Editor's note: opinion released October 17, 2000

SUPREME COURT OF LOUISIANA

NO. 99-K-2935

STATE OF LOUISIANA

versus

ALTON TAYLOR

c/w
No. 99-KP-2937

STATE OF LOUISIANA

versus

JESSE CLARK

c/w
No. 99-K-2938

STATE OF LOUISIANA

versus

JOSEPH DUPLESSIS, III

Johnson, J., Dissenting

I disagree with the majority's conclusion that a defendant may be considered for the Drug Probation Program only upon the recommendation of the district attorney under La. R.S. 13:5304. The district attorney apparently believes that it is his sole prerogative to decide who will be given the opportunity to participate in this program, which is made available by our legislature to individuals who suffer from alcohol or drug addiction and who meet all other criteria in La. R.S. 13:5304(B). The majority has accepted this view by saying that the district attorney acts as the gatekeeper and has the sole discretion to decide who will be recommended. This interpretation of the statute is not in accordance with the explicit language of the statute, the legislative intent, nor the statute's stated purpose.

As stated by the majority, statutory interpretation begins with the language of the statute. *Bailey v. United States*, 516 U.S. 137, 144 (1995). The statute reads in

pertinent part:

> "The district attorney *may* propose to the court that an individual defendant be screened for eligibility as a participant in the drug division probation program." La. R.S. 13:5304(B)(1)."

La. R.S. 13:5304(B)(11) further provides that:

> "the judge shall make the final determination of eligibility. If, *based on the examiner's report and the recommendations of the district attorney and the defense counsel*, the judge determines that the defendant should be enrolled in the drug division probation program, the court shall accept the defendant's guilty plea..." (emphasis added).

The majority concludes that the language of the statute makes clear that the court can only act upon recommendation of the district attorney. I disagree .

It is clear that the statute does not say "*only* upon motion of the district attorney." Further, the statute does not say that the court cannot, on request of the defendant, or on its own motion, have the defendant screened for drug court program eligibility. Moreover, the import of §5304(B)(11)(a) is that whether the district attorney recommends placement in the drug probation program is only one factor to be considered by the Court. The section implies that the Court's determination as to eligibility should be based upon the weight of the combination of three enumerated factors. Thus, if the examiner's report is strongly in favor of participation, that factor could be dispositive, regardless of whether the district attorney recommends the defendant for the Drug Court program.

This interpretation is supported by the legislative intent. The majority points out that when H.B. 2412 went to the state Senate, it was amended to eliminate from subsection H (the precursor to La. R.S. 13:5304(H)), the sentence which expressly provided "*The district attorney shall retain the sole and exclusive right to recommend candidates for the drug division probation program*." (emphasis added). I find that it is illogical to presume that the legislature intended this statute

to have the interpretation adopted by the majority, when it specifically deleted the language which would have given the district attorney the gatekeeping function.

The majority's interpretation of the statute also conflicts with the statute's stated goals as set forth in La. R.S. 13:5302:

> (1) To reduce alcoholism and drug abuse and dependency among offenders.
> (2) To reduce criminal recidivism.
> (3) To reduce the alcohol and drug-related workload of the courts.
> (4) To increase the persona, familial, and societal accountability of offenders.
> (5) To promote effective interaction and use of resources among criminal justice personnel and community agencies.
> (6) To reduce the overcrowding of prisons.

There were statistics presented to this Court from a staff report of the Orleans Criminal District Court, section E, which shows that there were 97 persons involved in section E's program, none of whom were recommended by the district attorney. Of the 97 persons, only one was re-arrested. The record reveals that the Orleans Parish district attorney takes the position that the program only applies to misdemeanors and not to felony offenses and he has objected to the program in every case in which a felony offense is involved. The staff report reveals that where the drug probation program is used, recidivism is low and the legislative purpose of this program is being carried out. To allow the district attorney to arbitrarily pick and choose what offenses and which defendant's will be recommended for the drug probation program greatly limits the number of persons who will have the opportunity to participate in the program and consequently diminishes the effectiveness and purpose of the program.

If we accept the majority's interpretation, any district attorney could deny persons the opportunity to participate in this program, and effectively shut down the Drug Courts, without reason.

I would hold that the district attorney does not have the sole discretion to determine who should be allowed to participate in the drug probation program. It

was not the legislative intent to give such exclusive power to the district attorneys.