

**STATE EX REL. ESTEEN V. STATE:
FAIRNESS, FREEDOM, AND A
CONSTITUTIONAL DEBATE IN LOUISIANA**

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I. INTRODUCTION

Four kilos is a lot of cocaine.¹ But should it warrant life in prison? In 1998, Louisiana’s punishment for possessing over four

1. See *infra* notes 17-19 and accompanying text (discussing details regarding the defendant’s crime and charges).

hundred grams of cocaine² was thirty to sixty years imprisonment at hard labor and a fine of between \$250,000 and \$600,000.³ Since that time, the Louisiana legislature has lowered the penalties for this crime and took affirmative steps to alleviate the harsh penalties for a number of other offenses.⁴ Although courts generally sentence a defendant according to the penalties in place at the time of the offense,⁵ what happens when a lawmaking body passes legislation calling for the retroactive application of newer, lower penalties? And still further, who has the authority to remediate final sentences along these lines and release offenders into society?

John Esteen faced such a situation following his trial in Gretna, Louisiana in October 2000.⁶ A jury found him guilty on four separate counts, and he was sentenced to serve 150 years at hard labor.⁷ Less than a year later, the Louisiana legislature reduced the sentencing range for crimes like Esteen's by one-half.⁸ While he was serving his time in prison, the legislature, "in the interest of fairness in sentencing," passed a law that sought to apply these reductions retroactively.⁹ However, it was unclear which governing body, the executive or judicial branches, had the authority to apply the reductions.¹⁰

2. Quantity triggers delineate penalty ranges for different drug crimes according to quantity. Based on such sentencing schemes, larger quantities correlate to higher penalties. As of 2000, Louisiana was one of nine states using a four-tiered trigger scheme for cocaine possession, whereas, twenty-five states only used one-tier. ImpacTeen Illicit Drug Team, *Illicit Drug Policies: Selected Laws from the 50 States*, UNIV. OF ILL. AT CHI. HEALTH RESEARCH AND POLICY CTR. 19-20 (2002) <http://www.policyarchive.org/handle/10207/21778>.

3. Act No. 77, 1994 La. Acts 926, 928.

4. See *infra* note 35-36 and accompanying text; see also Act No. 403, 2001 La. Acts 853 (reducing penalties for criminal damage of a pipeline facility, obscenity, marijuana possession, Schedule II possession, and many others); Act No. 45, 2002 La. Acts 1213 (amending penalties for distribution of marijuana and possession of GHB); see generally Act No. 281, 2017 La. Acts 1-31 (reducing penalties for simple arson, theft, Schedule I, II, III, and IV possession, and many others).

5. *State v. Sugasti*, 01-3407, p. 4 (La. 6/21/02); 820 So. 2d 518, 520 (holding that penalties in place at the time of defendant's crime, possession of heroin, applied to defendant and, thus, defendant was not entitled to subsequent reduced penalties that only eliminated "without benefit of probation or suspension of sentence" from the statute).

6. See generally *State ex rel. Esteen v. State*, 16-0949 (La. 1/30/18); 239 So. 3d 233.

7. See *State v. Esteen*, 01-879, p. 3 (La. App. 5 Cir. 5/15/02); 821 So. 2d 60, 62-63.

8. See Act No. 403, 2001 La. Acts 853.

9. Act No. 45, 2006 La. Acts 894.

10. See *State ex rel. Esteen*, 16-0949, pp. 4-6; 239 So. 3d at 236-37.

The Louisiana Supreme Court first ruled on the issue in 2007, but the statutory interpretation problem lingered.¹¹ After years of debate among pro se inmates, attorneys, and judges, the Louisiana Supreme Court heard both Esteen's and the State's arguments over what type of relief the legislature intended to provide.¹² In its ruling, the court resolved a decades-old dispute over the separation of powers and legislative intent and, in effect, helped Louisiana abdicate its long-held title¹³ as the "incarceration capital of the nation."¹⁴

Section II of this Note summarizes the facts of *Esteen* and the Louisiana Supreme Court's decision. Section III discusses the laws in question and the jurisprudence leading up to the court's holding. Section IV further explains how the court came to its conclusion. And lastly, Section V analyzes what the majority's ruling got right, what it got wrong, and the impact it had on Louisiana's notoriety as a titan of incarceration.

