

SUPREME COURT OF LOUISIANA

NO. 97-KK-1906

STATE OF LOUISIANA

VERSUS

WALTER JOHNSON

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS, STATE OF LOUISIANA

JOHNSON, J. Dissenting

It is completely discretionary with each district attorney as to which cases he will prosecute and which cases he will nolle prosequi. He also decides when to file multiple offender bills leading to severe mandatory minimum sentences.

Since the purpose of the multiple offender legislation is to rid the community of violent repeat offenders, I wonder how the public is being served when a defendant in possession of drug paraphernalia which contains a residual amount of cocaine is charged with possession of cocaine, rather than possession of drug paraphernalia, as well as possession of marijuana which would ordinarily be misdemeanor offenses. Moreover, this defendant's previous convictions for illegal possession of stolen property (twice) and theft do not characterize him as a violent offender.

Our citizens often complain about the amount of their tax dollars spent annually to maintain those incarcerated, and about the limited jail space, which should be reserved for occupancy by violent criminals or those convicted of more serious crimes. This defendant, although a multiple offender, with a history of drug use, has no history of violent crimes.

There are hundreds of non-violent offenders incarcerated in Louisiana prisons because they were addicted to drugs and did not have the financial resources for detoxification and rehabilitation in a medical facility. We as a society are more forgiving when professionals commit non-violent crimes to fund their addiction.

A sentence is constitutionally excessive when it is grossly out of proportion to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. *State v. Lobato*, 603 So. 2d 739, 751 (La. 1992), citing *State v. Bonanno*, 384 So. 2d 355 (La. 1980). A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *Lobato*, 603 So. 2d at 751, citing *State v. Hogan*, 480 So. 2d 288 (La. 1985).

Walter Johnson has already served the thirty (30) month sentence imposed by the trial court and returned to the community, a circumstance with significant due process implications for any attempt to reincarcerate him.

For the foregoing reasons, I respectfully dissent.

