

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA IN THE INTEREST
OF N.S.

No.2020-CK-01171

IN RE: Confidential Party - Applicant Other; Applying For Writ Of Certiorari,
Parish of Orleans Criminal, Orleans Juvenile Court Number(s) 2019-339-02-DQ-F,
Court of Appeal, Fourth Circuit, Number(s) 2020-CA-0345;

December 08, 2020

Writ application granted. See per curiam.

SJC

BJJ

JLW

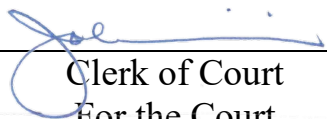
JTG

WJC

JBM

Hughes, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
December 08, 2020



Clerk of Court
For the Court

12/08/20

SUPREME COURT OF LOUISIANA

No. 2020-CK-01171

STATE IN THE INTEREST OF N.S.

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

PER CURIAM:

Writ granted. The Orleans Parish Juvenile Court adjudicated N.S., along with two fellow juveniles, delinquent of violating La. R.S. 14:64.2, relative to carjacking. The juvenile court issued a written judgment of disposition for the three girls on February 19, 2020 sentencing them each to “juvenile life” in the custody of the Office of Juvenile Justice (OJJ) pursuant to La. Ch.C. art. 898(A). The court announced that the girls would be eligible to seek modification after spending four years in custody, but barred consideration of a motion to modify the disposition to release from OJJ custody.¹ On appeal, the court of appeal affirmed N.S.’s adjudication and amended her disposition to remove the erroneously imposed four-year prohibition on modification. *State in the Interest of N.S.*, 20-0345, p. 1 (La. App. 4 Cir. 10/5/20), — So.3d. —, available at 2020 WL 5887281.²

N.S. filed an application for writ of review with this Court arguing her disposition was excessive. The only upper limits the Children’s Code places on a

¹ In pertinent part, the disposition read: “The Court further notes that it will only consider a motion to modify the disposition to stepped-down custody to non-secure care. The Court will not consider a motion to modify the disposition to release from Office of Juvenile Justice custody.”

² The appellate court provided the same amendment to the dispositions of N.S.’s co-defendants. *See State in the Interest of M.R.*, 20-0347, p. 3 (La. App. 4 Cir. 10/5/20), — So.3d. —, available at 2020 WL 5887222; *State in the Interest of M.S.*, 20-0346, p. 4 (La. App. 4 Cir. 10/5/20), — So.3d. —, available at 2020 WL 5903502.

potential sentence for the crime of carjacking committed by a juvenile over 13 years old is that it cannot exceed the maximum term of imprisonment for the offense and it must terminate upon age 21. La. Ch.C. art. 898 (A), (E)(5). The sentencing range for carjacking is two to 20 years. La. R.S. 14:64.2(B). N.S. was five days shy of her fourteenth birthday when the crime occurred and her custody commenced. Her sentence is effectively just over seven years which fits within the limitations provided for in the Children's Code. Thus, the sentence is statutorily legal.

A sentence that is statutorily permissible may nevertheless be constitutionally excessive as applied to an individual defendant. *State v. Sepulvado*, 367 So.2d 762, 767 (La.1979). The crime for which N.S. was adjudicated was dangerous, and, although the girls were unarmed, their actions harmed the victim and may have resulted in serious injury. However, this is the first time N.S. was arrested or adjudicated for a crime. Unlike her co-defendants, she has no prior experience with a probationary sentence. Regardless, because we find errors in the disposition, it is premature for this Court to decide whether her sentence is excessive.

We find that the disposition imposed by the juvenile court contained two illegal provisions: first, the four-year prohibition on modification, and, second, the restriction on consideration of a motion to modify to release from OJJ custody. The court of appeal corrected the first illegal provision by removing the four-year prohibition. However, the restriction on modification to release also violates the Children's Code, which provides juvenile courts with general authority to modify sentences after the entry of any order of disposition. *See* La. Ch.C. arts. 909, 910, 911; La. R.S. 15:906. Similar restrictions in other delinquency dispositions have been overturned by appellate courts. *See, e.g., State in the Interest of D.B.*, 14-0085, p. 15 (La. App. 3 Cir. 5/07/14), 141 So.3d 296, 306 ("Considering the language in La. Ch.C. art. 898(B)

concerning the possibility of parole, the language in La. Ch.C. art. 909 concerning the court's power to modify a sentence, the language of La. R.S. 15:906 concerning the Department of Corrections' authority to seek early release for a juvenile, the language in La. R.S. 15:906 concerning the legislature's clear intent for rehabilitation for all juveniles except those who fall under La. Ch.C. art. 897.1, and the first circuit's opinion in *J.C.*, the juvenile court erred in imposing the present Juvenile's disposition without benefit of parole or modification of sentence."); *see also State in the Interest of J.C.*, 09-2000 (La. App. 1 Cir. 7/15/10) (unpub'd), *available at* 2010 WL 2802104; *State in the Interest of Guy*, 413 So.2d 657 (La. App. 1 Cir. 1982). Accordingly, we vacate the disposition and remand the case back to the juvenile court for imposition of a new disposition consistent with this order. In imposing a new disposition, the court may consider whether the previously imposed disposition was excessive, as argued by the juvenile in her application to this Court.

REVERSED AND REMANDED