II. FACTS AND HOLDING

Following a multi-agency wiretap and surveillance investigation, John Esteen and twenty-two others were charged by bill of information on February 11, 1999 for their roles in a drug trafficking operation.¹⁵ The State specifically accused Esteen of facilitating the transportation of cocaine from Texas to Louisiana and distributing it from his apartment.¹⁶ At his jury trial, Esteen was convicted of two counts of possession of cocaine over 400 hundred grams, one count of attempted possession of cocaine over 400 hundred grams, and one count of conspiracy to possess cocaine over 400 hundred grams.¹⁷

On November 3, 2000, the trial court sentenced Esteen to fifty years imprisonment at hard labor for each possession count,

11. See *State v. Dick*, 2006-KP-2223, 2006-KK-2226, pp. 9-10 (La. 1/26/07); 951 So. 2d 124, 130.

12. See generally *State ex rel. Esteen v. State*, 16-0949 (La. 1/30/18); 239 So. 3d 233.

13. John Simerman, *'Prison Capital' No More: Louisiana Sheds Long-Held Title, But Remains Above U.S. Incarceration Rate*, *ADVOCATE* (June 20, 2018, 5:00 PM), https://www.theadvocate.com/baton_rouge/news/article_65844992-6b53-11e8-ac2d-97c9311b1424.html.

14. See *State ex rel. Esteen*, 16-0949, p. 5; 239 So. 3d at 242.

15. *State v. Esteen*, 01-879, p. 2 (La. App. 5 Cir. 5/15/02); 821 So. 2d 60, 62.

16. *Id.* at pp. 4-11; 821 So. 2d at 63-67.

17. *Id.* at p. 3; 821 So. 2d at 62. Esteen was tried separately from his codefendants on October 24-27, 2000. *Id.*

twenty-five years for attempt,¹⁸ and twenty-five years for conspiracy.¹⁹ The sentences ran consecutively and, thus, totaled 150 years.²⁰ At the time of the offenses, the sentencing range for possession of cocaine over 400 grams was thirty to sixty years.²¹ During sentencing, the trial judge remarked that Esteen was a “serious drug dealer” and that he had “failed to present any mitigating circumstances to warrant [a] lesser sentence[.]”²² The Louisiana Fifth Circuit Court of Appeal affirmed Esteen’s conviction and held that his sentence was not constitutionally excessive.²³ Likewise, the Louisiana Supreme Court denied Esteen’s writ,²⁴ and his sentences became final on March 13, 2003.²⁵

In 2001, while Esteen was incarcerated at the Louisiana State Penitentiary, the state legislature lowered the sentencing ranges for his crimes.²⁶ Five years later, further legislation passed mandating retroactive application of the lower sentencing ranges to defendants’ final sentences.²⁷ Because Esteen’s 150-year sentence exceeded the maximum authorized by the new laws, he filed a motion in district court in 2016 to correct his illegal

18. The penalties for attempt and conspiracy are no more than “one-half of the largest fine” and no more than “one-half of the longest term of imprisonment.” LA. STAT. ANN. § 14:26 (2019); *see also* LA. STAT. ANN. § 14:27 (2019).

19. *See State v. Esteen*, 01-879, p. 3 (La. App. 5 Cir. 5/15/02); 821 So. 2d 60, 63. The State also charged Esteen on the conspiracy count as a habitual offender. *Id.* at pp. 3-4; 821 So. 2d at 63. The trial judge vacated Esteen’s conspiracy sentence and sentenced him to twenty-five years as a habitual offender. *Id.* At sentencing, the trial judge told Esteen:

You destroyed your own life and you destroyed many other individuals’ lives in the course of what came out in this trial. God knows how many more lives you would have destroyed if you were on the street yet. I don’t see any redeeming factors concerning your involvement in [the] sale of the quantity of drugs I’ve seen. I’ve seen four kilos of hard cocaine in this court which is a quantity you don’t see often. I can’t have any sympathy for the sentence I am going to impose on you or plight.

