

SUPREME COURT OF LOUISIANA

No. 96-KA-0991

STATE OF LOUISIANA

Versus

WILFRED ROME

LEMMON, J., Concurring

It is the function of the legislative branch to fix the range of sentences for defined crimes; it is the function of the judicial branch to exercise discretion in selecting the sentence for a particular criminal act, within the range fixed by the Legislature (as long as the sentence is not constitutionally excessive).

If the judge selects a sentence that involves confinement in an adult penal institution, the Department of Public Safety and Corrections selects the particular institution at which the defendant is to be confined. La. Rev. Stat. 15:824. This procedure does not violate the separation of powers doctrine. Neither is that doctrine violated by the requirement that the Department's probation and parole division recommend home incarceration in lieu of imprisonment (generally in the pre-sentence investigation report) in order to make home incarceration an option available to the sentencing judge,¹ particularly since the judge has the discretion to accept or reject the recommendation and to choose the sentence ultimately imposed.

¹Of course, the sentencing judge can request a recommendation of home incarceration for a particular defendant.