

SUPREME COURT OF LOUISIANA

No. 99-K-2935

STATE OF LOUISIANA

Versus

ALTON A. TAYLOR

Consolidated with

No. 99-KP-2937

STATE OF LOUISIANA

Versus

JESSE CLARK

Consolidated with

No. 99-K-2938

STATE OF LOUISIANA

Versus

JOSEPH DUPLESSIS, III

LEMMON, J., Concurring

La. Rev. Stat. 13:5304 provides a diversionary procedure that is initiated after charging and prior to trial.¹ Therefore, this statute providing for pre-trial initiation of the eligibility process (at which time the district attorney can still reduce or dismiss the charge) involves a prosecutorial function.² As such, the statute is vastly different from

¹If the district attorney recommends that the defendant be screened for eligibility, the judge makes the determination that the defendant is acceptable. And if the defendant is accepted into the program, he or she must plead guilty.

²One of the defendants quotes a transcript statement by an assistant district attorney that the program only applies to misdemeanants, and defendant complains that a felon has never been recommended for eligibility in this district. The program,

the statute in State v. LeCompte, 406 So. 2d 1300 (La. 1981), which involved a post-conviction sentencing procedure, a function reserved exclusively to the judicial branch.

of course, is also designed for felons, as shown by the exception in La. Rev. Stat. 13:5304(D), making La. Code Crim. Proc. art. 893(A) and (D) inapplicable to prosecutions in drug division probation programs.