Id. at p. 27; 821 So. 2d at 77.

20. *Id.* at p. 3; 821 So. 2d at 63. In Louisiana, a “strong presumption exists” that the sentencing guidelines in effect at the time of the offense, as opposed to the time of sentencing, govern the punishment. *State v. Hyde*, 07-1314, p. 1 (La. 11/21/07); 968 So. 2d 726, 726.

21. *State v. Esteen*, 01-879, p. 25 (La. App. 5 Cir. 5/15/02); 821 So. 2d 60, 76.

22. *Id.* at p. 27; 821 So. 2d at 77.

23. *Id.*

24. *See State v. Esteen*, 2002-K-1540, p. 1 (La. 12/13/02); 831 So. 2d 983.

25. *Esteen v. Cain*, No. 09-5450, 2010 WL 497764, at *2 (E.D. La. Feb. 5, 2010).

26. *See Act No. 403*, 2001 La. Acts 853.

27. *See Act No. 45*, 2006 La. Acts 894-95.

sentences.²⁸ The district and appellate courts, relying on case law adverse to Esteen's argument that he was entitled to relief by the sentencing court, denied his motion and subsequent writs.²⁹ However, the Louisiana Supreme Court sought to resolve the apparent dilemma and granted Esteen's writ.³⁰

In *Esteen*, the Louisiana Supreme Court overruled the controlling precedential case, *State v. Dick*.³¹ The court held that a defendant could seek resentencing in a district court via a motion to correct illegal sentences pursuant to Louisiana Revised Statute § 15:308 and the more lenient penalty provisions the legislature enacted in 2001 and 2002.³² Because the legislature intended to include resentencing in a district court as an avenue of relief in the statute, granting this authority to the judiciary did not equate to commutation,³³ a power otherwise constitutionally reserved solely to the executive branch.³⁴

III. LEGAL BACKGROUND

A. LOUISIANA REVISED STATUTE § 15:308 AND “THE INTEREST OF FAIRNESS”

The enactment of Act 403 in 2001 changed the sentencing guidelines for twenty-nine crimes ranging from medical fraud to the skimming of gaming proceeds.³⁵ It also reduced the penalties for distribution and possession of Schedule I and Schedule II narcotics.³⁶ According to the bill, these changes were to apply prospectively only.³⁷ In 2006, however, the Louisiana legislature enacted Louisiana Revised Statute § 15:308, which, in subsection

28. *State ex rel. Esteen v. State*, 16-0949, p. 1 (La. 1/30/18); 239 So. 3d 233, 235.

29. *Id.* at pp. 1-2; 239 So. 3d at 235.

30. *See generally State ex rel. Esteen*, 16-0949; 239 So. 3d 233.

31. *See id.* at pp. 4-6; 239 So. 3d at 236-38; *State v. Dick*, 2006-2223, 2006-2226 (La. 1/26/07); 951 So. 2d 124.

32. *State ex rel. Esteen*, 16-0949, pp. 6-7; 239 So. 3d at 238.

33. Commutation in criminal law is defined as: “The executive’s substitution in a particular case of a less severe punishment for a more severe one that has already been judicially imposed on the defendant.” *Commutation*, BLACK’S LAW DICTIONARY (10th ed. 2014).

34. *See State ex rel. Esteen v. State*, 16-0949, pp. 5-6 (La. 1/30/18); 239 So. 3d at 237.

35. *See Act No. 403*, 2001 La. Acts 853. The next year, the legislature enacted Act 45 which revised the penalties for distribution of marijuana and possession of gamma hydroxybutyric acid (GHB). Act No. 45, 2002 La. Acts 1213-14.

36. *See Act No. 403*, 2001 La. Acts 853.

