Editor's note: opinion released October 17, 2000

SUPREME COURT OF LOUISIANA

No. 99-K-2935

STATE OF LOUISIANA

versus

ALTON A. TAYLOR

c/w
No. 99-KP-2937

STATE OF LOUISIANA

versus

JESSE CLARK

c/w
No. 99-K-2938

STATE OF LOUISIANA

versus

JOSEPH DUPLESSIS, III

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

TRAYLOR, Justice

These consolidated criminal appeals involve the trial court's placement of three individual defendants into the Drug Court Probation Program (Program) pursuant to La. Rev. Stat. 13:5304 (Statute) over the State's objections. The State appealed arguing that the trial court's decisions to defer Defendants' sentences and place them in the Program were erroneous. *State v. Taylor*, 99-0592 (La. App. 4 Cir. 6/23/99), 743 So. 2d 723; *State v. Duplessis*, 99-0587, 99-0588, 99-0589 (La. App. 4 Cir. 6/23/99) (unpublished opinion); *State v. Clark*, 99-1023 (La. App. 4 Cir. 9/15/99), ___ So. 2d ___. In each of the appeals, the court of appeal rejected the State's claims and affirmed the trial court. We granted the writs and consolidated these cases to address the issues raised by the State in its application and to correct the lower courts' interpretation of the Statute.

FACTS AND PROCEDURAL HISTORY

All three defendants involved herein were separately arrested for narcotic drug offenses.[1] Defendants separately pled guilty to the charges against them and were referred to the Program by the court, without the recommendation of the State. In each case, the State objected to Defendants' pleading under the Statute and sought writs. The court of appeal found the State's arguments to be without merit and interpreted the statutory language of La. Rev. Stat. 13:5304(B)(1) as permissive, holding in part:

> The State's position is that only when the State proposes drug court probation is it an alternative. We have held that the statute is properly read to provide that the district attorney is one of those who may propose probation. If the legislature had intended for the district attorney to be the only source of eligibility for the drug program, the statute would have been worded to that effect. Furthermore, a reading of the entire statute simply does not support the State's position, especially section (B)(11)(a) which states that the judge makes the final determination as to eligibility for probation.

State v. Taylor, 99-0592 (La. App. 4 Cir. 6/23/99), 743 So. 2d 723; *see also State v. Duplessis*, 99-0587, 99-0588, 99-0589 (La. App. 4 Cir. 6/23/99) (unpublished opinion); *State v. Clark*, 99-1023 (La. App. 4 Cir. 9/15/99), ___ So. 2d ___. Upon receiving these adverse rulings from the court of appeal, the State filed the instant applications seeking a definitive interpretation of the Statute.

DISCUSSION

The basic issue before this court is whether the trial court was authorized to place the Defendants into the Program absent the recommendation of the State. Notably, the issues raised by the State in the instant applications are effectively moot because all three Defendants failed a drug test and, as a result, no longer remain in the Program.[2] Although our review of these cases will not affect the Defendants themselves, the questions raised nevertheless fall within the exception to mootness for

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[1] The cases were individually allotted to Judge Alarcon, Section "L," Orleans Parish Criminal District Court. Defendant Duplessis pled guilty to possession of heroin, a violation of La. Rev. Stat. 40:966(C), second offense possession of marijuana, a violation of La. Rev. Stat. 40:966(D), and possession of diazepam (Valium), a violation of La. Rev. Stat. 40:967(C). Defendant Clark pled guilty to distribution of crack cocaine, a violation of La. Rev. Stat. 40:967(B)(4)(b). Defendant Taylor pled guilty to possession of heroin, a violation of La. Rev. Stat. 40:966.

[2]Defendant Duplessis was remanded and has been sentenced to three years imprisonment at hard labor under the About Face Program. The trial court amended Defendant Clark's conditions of probation to include one year in the Parish Prison's About Face Program. Finally, the trial court revoked Defendant Taylor's probation, sentenced him to four years imprisonment at hard labor, and ordered the him to complete the About Face Program. Upon successful completion of this program, the trial court resentenced Taylor to five years active probation.

claims which, because they arise within a short window of time, are "capable of repetition yet evading review." *State v. Neisler*, 633 So. 2d 1224, 1227 (La. 1994)*; State v. Lacour*, 398 So. 2d 1129, 1130 (La. 1981); *Malek v. Yekani-Fard*, 422 So. 2d 1151, 1152 (La. 1982). Should we decline the issue because it is now moot, the issue could permanently escape our consideration and evade appellate review because that window of time for review is shorter than the ordinary appellate delay. *Id*.; *State v. Eaton*, 483 So.2d 651, 660-61 (La. App. 2 Cir. 1986); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976). Accordingly, we treat in full the issues raised in the State's application.

Gatekeeper Function of the State

First, the State argues that the trial court erred in unilaterally placing the Defendants in the Program without the recommendation of the State and over the State's objection. Citing to La. Rev. Stat. 13:5304(B)(1), the State maintains that a defendant may only be considered for the Program upon the recommendation of the district attorney. We agree.

Generally, Louisiana criminal statutes must be "given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision." La. Rev. Stat. 14:3. In construing statutes, the court must endeavor to give an interpretation that will give the statute effectiveness and purpose, rather than one which makes it meaningless. *State v. Union Tank Car Co.*, 439 So. 2d 377, 381-82 (La. 1983). Statutory interpretation begins, "as [it] must, with the language of the statute." *Bailey v. United States*, 516 U.S. 137, 144 (1995). Hence, we begin our analysis with the contested language of the Statute.

