

**SUPREME COURT OF LOUISIANA**

**No. 01-KK-3195**

**STATE OF LOUISIANA**

**v.**

**MICHAEL J. MAYEUX**

KIMBALL, Justice, dissenting

I dissent from the majority’s decision to apply the sentencing provisions in effect at the time of defendant’s conviction rather than those in effect at the time he committed the offense. It has long been held in this state that “[w]here there has been an ameliorative change in the penalty provision of a statute that takes effect after the date of the offense, but before trial or final judgment, it is the rule in this state that the penalty provision in effect at the time of the offense is the applicable provision.” *State v. Clark*, 391 So.2d 1174, 1176 (La. 1980). The majority’s attempt to distinguish *Clark* from the instant case by stating that nothing in the language of the statute at issue in *Clark* changed except the term of imprisonment is unpersuasive in light of the strong principle enunciated in *Clark*.

Louisiana courts have consistently applied this rule and the legislature must be presumed to be aware of it. Because the legislature did not explicitly state its intention that the new law should apply to those cases in which the offense was committed prior to the effective date of the Act, the majority strains to infer that intent. As pointed out by Justice Victory’s dissent, the fact that the statute utilizes the phrase “upon conviction” is not at all unusual language that can be said to repudiate the general rule. Additionally, although the legislature stated that conviction of a

third or subsequent DWI offense is presumptive evidence of the existence of a substance abuse disorder and that there are successful treatment methods available for such disorders, this statement does not evidence a clear intent to “embrace treatment measures in preference to incarceration,” Slip Op. at p. 5, especially in light of the fact that incarceration remains mandatory.

In my view, this court, in the absence of the expression of explicit legislative intent to the contrary, should continue to apply the longstanding rule that even in the case of an ameliorative change in the penalty provision of a statute, the penalty provision in effect at the time of the offense is the applicable provision. I would therefore affirm defendant’s sentence in accordance with the law in effect at the time of the commission of the offense.