

SUPREME COURT OF LOUISIANA

No. 01-K-3407

STATE OF LOUISIANA

VERSUS

DANIEL SUGASTI

Johnson, J., dissenting

I disagree with the majority’s conclusion in this case. It is illogical to conclude that the legislature intended that drunk drivers convicted under La. R.S. 14:98(G) must be sentenced under the post-amendment provisions, even though the underlying offense occurs prior to the amendment, based on the stated legislative purpose, but conclude that the legislature did not intend the same result for those offenders found guilty of minor drug offenses under La. R.S. 40:966(C), as the defendant, Daniel Sugasti, in the instant case. The legislature clearly intended that third and fourth DWI offenders under La. R.S. 14:98(G), as well as drug offenders (convicted of possession) under La. R.S. 40:966(C), benefit from the more rehabilitative and less onerous sentencing provisions.¹ Scientific studies recognize both alcoholism and drug dependency as addictive behaviors. But, statistics also show that damages caused by repetitive DWI offenders on the nation’s highways are far more costly in money damages and innocent human lives than the harm posed by drug possession offenders.

The majority, in the instant case, holds that the amendment to La. R.S. 40:966(C), allowing a suspended sentence, applies only to those cases in which the underlying offense occurred after the effective date of the statutory

¹Distribution, manufacture, and possession with intent to distribute provisions are not at issue in this case. La. R.S. 40:966(A) and (B)

amendment.² Therefore, Sugasti, who was charged on September 5, 1998 (prior to the amendment) with possession of heroin in violation of La. R.S. 40:966(C) must be sentenced under the statute as it read prior to the amendment, even though he was convicted and sentenced after the effective date of the amendment. In so holding, the majority relies primarily on the proposition that the law in effect at the time of the commission of the offense is determinative of the penalty which the convicted accused must suffer. *State v. Wright*, 394 So.2d 399, 401 (La. 1980); *State v. Narcisse*, 426 So.2d 118, 130131 (La. 1983) (a defendant must be sentenced according to sentencing provisions in effect at the time of the commission of the offense).

However, this Court held in *State v. Michael Mayeaux*, 01-KK-3195 (La. 6/ /02), ___ So.2d ___, decided on the same day as the instant case, that the trial court erred in sentencing the defendant under the penalty provisions of LA. R.S. 14:98(G) as it existed at the time of the defendant's DWI offense, rather than at the time of his conviction. In *Mayeaux*, we reasoned that although Louisiana courts have generally held that the law in effect at the date of the offense should control, the statutory language and legislative purpose behind the statutory amendment of La. R.S.14:98(G) dictates that the amendment be applied to even those defendants having committed an offense prior to the effective date of the amendment.

I believe that the same rationale as expressed by this Court in *Mayeux* should apply in the instant case. As pointed out in the majority's decision, the legislature has enacted changes in certain penalty provisions in an attempt to

²Prior to the 2001 amendment, the penalty for possession of heroin was not less than four nor more than ten years imprisonment at hard labor without benefit of probation or suspension of sentence. The amendment, effective June 15, 2001, deleted the language "without benefit of probation or suspension of sentence."

reduce incarceration rates for non-violent offenders and ease the financial burden on the State. Like the amendment to La. R.S.14:98(G), the amendment to La. R.S. 40:966(C), under which Sugasti was sentenced, is an example of such a non-violent offense which the legislature has chosen to impose a more lenient sentence. The legislative intent to transform sentencing for non-violent crimes into a more rehabilitative nature is made clear by a review of the legislative history of such amendments.

Regarding the amendment to La. 14:98(G), House Bill No. 665, Representative Odinet explained that “the purpose of the proposed legislation was twofold: (1) to give treatment to those in need of treatment; and (2) to allow incarceration to be reduced to allow more space in the state prisons for violent criminals.” He further explained:

[t]he bill is fiscally responsible and beneficial to the people of Louisiana as the state spends a great deal of money on incarceration. When someone has a problem, they need treatment; by providing the treatment, the state can reduce its repetitive costs for incarceration as a result of DWI offenses and gives these offenders an opportunity to not return to that style of behavior. This benefits the state and the individual.

Senator C.D. Jones presented Senate Bill No. 239, proposed amendment to La. R.S. 40:966(C). Senator Jones concluded that “the proposed bill would maintain public safety and protect our citizens, while at the same time, give some relief to the overcrowded prison situations. Governor Mike Foster also appeared in support of the bill and stated that “anything that could be done to look at the entire system, rid the state of the title of the highest incarceration rate in the nation, stop the increase in violent crimes, and rehabilitate those who are not violent criminals should be supported.” The legislative purpose behind the amendments to both La. R.S. 14:98(G) and La. R.S. 40:966(C) are the same.

In sentencing Sugasti under the post-amendment sentencing provisions of La. R.S. 40:966(C), the trial court stated:

“[s]ection 6 of the new act says that the effects shall be prospective only. And the court believes that since the Court is giving this sentence after the effective date of the act, that is prospective to the effective date of the act... The Court does believe that the sentence is not part of the substantive facts of the crime and therefore the law requires that the Court consider the sentence that the Legislature has enacted as of the date of the sentencing.”

I agree with the trial court’s reasoning. Accordingly, I would reverse the court of appeal’s decision vacating Sugasti’s sentence and reinstate the trial court’s sentence under the amended penalty provisions of La. R.S. 40:966(C).