37. Act No. 403, 2001 La. Acts 853, 871.

(B), called for updated penalties for a specific list of crimes, including possession of cocaine over 400 grams, to be applied retroactively “in the interest of fairness in sentencing.”³⁸ Following this declaration, subsection (C) of the statute added that “[s]uch persons shall³⁹ be entitled to apply to the Louisiana Risk Review Panel pursuant to R.S. 15:574.22.”⁴⁰

The legislature created the Louisiana Risk Review Panel (the Panel) in 2001, and directed it to consider the updated penalty provisions, make a determination of a defendant’s risk to society, and forward any recommendations on parole or clemency to the appropriate board.⁴¹ Importantly, the original version of the bill enacting the provision, Senate Bill 126, stated that: “The court may grant the motion and amend, modify, or reconsider the sentence and impose a more lenient sentence pursuant to [Act No. 403, 2001 La. Acts 853].”⁴² However, the final version of Louisiana Revised Statute § 15:308 edited out this language and only specified the Panel as a remedy.⁴³

The Panel did not last long as the executive branch’s avenue

38. The full text of the original version of Louisiana Revised Statute § 15:308 provides:

§ 308. Ameliorative penalty provisions; retroactivity; amendment of sentence; time limitations

A. (1) The legislature hereby declares that the provisions of Act No. 403 of the 2001 Regular Session of the Legislature provided for more lenient penalty provisions for certain enumerated crimes and that these penalty provisions were to be applied prospectively.

(2) The legislature hereby further declares that Act No. 45 of the 2002 First Extraordinary Session of the Legislature revised errors in penalty provisions for certain statutes which were amended by Act No. 403 of the 2001 Regular Session of the Legislature and that these revisions were to be applied retroactively to June 15, 2001, and applied to any crime committed subject to such revised penalties on and after such date.

B. In the interest of fairness in sentencing, the legislature hereby further declares that the more lenient penalty provisions provided for in Act No. 403 of the 2001 Regular Session of the Legislature and Act No. 45 of the 2002 First Extraordinary Session of the Legislature shall apply to the class of persons who committed crimes, who were convicted, or who were sentenced according to the following provisions: . . . [the provisions changed by 403 and 45]. . . prior to June 15, 2001, provided that such application ameliorates the person’s circumstances

C. Such persons shall be entitled to apply to the Louisiana Risk Review Panel pursuant to R.S. 15:574.22.

Act. No. 45, 2006 La. Acts 894-95.

39. “Shall” has several different definitions including: (1) “has a duty to; more broadly, is required to”, and (2) “should (as often interpreted by courts).” *Shall*, BLACK’S LAW DICTIONARY (10th ed. 2014).

40. Act No. 45, 2006 La. Acts 895.

41. Act No. 403, 2001 La. Acts 853, 861.

42. *State v. Dick*, 2006-2223, 2006-2226, p. 8 (La. 1/26/07); 951 So. 2d 124, 129-30.

43. *See id.*

of relief. In 2012, the legislature edited Louisiana Revised Statute § 15:308, repealing subsection (C) and thereby dissolving the Panel altogether.⁴⁴ However, in 2014, the legislature reinstated subsection (C) and replaced the Panel with “the committee on parole.”⁴⁵

Normally, once a defendant has served a length of time in prison, the committee on parole (the committee) evaluates a number of factors including the nature of the crime, conduct while incarcerated, and a unique risk assessment score.⁴⁶ Following an in-person hearing, the committee determines if the individual should be released from prison under intensive supervision.⁴⁷ To facilitate these hearings, the committee employs a full-time group of educated, trained individuals with professional experience in relevant fields.⁴⁸ The committee also evaluates parole applications pursuant to Louisiana Revised Statute § 15:308 “taking into consideration the risk of danger the applicant would pose to society if released from confinement”⁴⁹ Based on the evaluation, the committee then sends recommendations to the Board of Pardons⁵⁰

44. *State ex rel. Esteen v. State*, 16-0949, p. 2 (La. 1/30/18); 239 So. 3d 233, 235. According to the state’s brief, the legislature repealed the Panel because it was “an unnecessary, redundant, and duplicitous waste of funds.” State’s Original Brief in Opposition to Application for Writs at 4, *State v. Esteen*, 16-0949 (La. 11/13/17); 239 So. 3d 233, 2017 WL 6519835 at *4.

