

**STATE OF LOUISIANA IN RE
C.F.**

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NO. 2007-C-0027

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COURT OF APPEAL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

**APPLICATION FOR WRITS DIRECTED TO
JUVENILE COURT ORLEANS PARISH
NO. 01-113-09-DQ-F, SECTION "F"
Honorable Mark Doherty, Judge**

CHIEF JUDGE JOAN BERNARD ARMSTRONG

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Dennis R. Bagneris Sr. and Judge Roland L. Belsome)

BELSOME, J., DISSENTS WITH REASONS

EDDIE J. JORDAN, JR., DISTRICT ATTORNEY
BRANDI DOHRE, ASSISTANT DISTRICT ATTORNEY
PARISH OF ORLEANS
421 LOYOLA AVENUE
JUVENILE DIVISION
NEW ORLEANS, LA 70112

-AND-

MARTHA MORGAN
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
OFFICE OF YOUTH DEVELOPMENT
7919 INDEPENDENCE BOULEVARD
STATE POLICE BUILDING
BATON ROUGE, LA 70806

COUNSEL FOR RELATOR

DERWYN BUNTON

JUVENILE JUSTICE PROJECT OF LOUISIANA
1600 ORETHA CASTLE HALEY BOULEVARD
NEW ORLEANS, LA 70113

COUNSEL FOR RESPONDENT

WRIT GRANTED; TRIAL COURT ORDER OF TERMINATION REVERSED.

The State of Louisiana seeks review of the trial court's judgment granting C.F.'s motion to amend or terminate disposition of sentence.

C.F. was arrested and charged with armed robbery and attempted armed robbery on April 19, 2001. He pled guilty on May 29, 2001, was adjudicated a delinquent and sentenced to incarceration until his twenty-first birthday on July 19, 2001.

In 2004, C.F. filed a motion to modify disposition, arguing that he had obtained his G.E.D. and received all of the rehabilitation available to him. The trial court denied the motion on December 15, 2004, whereupon defendant sought supervisory review from this Court. This Court denied the application for supervisory writs on March 3, 2005 in State of Louisiana In Re C.F., unpub., 2005-0102 (La. App. 4 Cir. 3/3/05), writs denied, 2005-0188 (La. 6/17/05), 904 So.2d 698.

On October 16, 2006, C.F. filed a Motion to Amend or Terminate Disposition of Sentence. The trial court conducted hearings on the motions on November 27, 2006, and December 5, 2006, and ordered post-hearing

memoranda. On December 18, 2006, the trial court granted the motion to terminate the defendant's sentence, effective January 29, 2007, the defendant's twentieth birthday. The State has applied for supervisory review of that order. For the reasons that follow, we grant the writ application and reverse the termination order issued by the trial court.

The State argues that the trial court did not have authority to terminate C.F.'s sentence under Children's Code article 897.1.

La. Ch. C. article 897.1 provides in pertinent part:

B. 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 who is fourteen years of age or older at the time of the commission of the offense to the custody of the Department of Public Safety and Corrections to be confined in secure placement 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, or modification of sentence.

C.F. suggests that language in La. Ch. C. article 909 permits a juvenile court to terminate the disposition of sentence of a child adjudicated a delinquent based upon the violation of La. R.S. 14:64. La. Ch. C. article 909, which is entitled "Modification authority in general", provides:

Except as provided for in Article 897.1, after the entry of any order of disposition, the court retains the power to modify it, including the changing the child's legal custody, suspending all or part of any order of commitment, discharging conditions of probation, or adding any further condition authorized by Article 987(B) or 899(B). It may also terminate

an order of disposition at any time while it is still in force.
[Emphasis added.]

C.F. argues that the last sentence, concerning termination, is not restricted by the language at the beginning of the article “Except as provided for in Article 897.1.” C.F. further argues that “termination” differs from “modification”, and suggests that the codal articles treat “termination” distinctly from “modification,” so that while a court’s authority to **modify** a sentence may be limited, its authority to **terminate** a sentence is not so restricted.

