes; Section 775.084 and Section 793.318. Section 793.318 makes reference of punishment pursuant to Section 775.084. It does not attempt to "logroll" two separate provisions into one statute but rather amend two separate statutes which are interrelated. (Appendix A).

Defendant relies on Burch v. State, 558 So.2d 1 (Fla. 1990) which answered the certified question as one of great public importance:

Is Section 893.13(i)(e), Florida Statutes  
(1987) Constitutional?

In that case petitioner's initial argument was that Chapter 87-243, Laws of Florida, of which Section 893.13(i)(e) was a part, violates Article III section 6. The State asserted that all sections of the act are naturally and logically connected within the parameters of this Court's interpretation of the single-subject rule. *Id.* at 2. The Supreme Court looked at Chapter 87-243 and determined that each of the areas contained in the act bore a logical relationship to the single subject of controlling crime.

In the case at bar the subjects are related in that Section 493.321 Florida Statutes was **amended** to read:

493.321 Violation; penalty -

(1) Except as provided in 8492.3175 any person who violates any provision of this part is guilty of a misdemeanor of the first degree, punishable as provided in 8775.082, 8775.083, or 8775.084.

(Appendix at 1637)

Therefore, both sections are specifically related **and** are properly dealt within the same chapter.

Defendant further argues that Section 775.084 is facially unconstitutional because it penalizes defendants for their status as habitual offenders. However, the guarantee of equal protection is not violated when prosecutors are given the discretion by law to "habitualize" only some of those criminals who are eligible, even though their discretion is not bound by statute. ~~More~~ selective, discretionary application of a statute is permissible. Only a contention that persons within the habitual offender class are being selected according to some unjustifiable standard such as race, religion or other arbitrary classification would raise a potentially viable challenge. Barber v. State, 564 So.2d 1169 (Fla. 1st DCA 1990).

Defendant also argues that Section 775.084 violates his due process rights because it only makes exceptions for convictions which have been set aside or **pardoned**. It is apparent that the legislature intended to enact this law in the belief that increased sentences for repeat offenders will deter their criminal conduct, at least during the time that they are incarcerated. There can be no question that enhanced punishment of repeat felons is a legitimate goal within the police power. A state "may inflict a deserved penalty merely to vindicate the law or deter or reform the offender or for all of these purposes."<sup>1</sup> The habitual felony offender statute does not violate due process on the ground that it does not contain more than two exceptions.

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<sup>1</sup> Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51, 55, 58, S.Ct. 59, 61, 82 L.Ed. 43, 46 (1937).

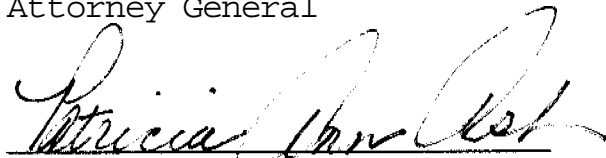
U.S.C.A. Const. Amend. 14; Barber v. State, 564 So.2d 1169 (Fla. 1st DCA 1990); Showers v. State, 570 So.2d 377 (Fla. 1st DCA 1990).

CONCLUSION

For the foregoing argument and authority the **State** of Florida respectfully requests this Court to conclude that Section **775.084** (amended **1989**) Florida Statutes **does** not violate the single subject rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT was furnished by mail to WILFREAD BEAUBRUM, DC# **422276**, Desoto Correctional Institution, P.O. Drawer **1072**, Arcadia, Florida **33821** on this 20th day of October, 1992.



PATRICIA ANN ASH  
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/bfr