45. Act No. 340, 2014 La. Acts 2183. The statutory text tasking the committee on parole with review powers pursuant to 15:308 provides:

I. (1) In addition to any duties set forth in the provisions of this Section, the committee on parole shall evaluate any application filed pursuant to R.S. 15:308 and, taking into consideration the risk of danger the applicant would pose to society if released from confinement, shall make recommendations to the Board of Pardons as to whether the applicant is eligible for a reduction in sentence pursuant to R.S. 15:308.

Act No. 340, 2014 La. Acts 2183; *see also* LA. STAT. ANN. § 15:574.2 (2018). During the committee hearing, legislators referred to Act No. 340, 2014 La. Acts 2183, as “clean up work.” State’s Original Brief in Opposition to Application for Writs at 4, *State v. Esteen*, 16-0949 (La. 11/13/17); 239 So. 3d 233, 2017 WL 6519835 at *4.

46. *See* LA. STAT. ANN. § 15:574.2 (2018).

47. *See* LA. STAT. ANN. § 15:574.2 (2018). The requirements of intensive supervision while a defendant is on probation or parole include numerous conditions, such as monthly reporting, obtaining employment in approved workplaces, and personal searches when reasonable suspicion of criminal activity exists. *Supervision Conditions*, LA. DEPT OF PUB. SAFETY & CORRECTIONS, <https://doc.louisiana.gov/supervision-conditions> (last visited Jan. 22, 2019).

48. *See* LA. STAT. ANN. § 15:574.2 (2018). Relevant fields include: “penology, corrections, law enforcement, sociology, law, education, social work, medicine, psychology . . . [and] psychiatry.” LA. STAT. ANN. § 15:574.2(A)(3) (2018).

49. LA. STAT. ANN. § 15:574.2(I)(1) (2018).

50. The five members of the Board of Pardons, appointed by the governor, also make up five of the seven members of the parole committee. LA. STAT. ANN. §

regarding whether the individual is eligible for sentence reduction under Louisiana Revised Statute § 15:308.⁵¹ Following a recommendation by the Board of Pardons for a pardon, the governor may then grant reprieves, commute sentences, and pardon those convicted.⁵² Even during the two-year disappearance of subsection (C) in which Louisiana Revised Statute § 15:308 specified no remedy for a defendant seeking resentencing, Louisiana courts upheld the committee on parole as the vital step towards a defendant's relief.⁵³

B. *STATE V. DICK*: THE ROADBLOCK

The Louisiana Supreme Court's 2007 decision in *Dick* controlled resentencing options until *Esteen*.⁵⁴ In *Dick*, the court held that a defendant's sole remedy in seeking resentencing under the ameliorative penalty provisions in Louisiana Revised Statute § 15:308 was to apply to the Panel, as opposed to filing a motion to correct illegal sentences in a district court.⁵⁵

1. RESOLVING THE SPLIT

Following the introduction of Louisiana Revised Statute § 15:308, Louisiana's appellate courts were split over whether the Panel was the sole remedy.⁵⁶ To resolve the split, the Louisiana Supreme Court consolidated two divisive cases: *State v. Dick* and *State v. Smith*.⁵⁷

In *Dick*'s lower court decision, the trial court sentenced the defendant to life in prison following a conviction for distributing heroin.⁵⁸ Following the enactment of shorter sentences in Act No. 403, 2001 La. Acts 853, and the retroactive application of those sentences in Louisiana Revised Statute § 15:308, the defendant

15:572.1(A)(1)(a) (2018); LA. STAT. ANN. § 15:574.2(A)(1) (2018); LA. STAT. ANN. § 15:574.2(A)(2) (2018).

51. LA. STAT. ANN. § 15:574.2(I)(1) (2018).

52. LA. CONST. ANN. art. 4, § 5(E)(1) (2018).

53. See *State v. Parker*, 2013-0991 (La. App. 1 Cir. 8/27/13); 2013 WL 12124365 (denying writ and holding that despite repeal of subsection (C), allowing court to resentence would in effect be commutation, a power reserved to the executive branch); see also *State v. Flagg*, 2013-389 (La. App. 5 Cir. 5/28/13); 2013 WL 10301201 (denying writ and holding that despite repeal of subsection (C), allowing court to resentence would in effect be commutation, a power reserved to the executive branch).

