

Supreme Court of Florida

No. SC02-2630

SCOTT HERSEY,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC03-401

HOWARD H. LEWIS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC03-404

TONY DERAMOUS OLIVER,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC03-537

KYLE SHIVER,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC03-770

ROBERT CLAYTON,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC03-1767

HENRY L. FILLYAW,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC03-1828

ANA M. PENA,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC03-2383

PATRICK G. TAYLOR,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC04-57

ALBERT H. LAWHON,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[April 21, 2005]

PARIENTE, C.J.

We have for review the decisions in these cases, which concern the constitutionality of chapter 99-188, Laws of Florida, known as the “Three-Strike Violent Felony Offender Act” (the Act). In Hersey v. State, 831 So. 2d 679, 680 (Fla. 5th DCA 2002), the Fifth District Court of Appeal concluded that the Act violated the single subject clause in article III, section 6 of the Florida Constitution, but ultimately upheld the sentence imposed pursuant to chapter 99-188 on grounds that the Act’s infirmity was retroactively cured by legislation enacted in 2002. The other cases under review herein were decided accordingly.¹ In each case, the Fifth

1. The Fifth District ultimately receded from Hersey and held that the 2002 legislation could not retroactively cure the single subject violation without violating the ex post facto clauses of the state and federal constitutions. See Jones v. State, 872 So. 2d 938, 940 (Fla. 5th DCA 2004). We also have Jones and its

District certified either a question of great public importance or conflict with Green v. State, 839 So. 2d 748 (Fla. 2d DCA 2003), quashed, State v. Green, 887 So. 2d 1089 (Fla. 2004), on the constitutional validity of the retroactive cure. We have jurisdiction, see art. V, § 3(b)(3)-(4), Fla. Const., and consolidate these cases for disposition.

We expressly disapprove of the Fifth District's conclusion that a single subject violation occurred. See Franklin v. State, 887 So. 2d 1063, 1067 (Fla. 2004) (holding that chapter 99-188 did not violate the single subject rule). Our conclusion that no single subject violation occurred renders it unnecessary for us to address whether the retroactive application of the 2002 legislation to crimes occurring before that legislation took effect would be a violation of the ex post facto clauses of the Florida and United States Constitutions. See State v. Green, 887 So. 2d 1089, 1090 (Fla. 2004). Because the Fifth District also determined that these sentences were valid, albeit on different grounds, these cases need not be remanded for further proceedings.

It is so ordered.

WELLS, ANSTEAD, CANTERO, and BELL, JJ., concur.
QUINCE, J., dissents with an opinion.
LEWIS, J., dissents.

Fifth District progeny for review, and address those cases in a separate opinion. See State v. Jones, No. SC04-706 (Fla. April 21, 2005).

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

QUINCE, J., dissenting.

I dissent for the same reasons expressed in my dissenting opinion in Franklin
v. State, 887 So. 2d 1063 (Fla. 2004).

Nine Cases:

SC02-2630

Application for Review of the Decision of the District Court of Appeal - Certified
Great Public Importance

Fifth District - Case No. 5D01-2314

(Osceola County)

James B. Gibson, Public Defender and Nancy Ryan, Assistant Public Defender,
Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida and Mary G. Jolley,
Assistant Attorney General, Daytona Beach, Florida,

for Respondent

SC03-401

Application for Review of the Decision of the District Court of Appeal - Certified
Great Public Importance

Fifth District - Case No. 5D02-1161

(Orange County)

James B. Gibson, Public Defender and Nancy Ryan, Assistant Public Defender,
Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida and Mary G. Jolley and
Kellie A. Nielan, Assistant Attorneys General, Daytona Beach, Florida,

for Respondent

SC03-404

Application for Review of the Decision of the District Court of Appeal - Certified
Great Public Importance

Fifth District - Case No. 5D01-3510

(Orange County)

James B. Gibson, Public Defender and Meghan Ann Collins, Assistant Public
Defender, Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Angela D.
McCravy, Assistant Attorney General, Daytona Beach, Florida,

for Respondent

SC03-537

Application for Review of the Decision of the District Court of Appeal - Certified
Great Public Importance

Fifth District - Case No. 5D03-125

(Orange County)

Kyle Shiver, pro se, Apopka, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Robin Angie
Compton, Assistant Attorney General, Daytona Beach, Florida,

for Respondent

SC03-770

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

Fifth District - Case No. 5D01-3213

(Brevard County)

James B. Gibson, Public Defender and Nancy Ryan, Assistant Public Defender,
Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Wesley Heidt,
Assistant Attorney General, Daytona Beach, Florida,

for Respondent

SC03-1767

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

Fifth District - Case No. 5D02-923

(Orange County)

James B. Gibson, Public Defender and Brynn Newton, Assistant Public Defender, Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Judy Taylor Rush, Assistant Attorney General, Daytona Beach, Florida,

for Respondent

SC03-1828

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

Fifth District - Case No. 5D02-4080

(Orange County)

Michael Dominick Dicembre, Orlando, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Robin Angie Compton, Assistant Attorney General, Daytona Beach, Florida,

for Respondent

SC03-2383

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

Fifth District - Case No. 5D03-2780

(Orange County)

Patrick G. Taylor, pro se, Daytona Beach, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Daytona Beach, Florida,

for Respondent

SC04-57

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

Fifth District - Case No. 5D03-3826

(Orange County)

Albert H. Lawhon, pro se, Sanderson, Florida,

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, and Pamela J. Koller, Assistant Attorney General, Daytona Beach, Florida,

for Respondent