

SUPREME COURT OF LOUISIANA

No. 96-KK-2719

STATE OF LOUISIANA

Versus

MICHAEL FERNANDEZ

JOHNSON, J., Dissenting

The majority has decided to effectively overrule nearly two decades of jurisprudence and return to an antiquated standard of determining whether the rights of our juveniles are violated where a confession is made without a knowing and voluntary waiver. In my opinion, the principles established in State in the Interest of Dino, 359 So. 2d 586 (La.), cert. denied, 439 U.S. 1047 (1978) clearly provide the additional protection to which minors are entitled. These principles were codified by our Legislature upon creation of the Louisiana's Children's Code. See 1991 La. Acts 235 §§ 1 to 16.

To ensure that the rights of a juvenile taken into custody were not violated, this court determined that "the general policy of our law" protects all minors from any possible consequences associated with their immaturity. Moreover, Dino states:

"Because most juveniles are not mature enough to understand their rights and are not competent to exercise them, the concepts of fundamental fairness embodied in the Declaration of Rights of our constitution require that juveniles not be permitted to waive constitutional rights on their own. For these reasons we hold that in order for the State to meet its heavy burden of demonstrating that a waiver is made knowingly and intelligently, it must affirmatively show that the juvenile engaged in a meaningful consultation with an attorney or an informed parent, guardian, or other adult interested in his welfare before he waived his right to counsel and the privilege against self-incrimination."

See Dino, 359 So. 2d at 594. [*footnotes omitted*].

By eliminating the prophylactic requirements adopted in Dino and holding

juvenile defendants to the exact standard as adults in determining whether a confession was given without a knowing and intelligent waiver, the majority ignores the protection we have always given minors based on their immaturity. We would never evaluate a minor's age, experience, background and intelligence before deciding whether (s)he should be admitted to a bar or gambling casino. As a society, we have determined to hold the line and protect minors from the evils of gambling and purchasing alcohol until the age of 21, and from any harm associated with tobacco products until the age of 18.

Michael Fernandez would not have had the privilege to legally consume alcohol or gamble in Louisiana because he was "almost seventeen". Yet the majority will allow him to waive more fundamental rights without the presence and counsel of an attorney, parent or guardian. In light of the restrictions in situations involving rights that are less deeply-rooted than Miranda, coupled with the lack of proof that juveniles are more mature, intelligent, sophisticated or responsible, the majority's conclusions present an unwaivering conflict to which I cannot subscribe. For the foregoing reasons, Dino should be upheld in its entirety, and I respectfully dissent.