

SUPREME COURT OF LOUISIANA

No. 01-KK-3195

STATE OF LOUISIANA

versus

MICHAEL J. MAYEUX

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIFTH CIRCUIT, PARISH OF JEFFERSON

VICTORY, J., dissenting.

I dissent from the majority’s ruling that the district court erred in sentencing defendant under the provisions of La. R.S. 14:98E in effect at the time of his offense rather than at the time of his conviction. This Court has consistently held that the law in effect at the time of the commission of the offense is determinative of the penalty. *State v. Wright*, 384 So. 2d 399 (La. 1980); *State v. Narcisse*, 426 So. 2d 118 (La. 1983). In fact, we affirmed this concept in two rulings today. *State v. Sugasti*, 01-3407 (La. 6//02); *State v. Wayne Mayeux*, 01-3408 (La. 6//02). I disagree with the reasoning of the majority for deviating from this rule in this case.

First, the fact that La. R.S. 14:98E states that “on . . . conviction” and not “upon committing the offense,” the defendant shall be sentenced to a specific term is not determinative of this issue. This is not unique wording. In the revised statutes alone, at least 37 statutes use language based on the time of conviction to determine the sentence. See La. R.S. 4:149.1; 4:171.1; 6:121.5; 6:1099; 9:3518.2; 9:3553; 9:3573.13; 14:79; 14:18.2; 14:94; 14:95; 14:95.8; 14:98; 14:98.1; 14:102.2; 14:106; 14:283; 15:529.1; 15:542; 15:574.4; 17:172; 18:1506.6; 30:2531; 30:2531.1; 32:1236; 33:4753.1; 37:154; 37:700; 40:966; 40:971; 40:979; 40:982; 40:1645;

40:1715; 40:2608; 47:2607. In fact, this language is used in different sections of the statute at issue in *State v. Sugasti*, *supra*, i.e., La. R.S. 40:966 dealing with controlled dangerous substances, and provides the penalties for manufacture and distribution under La. R.S. 40:966(A) and (B) and the penalties for possession of marijuana under La. R.S. 40:966(D) “upon conviction.”

Secondly, the legislative purpose stated in La. R.S. 14:98(G) of favoring treatment over incarceration cannot overcome the presumption against the retroactivity of laws. Knowing that this Court has consistently applied the penalty provisions in effect at the time of the commission of the offense, had the legislature intended for any provisions of La. R.S. 14:98 to have retroactive, rather than prospective, effect, it would have clearly said so. Yet, the legislature in La. R.S. 1:2 had clearly stated its default position, i.e., if we do not say that it is retroactive in the statute, it is not.

Finally, that home incarceration might not be available for those charged but not convicted prior to August 15, 2001, is far too tenuous a reason to depart from our well-established rules relating to sentencing. In all probability, if there is a problem, the legislature simply overlooked it and was not in any way suggesting that the sentencing changes in La. R.S. 14:98 be applied to crimes committed before the changes went into effect.