La. Rev. Stat. 13:5304(B), Subsections (1) and (2) provide, in pertinent part:

> B. Participation in probation programs *shall* be subject to the following provisions:
>
> (1) The district attorney *may* propose to the court that an individual defendant be *screened* for eligibility as a participant in the drug division probation program.
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> * * *
>
> (2) Upon receipt of the proposal provided for in Paragraph (1) of this Subsection [i.e., upon receipt of the District Attorney's recommendation], the court *shall* advise the defendant that he or she may be eligible for enrollment in a court-authorized treatment program through the drug division probation program. (emphasis added)

La. Rev. Stat. 13:5304(B)(11) further provides:

> The judge shall make the final determination of eligibility. If, based on

> the examiner's report and the recommendations of the district attorney and the defense counsel, the judge determines that the defendant should be enrolled in the drug division probation program, the court shall accept the defendant's *guilty plea* and suspend or defer the imposition of sentence and place the defendant on probation under the terms and conditions of the drug division probation program. The court also may impose sentence and suspend the execution thereof, placing the defendant on probation under the terms and conditions of the drug division probation program. (emphasis added)

The Statute makes certain points clear. First, while it is the judge, and not the district attorney who makes the ultimate decision on whether or not to place a defendant in the Program, it is also clear that the district attorney acts as the gatekeeper and only upon receipt of his recommendation may the court consider eligibility for the Program. It is also clear from the Statute that the sentencing function is left to the court while the plea bargaining and screening functions under the Program are left, as they always are, to the sole prerogative of the district attorney. La. Code Crim. Proc. arts. 61 - 67; La. Code Crim. Proc. arts. 558; La. Const. Art. 5, § 26(B); *State v. Bright*, No. 98-KA-0398 (La. 4/11/2000), ___ So. 2d. ___ 2000 WL 366295; *State v. Connolly, III*, 96-1680 (La. 7/1/97), 700 So.2d 810; *State v. Shepherd*, 566 So. 2d 1127 (La. App. 2 Cir. 1990)*; State v. Howard*, 449 So. 2d 1355 (La. App. 1 Cir. 1984).

However, a study of the legislative history of H.B. 2412, the precursor to La. Rev. Stat. 13:5304, reveals that the bill went to the Senate and was amended to eliminate from Subsection H the sentence which expressly provided "[t]he district attorney shall retain the sole and exclusive right to recommend candidates for the drug division probation program." The amendment left unchanged the introductory sentence in the original version of Subsection H which now appears in the act as finally passed. That the Legislature chose to omit the specific language granting the district attorney the sole right to recommend defendants for drug court probation under La. Rev. Stat. 13:5304 makes the State's reading of R.S. 13:5304 somewhat less certain, but does not render it unclear and wanting of further interpretation by this court.[3] We find persuasive the minutes from the House Judiciary

[3]We will not discuss in full this court's prior ruling in *State v. LeCompte*, 406 So. 2d 1300 (La. 1981) (on rehearing) because we find it distinguishable from the case at hand and will detract from the discussion herein. However, we do find a brief peripheral discussion in this footnote to be of some guidance. In *LeCompte*, this court rejected as a violation of the Separation Clause of the State Constitution a legislative interpretation of the sentencing provision of La. Rev. Stat. 40:967(G)(2) which conditioned exercise of the judicial sentencing function upon the arbitrary discretion of the district attorney.

Committee which support the view that the trial court, and not the district attorney, determines final eligibility in the Program.[4] Taken as a whole, the structure and language of La. Rev. Stat. 13:5304 support the State's position in the present cases that only the District Attorney may initiate the process by recommending each defendant to the Program although only the trial court possesses the authority to make the final determination. Clearly, the Statute was drawn to recognize the separate roles and duties of the court and the district attorney under the Statute. In sum, the Statute clearly states that a defendant may not enter the Program unless he or she is first recommended to it by the district attorney and then the party's eligibility is scrutinized and accepted by the trial court.

Thus, there is absolutely no indication that the amendment of H.B. 2412 was intended to give parties other than the district attorney power to propose defendants for the Program. Likewise, there is no indication that the Statute confers any power upon the district attorney to affect sentencing, which is a time-honored judicial function. Rather, both the legislative history and the wording of the Statute itself supports only the finding that the Legislature intended to reserve sentencing as the province of the trial court. Therefore, we are reinforced in our interpretation of La. Rev. Stat. 13:5304 by our review of the legislative history of the act.

CONCLUSION

In light of the above, we reject and reverse the trial court and court of appeal decisions insofar as they interpreted the Statute to allow the court to determine eligibility or place a defendant into the Program without first receiving a recommendation from the district attorney. We hold that the district attorney is to act as the gatekeeper and, when he has reason to believe that the individual charged suffers from alcohol or drug addiction and all other criteria of La. Rev. Stat. 13:5304(B) are met, he

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We reject the application of *LeCompte* in this case because the function of the district attorney under La. Rev. Stat. 13:5304, which occurs before conviction, is rather likened to the district attorney's sole ability to screen cases for trial or to conduct plea bargains, and is therefore clearly a prosecutorial function. Serious consideration of *LeCompte* analysis of the instant Statute would run afoul of the rule of statutory construction that if possible a statute is to be read in such a way as to preserve its constitutionality. *O'Regan v. Preferred Enterprises, Inc.*, 98-1602 (La. 3/17/2000), 758 So.2d 124, 130.

[4]There, Judge William Morvant, from the 19th Judicial District Court, stated that he supported the bill and that, "the judge makes the final determination concerning participation." Minutes of House Judiciary Committee, May 9, 1997 p. 2.

may, in his discretion, furnish the court a recommendation *before* the court may divert defendants into the Program. We pretermit discussion of all remaining issues raised by the State. For the foregoing reasons, we reverse the contradictory findings of the trial court and court of appeal.

DECREE

REVERSED.