

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2022-K-01743

VS.

EMILE PIERCE

IN RE: Emile Pierce - Applicant Defendant; Applying For Writ Of Certiorari, Parish of Jefferson, 24th Judicial District Court Number(s) 99-05283, Court of Appeal, Fifth Circuit, Number(s) 22-KA-399;

May 02, 2023

Writ application granted. See per curiam.

JDH

SJC

JTG

PDG

Weimer, C.J., dissents and would grant and docket.
Crain, J., dissents and assigns reasons.
McCallum, J., dissents for reasons assigned by Justice Crain.

Supreme Court of Louisiana
May 02, 2023

Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-K-01743

STATE OF LOUISIANA

VS.

EMILE PIERCE

On Writ of Certiorari to the Court of Appeal,
Fifth Circuit, Parish of Jefferson

PER CURIAM

Writ granted. The court of appeal erred in vacating the sentence imposed by the district court. *State v. Pierce*, 22-399 (La. App. 5 Cir. 10/31/22), 351 So.3d 762. The district court found that the mandatory minimum sentence required by the Habitual Offender law was unconstitutionally excessive as applied to this defendant. The district court further found that a sentence of 22 years was the longest that would not be constitutionally excessive under the circumstances. In finding defendant failed to show that a downward departure below the mandatory minimum sentence was justified in accordance with *State v. Dorthey*, 623 So.2d 1276 (La. 1993) and subsequent jurisprudence, the court of appeal erred in giving inadequate deference to the district court’s exercise of its discretion in sentencing.

Defendant was convicted in 2001 of armed robbery and sentenced to the term statutorily mandated at that time for a third-felony habitual offender: life imprisonment at hard labor without parole eligibility. He was resentenced in 2022 pursuant to *State ex rel. Esteen v. State*, 16-0949 (La. 1/30/18), 239 So.3d 233, because subsequent legislative action rendered the life sentence illegal. The district court issued detailed reasons for its sentencing determination after conducting a lengthy and comprehensive hearing. As described in a concurrence in previous

appellate review of these proceedings, “The record reflects that the sentence was imposed after a searching inquiry into and meaningful assessment of facts and circumstances that justify the exercise of judicial discretion with careful consideration of the defendant and facts of the case in light of defendant’s family history, prior criminal conduct, and circumstances of La. C.Cr.P. art. 894.1.” *State v. Pierce*, 22-154, p. 3 (La. App. 5 Cir. 8/1/22), 349 So.3d 50, 55 (Wicker, J., concurring).

The court of appeal, however, found the district court in resentencing failed to give adequate deference to the original sentencing determination, in which the statutorily mandated life sentence was imposed. As observed by the dissent in the court below, the court of appeal’s emphasis on effectuating to the greatest extent possible the originally imposed sentence fails to adequately consider that subsequent legislative action rendered the originally imposed sentence illegal. *See Pierce*, 22-399, pp. 11–12, 351 So.3d at 781–782 (Johnson, J., dissenting). Accordingly, we reverse the ruling of the court of appeal, which vacated the sentence imposed by the district court and remanded for resentencing. We reinstate the sentence of 22 years imprisonment at hard labor, which was imposed by the district court, and we affirm that sentence as reinstated.

SENTENCE REINSTATED AND AFFIRMED