54. See generally *State v. Dick*, 2006-2223, 2006-2226 (La. 1/26/07); 951 So. 2d 124.

55. *Id.* at pp. 13-14; 951 So. 2d at 133.

56. *Id.* at pp. 2-3; 951 So. 2d at 126-27.

57. *Id.* at p. 3; 951 So. 2d at 127.

58. *State v. Dick*, 2006-1381, p. 1 (La. App. 1 Cir. 7/20/06); 943 So. 2d 389, 390.

moved the trial court to correct his illegal sentence.⁵⁹ The court granted the defendant's motion and resentenced him to ten years in prison.⁶⁰ The State then filed its own motion to correct the illegal sentence, which the court denied.⁶¹ The Louisiana First Circuit Court of Appeal granted the State's motion and resentenced the defendant to life in prison, ruling that a defendant's sole remedy was to apply to the Panel.⁶²

In *Smith*, the defendant was also sentenced to life in prison after being convicted of heroin distribution.⁶³ Following the changes in law by Act No. 403, 2001 La. Acts 853 and Louisiana Revised Statute § 15:308, the trial court granted the defendant's motion to correct the illegal sentence and resentenced him to twenty-eight years imprisonment, with credit for time served.⁶⁴ The State appealed the trial court's decision, but the Fourth Circuit denied the appeal.⁶⁵ The Louisiana Supreme Court then granted writs from both *Dick* and *Smith* and consolidated the cases to resolve the split.⁶⁶

2. THE INTERPRETATION PROBLEM

In its opinion, the Louisiana Supreme Court recognized the general sentencing rule that a defendant is sentenced according to the penalties in place at the time of an offense.⁶⁷ The majority also noted the legislature's explicit directions in Act No. 403, 2001 La. Acts 853 that the updated provisions should be applied prospectively only.⁶⁸ Therefore, according to the court, if the legislature originally intended to apply the less harsh penalties of Act No. 403, 2001 La. Acts 853 retroactively, they would have said so in the statute's text.⁶⁹

The majority also discussed the judiciary's function in

59. *State v. Dick*, 2006-1381, p. 1 (La. App. 1 Cir. 7/20/06); 943 So. 2d 389, 390. A sentence is "illegal" when it "exceeds the maximum sentence authorized by law." LA. CODE CRIM. PROC. ANN. art. 881.5 (2018).

60. *Dick*, 2006-1381, p. 1; 943 So. 2d at 390.

61. *Id.*

62. *Id.*

63. *State v. Dick*, 2006-2223, 2006-2226, p. 3 (La. 1/26/07); 951 So. 2d 124, 126.

64. *Id.*

65. *Id.*

66. *Id.* at p. 3; 951 So. 2d at 127.

67. *Id.* at pp. 4-5; 951 So. 2d at 127.

68. *State v. Dick*, 2006-2223, 2006-2226, p. 4 (La. 1/26/07); 951 So. 2d 124, 127.

69. *Id.* at p. 5; 951 So. 2d at 127.

determining legislative intent and referenced multiple Louisiana codal provisions regarding statutory interpretation.⁷⁰ When the law is unambiguous, it should be applied as it was written and not interpreted any further.⁷¹ Conversely, when the law is ambiguous and susceptible to different meanings, it should be interpreted “as having the meaning that best conforms to the purpose of the law.”⁷² Thus, when the law is ambiguous, the court must determine the legislature’s intent by examining the law’s context and the text as a whole.⁷³ The majority concluded that Louisiana Revised Statute § 15:308 was ambiguous.⁷⁴ According to the court, because the legislature omitted the judicial remedy from the final bill and specified only the Panel in subsection (C), the legislature intended the Panel to be a defendant’s sole remedy.⁷⁵ Furthermore, the court read the word “shall” in subsection (C) as a “mandatory duty” wherein a defendant had only one option: to seek resentencing from the Panel.⁷⁶

