

SUPREME COURT OF LOUISIANA

No. 00-K-1725

STATE OF LOUISIANA

Versus

SIDNEY WILLIAMS

LOBRANO, Justice *Pro Tempore*, Concurring

In 1984, the legislature amended Code of Criminal Procedure Article 882 to provide that a reviewing court could correct an illegal sentence. This court negated the effect of that amendment in State v. Fraser, 484 So. 2d 122 (La. 1986) by holding that an appellate court could not correct an illegal sentence, sua sponte. In 1999, the legislature enacted La. R.S. 15:301.1 for the intended purpose of overruling State v. Jackson, 452 So. 2d 682 (La. 1984), and its progeny, which includes Fraser. However, that statute is ambiguous, redundant and conflicts with other statutes, including Article 882. The majority correctly notes that the present case does not fall within the purview of La. R.S. 15:301.1 and that the court of appeal's authority to do what it did emanates from Article 882.¹ The majority also correctly finds that the sua sponte correction of an illegal sentence by an appellate court violates no constitutional provisions simply because no one has a constitutional right to an illegal sentence. Therefore I see no reason to rely on La. R.S. 15:301.1 to support the appellate court's decision. I am of the opinion that Fraser was incorrectly decided and that La. C.Cr. Pro. arts. 882 and 920 give a reviewing court the authority to, sua sponte, correct an illegal sentence. For that reason, I agree with the majority result.

¹See footnotes 6 and 11 of the opinion.

Since the majority recognizes that this case does not fall within the purview of La. R.S. 15:301.1, and that the court of appeal's authority emanates from La. C.Cr.P. art. 882,² I am not sure why the retroactivity of La. R.S. 15:301.1 or its application is discussed. Because I believe that La. C.Cr.P. arts. 882 and 920 permit an appellate court to correct illegal sentences, *sua sponte*, and that *State v. Fraser*, 484 So. 2d 122 (La. 1986) was wrongfully decided, I concur with the majority's result in this case. Candidly, I find the wording of La. Rev. Stat. 15:301.1 unclear and ambiguous. If the intent of the statute was to overrule *State v. Jackson*, 452 So. 2d 682 (La. 1984), its language makes such an interpretation difficult. However, because the majority adequately addressed the constitutional concerns of correcting illegal sentences by a reviewing court, *sua sponte*, I would overrule *Fraser*.

²See footnotes 6 and 11 of the opinion.