

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA IN  
THE INTEREST OF T.S.**

\*

**NO. 2000-CA-1707**

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**COURT OF APPEAL**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
JUVENILE COURT ORLEANS PARISH  
NO. 97-202-03-QE, SECTION "E"  
Honorable Anita H. Ganucheau, Judge

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**Judge Terri F. Love**

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(Court composed of Judge Miriam G. Waltzer, Judge Patricia Rivet Murray,  
Judge Terri F. Love)

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## **COUNSEL FOR APPELLEE**

### **SENTENCE VACATED, ORIGINAL SENTENCE REINSTATED, RELEASE ORDERED**

#### **FACTS AND PROCEDURAL HISTORY**

On July 21, 1997, T.S. was charged in juvenile court with armed robbery, a violation of La. R.S. 14:64 and was adjudicated delinquent. On September 30, 1997, the juvenile court committed T.S. to the secure custody of the Department of Public Safety and Corrections (“DPSC”) for two years. At the time of the crime, T.S. was sixteen years old.

On April 9, 1997, this Court released *State in the Interest of T.J.T.*, 97-0335 (La. App. 4 Cir. 4/9/97), 692 So. 2d 1385. The Court stated that juvenile courts did not have discretion in adjudicating juveniles when the charge is armed robbery. The Court set forth a mandatory sentence of “juvenile life” for armed robbery, which is until the juvenile’s twenty-first birthday. Consequently, on December 16, 1997 the juvenile court corrected the illegal sentence of September 30, 1997 and sentenced T.S. to secure care until his twenty-first birthday.

On July 2, 1999, the Louisiana Supreme Court rendered *State ex rel.*

*A.M.*, 98-2752 (La. 7/2/99), 739 So. 2d 188. This case reversed *State in the Interest of T.J.T* and clarified La. Ch.C. art 897.1. Now, juvenile court judges are allotted discretion when adjudicating juveniles charged with armed robbery.

As a result of *State ex rel. A.M.*, T.S. filed a Motion to Correct Sentence. T.S. argued that the only reason Judge Ganucheau sentenced him until his twenty-first birthday was because of the current law in this circuit. T.S. stressed that the original disposition placing him in secure custody for two years was indicative of Judge Ganucheau's desire to give him a more lenient sentence.

On May 19, 2000, a hearing was held on the Motion to Correct Sentence. Judge Ganucheau deemed the motion as a Motion to Modify Judgment of Disposition and paroled T.S. from the Louisiana Training Institute to his mother, under the parole supervision of the Office of Youth Development.

DPSC appeals the May 19, 2000 ruling arguing that the placing of T.S. on parole is a clear violation of La. Ch.C. art. 897.1. The appellee agrees that the ruling violates 897.1; however, the appellee asks this Court to

vacate that judgment and re-instate the original two-year sentence, which would result in the immediate release of T.S.

## **DISCUSSION**

**La.Ch.C. art. 897.1** states:

A. Notwithstanding any other provision of the law to the contrary, after adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:64, armed robbery..., the court shall commit the child to the custody of the Department of Public Safety and Corrections to be placed within a secure detention facility until the child attains the age of twenty-one years *without benefit of parole*, probation, suspension of imposition or execution of sentence, modification, or furlough. (emphasis added).

B. Notwithstanding any other provision of law to the contrary, after adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:64, armed robbery, the court shall commit the child to the custody of the Department of Public Safety and Corrections to be placed within a secure detention facility for the length of the term imposed by the court at the disposition hearing *without benefit of parole*, probation, suspension of imposition or execution of sentence, modification, or furlough. (emphasis added).

To resolve the inconsistency caused by the inclusion of armed robbery in both parts A and B of the statute, and to clarify conflicting opinions in the circuits regarding the issue, the Louisiana Supreme Court held in *State ex rel. A.M. 739 So. 2d* at 190 that:

Because the legislature clearly intended that armed robbery not be

included in the list of offenses enumerated in Article 897.1, Section A of the Louisiana Children's Code, we find that juvenile courts are authorized to use discretion in determining the term of commitment to the custody of the Department of Public Safety and Corrections of juveniles adjudicated guilty of armed robbery. We further find that Article 897.1 mandates that such commitments be made without benefit of parole, probation, or suspension of imposition or execution of sentence, modification, or furlough.

Thus, the Court not only decided that juvenile court judges have discretion in sentencing those convicted of armed robbery, it also confirmed that, in accordance with both sections of La. Ch. C. art. 897.1, parole is strictly prohibited. Consequently, Judge Ganucheau's parole of T.K. was clearly wrong. Moreover, Judge Ganucheau's original sentence, once adjudged illegal, is now appropriate and legal. T.S has served that sentence. Although our reinstatement of that sentence after its "correction" by Judge Ganucheau may be procedurally unprecedented, we are empowered to "render any judgment which is just, legal and proper upon the record of appeal." La. C.C.P. art. 2164. In the instant case, the release of T.S. is the only just result.

## **DECREE**

Therefore, the May 19, 2000 ruling of Judge Ganucheau is vacated

and the original sentence of September 30, 1997 is hereby re-instated and  
T.S. shall be released from the custody of the DPSC.

**SENTENCE**  
**RELEASE**

**SENTENCE**  
**VACATED,**  
**ORIGINAL**  
**REINSTATED,**  
**ORDERED**