3. SEPARATION OF POWERS: RELYING UPON COLORADO

According to the majority in *Dick*, holding otherwise would in effect have gifted the judicial branch of the government with the power to commute sentences, a power only vested in the executive branch.⁷⁷ According to the Louisiana Constitution, governmental powers are separated into three branches⁷⁸ and, unless otherwise authorized by the constitution, no branch can exercise power belonging to another.⁷⁹ The executive branch traditionally has the power to commute and pardon sentences.⁸⁰ While the court conceded that it never previously ruled on whether judicial resentencing pursuant to a legislative directive equated to commutation, another state, Colorado, had.⁸¹

In Colorado, a statute sought to give the courts power to

70. *State v. Dick*, 2006-2223, 2006-2226, p. 8-9 (La. 1/26/07); 951 So. 2d 124, 130.

71. *Id.* at p. 9; 951 So. 2d at 130 (quoting LA. CIV. CODE ANN. art. 9 (2018)).

72. *Id.* (quoting LA. CIV. CODE ANN. art. 10 (2018)).

73. *Id.* (quoting LA. CIV. CODE ANN. art. 12 (2018)).

74. *Id.*

75. *State v. Dick*, 2006-2223, 2006-2226, p. 11 (La. 1/26/07); 951 So. 2d 124, 131.

76. *Id.* at p. 10; 951 So. 2d at 130-31.

77. *Id.* at pp. 13-14; 951 So. 2d at 132-33.

78. *State v. Dick*, 2006-2223, 2006-2226, p. 11 (La. 1/26/07); 951 So. 2d 124, 131 (citing LA. CONST. ANN. art. II, § 1 (2018)).

79. *Id.* (citing LA. CONST. ANN. art. II, § 2 (2018)).

80. *Id.* at p. 11; 951 So. 2d at 131-32 (quoting LA. CONST. ANN. art. IV, § 5(E) (2018)).

81. *Id.* at p. 12; 951 So. 2d at 132.

review final sentences that exceeded maximums authorized by more recent statutory provisions.⁸² The Colorado Supreme Court found that the Colorado Constitution only vested the power of commutation in the executive branch.⁸³ Therefore, any legislative statute giving such power to the courts was unconstitutional.⁸⁴ The majority in *Dick* agreed with the Colorado court; Louisiana also vested commutation power only in the executive branch.⁸⁵ The Louisiana legislature must have been aware of the separation of powers when it enacted Louisiana Revised Statute § 15:308.⁸⁶ Thus, the legislature intended the Panel, belonging to the executive branch, to be the sole remedy.⁸⁷

4. JUSTICE JOHNSON'S DISSENT

Justice Bernette Johnson (before she was Chief Justice) disagreed with the majority, and found that Louisiana Revised Statute § 15:308 was unambiguous.⁸⁸ In her view, the legislature's intent was to apply the more lenient penalty provisions retroactively, "[in] the interest of fairness in sentencing," and to grant that authority to trial courts.⁸⁹ The statute's language mandating retroactive application of more lenient sentences in subsection (B) would have no effect if the legislature had intended the Panel to be a defendant's exclusive remedy.⁹⁰ Furthermore, Justice Johnson believed that the language "shall *be entitled*" did not require defendants to only seek resentencing from the Panel.⁹¹ Instead, the statute's text would have created such a duty only if the legislature had omitted the phrase "be entitled."

Lastly, Justice Johnson noted that Louisiana law already contains an article permitting judicial resentencing.⁹² Louisiana Code of Criminal Procedure article 881.5 allows a defendant to move the court at any time to correct an illegal sentence, which is defined as a sentence that exceeds the maximum allowed by the

82. *People v. Herrera*, 516 P.2d 626, 628 (Colo. 1973).

83. *Id.* at 628-29.

84. *Id.* at 629.

85. *State v. Dick*, 2006-2223, 2006-2226, p. 13 (La. 1/26/07); 951 So. 2d 124, 132.

86. *Id.* at p. 13; 951 So. 2d at 132-33.

87. *Id.* at pp. 13-14; 951 So. 2d at 133-34.

88. *See id.* at pp. 1-7; 951 So. 2d at 134-37 (Johnson, J., dissenting).

89. *Id.* at p. 2; 951 So. 2d at 134 (Johnson, J., dissenting).

