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JAN 18 1993

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

WALTER LEE PEARCE,

Petitioner,

vs.

Case no. 80,379

District Court of Appeal
2d District no. 92-02783

STATE OF FLORIDA,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

Petitioner pro se:

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Table of Contents

	Page
Table of Contents	i
Table of Citations	ii
Statement of the Case and Facts	1
Summary of Argument	3
Argument	4
Conclusion	5
Certificate of Service	5

Table of Citations

<u>Cases</u>	<u>Page</u>
<u>Beaubrum v. State</u> , 595 So. 2d 254 (Fla. 3d DCA 1992)	3
<u>Johnson v. State</u> , 589 So. 2d 1370 (Fla. 1st DCA 1991)	3, 4, 5
<u>McCall v. State</u> , 583 So. 2d 411 (Fla. 4th DCA 1991) <u>rev. granted</u> 593 So. 2d 1052 (Fla. 1992)	■ 3, 5
<u>Pearce v. State</u> , 603 So. 2d 1282 (Fla. 2d DCA 1992)(table)	■ 4
 <u>Florida Constitution</u>	
Article 111, Section 6	3
 <u>Florida Statutes</u>	
5775.084	3
 <u>Laws of Florida</u>	
Chapter 89-280	3
 <u>Florida Rules of Court</u>	
Rule 3.850 Florida Rules of Criminal Procedure . .	1
Rule 9.140(g) Florida Rules of Appellate Procedure	1

Statement of the Case and Facts

On June 23, 1990 Pearce committed a burglary and two counts of aggravated assault. Pearce was tried and subsequently found guilty of these charges on February 8, 1991.

On February 8, 1991, the same day the jury reached its verdict of guilty, Pearce was sentenced. The sentencing court used Pearce's past convictions for aggravated battery to find him a violent habitual offender and sentenced him as follows: count one, burglary, natural life with a fifteen year minimum mandatory; count(s) two and three, aggravated assault, ten years with a five year minimum mandatory. All sentences were ordered to run concurrently with one another.

On April 8, 1992 the Petitioner filed a Fla. R. Crim. P. Rule 3.850, Motion for Postconviction Relief, into the Sixth Judicial Circuit Court of Pasco County, Florida, contending that his being sentenced as a violent habitual offender was in error for its being based upon an unconstitutional amendment to the habitual offender statute. The Sixth Judicial Circuit Court denied Petitioner's postconviction motion on May 28, 1992 and the Petitioner appealed.

On July 6, 1992 Pearce filed a Fla. R. App. P. Rule 9.140(g) appeal for the summary denial of his postconviction motion into the Second District Court of Appeals. This appeal was

decided on August 7, 1992. See Pearce v. State, 603 So. 2d 1282 (Fla. 2d DCA 1992)(table) citing McCall v. State, 583 So. 2d 411 (Fla. 4th DCA 1991) rev. granted 593 So. 2d 1052 (Fla. 1992).

This petition for discretionary review follows:

Issue

WHETHER THE 1989 AMENDMENTS TO THE HABITUAL
OFFENDER STATUTE VIOLATES THE SINGLE SUBJECT
RULE OF ARTICLE 111, SECTION 6, OF THE
FLORIDA CONSTITUTION

In Johnson v. State, 589 So. 2d 1370 (Fla. 1st DCA 1991) **the** First District Court of Appeal held Chapter 89-280, Laws of Florida, which amended section 775.084, Florida Statutes, is violative of the one-subject rule **of** the Florida Constitution.

The Third and Fourth District Courts' of Appeal in Beaubrum v. State, 595 So. 2d 254 (Fla. 3d DCA 1992) and McCall, supra., respectively, have held contrarily to the Johnson decision on the same subject matter; thus creating a direct conflict among the three appellate courts.

The instant case is factually similiar to Johnson and merely awaits this Court's clarification of the Johnson, McCall and Beaubrum cases.

Argument

Pearce meets all the criterion necessary to have his sentence vacated under the findings of Johnson, supra., i.e., (1) Pearce is serving an habitual violent offender sentence where the only qualifying prior is an aggravated battery; and, (2) Pearce's crime was committed between October 1, 1989 and May 2, 1991 (the effective date of the 1989 amendments and the date the amendments were re-enacted respectively).

Petitioner in the present case is proceeding pro se and will defer any in-depth argument on the constitutional implications of the 1989 amendments to those professionals that will be arguing this point before the Court. Furthermore, on November 2, 1992 this Court held oral arguments on this very same issue and Petitioner questions the likelihood of his being able to offer any useful information. In the event that this Court rules that the 1989 amendments to the habitual offender statute do violate the single subject rule, Petitioner would respectfully seek **to** have the Second DCA's affirmance of Pearce, supra., reversed on this new holding.

Conclusion

Wherefore, Petitioner would respectfully request that this Court reverse the lower court's affirmance based upon its holdings in **the** Johnson and McCall rulings.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. **Mail** on this 11 day of January, 1993, to the offices of: Donna A. Provonsha, Asst. Attorney General, Suite 700, 2002 North Lois Avenue, Tampa, Florida 33607.