C.F.’s position is inconsistent with the clear language of La. R.S. 15:906, which provides:

§906. Release from commitment

- A. (1) Except as provided for in Children’s Code Article 897.1, the Department of Public Safety and Corrections may recommend to the committing court the release of any juvenile committed to its care, who, in the opinion of the department, is ready to be returned to his own home, or to a substitute home. Such juvenile may be discharged by the court without supervision or may be placed under supervision until further orders of the court.
- (2) Except as provided for in Subsection B of this Section, it is hereby declared to be the public policy of this state that commitment of a juvenile to the care of the department is not punitive nor in anywise to be construed as a penal sentence, but as a step in the total treatment process toward rehabilitation of the juvenile and that, therefore, the

recommendations of the department should be given careful consideration by the court in determining what is to the best interest of the juvenile. If, after release from the care of the department, but while the juvenile is still under supervision of the court, the court deems it advisable to return the juvenile to the care of the department, a recommitment order shall be furnished the department.

B. In cases governed by Children's Code Article 897.1, it is hereby declared to be the public policy of this state that commitment of a juvenile to the custody of the Department of Public Safety and Corrections for confinement in secure placement without benefit of parole, probation, suspension of sentence, is necessary and proper because for these very serious offenses the protection of society is the primary objective.

Special rules for statutory interpretation are found in La. R.S. 1:1 et seq. La. R.S. 1:3 provides, in pertinent part, that "[w]ords and phrases shall be read with their context and shall be construed according to the common and approved usage of the language." La. R.S. 1:4 provides that "[w]hen the wording of a Section [of a statute] is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit." When a law is clear and unambiguous and its application does not lead to absurd consequences, the law is applied as written and no interpretation may be made, but when the words of a law are ambiguous, their meaning must be

found by examining their context and the text of the law as a whole. La. C.C. arts. 9, 12. It is a well-recognized and long-established rule of statutory construction that a statute should be interpreted as a whole to effect the legislative intent and should be construed in such way as to reconcile, if possible, apparent inconsistencies or ambiguities so that each part is given effect. State v. Cazes, 263 So.2d 8, 12 (La.1972). Finally, the paramount consideration in interpreting a statute is legislative intent and consideration of the reasons that prompted the legislature to enact the law. State ex rel. A.M., 98-2752 (La. 7/2/99), 739 So.2d 188.

In the present case, we must consider all three applicable statutes together to determine the legislature's intent concerning treatment of juveniles adjudicated delinquent because of felony violations. La. Ch. C. article 897.1 and La. R.S. 15:906 provide that juveniles who have been adjudicated as delinquent on the basis of having committed armed robbery are prohibited from receiving the benefits of probation, parole, **suspension or modification of sentence**. La. R.S. 15:906 (B) declares that the primary objective for these prohibitions is the protection of society. Thus, considering that the legislature is concerned with the protection of society in relation to such juveniles, La. Ch. C. article 909's language "Except as provided for in Children's Code Article 897.1" must be read to apply to the

entire paragraph, and not only to the first sentence. Thus, the juvenile court lacks statutory authority to terminate the sentence of a juvenile adjudicated a delinquent under La. Ch. C. article 897.1.

C.F.'s suggested interpretation of the statute also would lead to the sort of absurd result rejected by the articles on statutory interpretation. The legislature, concerned for the protection of society, has prohibited a juvenile from receiving the benefits of probation, parole, suspension and modification of sentence. Early termination of a sentence would conflict directly with the stated public policy and legislative intent. Furthermore, we must conclude that it is reasonable to interpret the "termination" of a sentence as constituting a "modification" of that sentence.

We note that the Department of Public Safety and Corrections, Office of Youth Development, in whose custody C.F. has remained for the last five years, has not recommended his release. The Department, along with the District Attorney's Office, objected to C.F.'s early release and to the termination proceeding conducted by the juvenile court.

Accordingly, we grant the State's writ application and reverse the judgment of the Orleans Parish Juvenile Court ordering termination of C.F.'s sentence.

WRIT GRANTED; TRIAL COURT ORDER OF TERMINATION REVERSED.

