

SUPREME COURT OF LOUISIANA

NO. 07-KP-0634

STATE OF LOUISIANA

VS.

WILLIS THOMAS

**ON WRIT OF CERTIORARI TO THE TWENTY-FOURTH
JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON**

JOHNSON, Justice, dissents and assigns reasons.

I dissent from the per curiam opinion vacating the district court's grant of the defendant's motion for suspension of sentence and probation. Contrary to the per curiam opinion, I find that Thomas had the right to apply for suspension of sentence and probation after serving twenty years of his life term.

Defendant, Willis Thomas, was indicted for first degree murder on May 7, 1975. Pursuant to a plea agreement, Thomas pled guilty to second degree murder on November 3, 1975, and was sentenced to life imprisonment at hard labor without the benefit of parole, probation or suspension of sentence for a period of twenty years.

In August of 2006, Thomas filed a motion in the trial court requesting that his sentence be suspended and that he be placed on probation. The trial court granted Thomas' motion, and the State filed the instant writ application.

At the time of the offense, La. R.S. 14:30.1, as enacted by 1973 La. Acts 111§ 1, provided that "[w]hoever commits the crime of second degree murder shall be imprisoned at hard labor for life and shall not be eligible for parole, probation or

suspension of sentence for a period of twenty years.” Thus, the law in effect at the time of the offense provided that Thomas could be considered for probation after he had served twenty years of the life sentence.

La. C. Cr. P. art. 893 regulates the suspension of sentences and probation in felony cases. The version of La. C. Cr. P. art. 893 which was in effect at the time of the offense provided that “[t]he court shall not suspend a felony sentence after the defendant has begun to serve the sentence.” However, 1973 La. Acts 111 incorporated a repeal provision, annulling any prior law that may have prohibited the suspension of such a sentence. 1973 La. Acts 111 § 4 provided that “[a]ll laws or parts of laws in conflict herewith are hereby repealed.” In my view, this language implicitly repealed the language of La. C. Cr. P. art. 893 with respect to its prohibition of probation and suspension of sentences after the defendant has begun to serve the sentence. As a result, the enactment of an indeterminate punishment provision by 1973 La. Acts 111 § 1 granted the trial court the authority to suspend a sentence after the defendant has served twenty years of his sentence. Such authority remains intact today, as the legislature’s 1987 amendment of La. C. Cr. P. art 893 reads, in pertinent part: “*Except as otherwise provided by law, the court shall not suspend a felony sentence after the defendant has begun to serve the sentence.*”

In my view, Thomas had the right to seek suspension of his sentence and probation from the trial court. Thus, in my opinion, the per curiam opinion errs in vacating the trial court’s judgment on the basis that the defendant is precluded from seeking suspension of his sentence.

For the above reasons, I respectfully dissent.