90. *See State v. Dick*, 2006-2223, 2006-2226, p. 6 (La. 1/26/07); 951 So. 2d 124, 137 (Johnson, J., dissenting).

91. *Id.* at p. 5; 951 So. 2d at 136 (Johnson, J., dissenting) (emphasis in original).

92. *Id.* at p. 6; 951 So. 2d at 137 (Johnson, J., dissenting).

law.⁹³ Thus, Justice Johnson concluded that, “since the legislature has declared a clear intent to make the more lenient penalty provisions retroactive, the only way to effect the change is by motion in the district court.”⁹⁴

C. *STATE V. MAYEUX: THE DIAMOND IN THE ROUGH*

Aside from statutory interpretation schemes, Justice Johnson relied on another Louisiana Supreme Court case to strengthen her argument. In *State v. Mayeux*, the defendant was arrested and charged with a fourth offense DWI.⁹⁵ Between the time of the arrest and the defendant’s guilty plea, the Louisiana legislature reduced the amount of mandatory jail time for the offense.⁹⁶ In the statute itself, the legislature expressed its intent for the change: “[a fourth DWI offense is] presumptive evidence of the existence of a substance abuse disorder in the offender posing a serious threat to the health and the safety of the public. Further, the legislature finds that there are successful treatment methods available for treatment of addictive disorders.”⁹⁷

Again, the court recognized that defendants are usually sentenced to the penalties in place at the time of the offense.⁹⁸ However, the court ruled that the more lenient changes to the Louisiana DWI statute in effect at the time of the conviction of the offense, instead of at the time of commission, could apply to a defendant.⁹⁹ The defendant was entitled to the more ameliorative penalty provisions because the statute plainly stated the penalties would be applied “upon conviction,” as opposed to at the time of the crime.¹⁰⁰ Because the statute contained a specific statement of legislative intent, the court honored that intent to embrace substance abuse treatment measures over incarceration.¹⁰¹

Justice Johnson likened *Mayeux* to *Dick* in that both statutes in question specifically identify when the more ameliorative penalty provisions should apply and contain a statement of

93. LA. CODE CRIM. PROC. ANN. art. 881.5 (2018).

94. *State v. Dick*, 2006-2223, 2006-2226, p. 7 (La. 1/26/07); 951 So. 2d 124, 137 (Johnson, J., dissenting).

95. *State v. Mayeux*, 2001-3195, p. 2 (La. 6/21/02); 820 So. 2d 526, 527.

96. *Id.*

97. *Id.* at p. 5; 820 So. 2d at 529.

98. *See id.* at p. 6; 820 So. 2d at 530.

99. *Id.* at pp. 7-8; 820 So. 2d at 531.

100. *State v. Mayeux*, 2001-3195, pp. 7-8 (La. 6/21/02); 820 So. 2d 526, 531.

101. *Id.*

purpose from the legislature indicating why it intended to stray from the general sentencing rule.¹⁰² Thus, according to Justice Johnson, the general sentencing rule does not apply in every case.¹⁰³

IV. THE COURT'S DECISION

Following *Dick*, Louisiana Revised Statute § 15:308's interpretation problem remained.¹⁰⁴ Subsection (B) mandated retroactive application of ameliorative penalties. Conversely, the statute governing the committee on parole's duties considered "whether" a defendant was eligible for a sentence reduction.¹⁰⁵ Thus, the Louisiana Supreme Court, seeking to resolve this debate, heard from both sides of the argument again in *Esteen*.

A. PER CURIAM: WHY *DICK* GOT IT WRONG

The majority in *Esteen* recognized the separation of powers conflict that *Dick* depended on and noted that the court could now "harmonize[]" Louisiana Revised Statute § 15:308's provisions in such a way as to avoid a clash.¹⁰⁶ The court, in a brief and logical fashion, separated each branch of the government's duties regarding resentencing and commutation and succinctly dissolved any notion of over-reaching from *Dick*.¹⁰⁷

According to the court, the majority's reasoning in *Dick* rested on the premise that judicial resentencing of a final decision following a legislative act applying ameliorative penalty provisions retroactively was equivalent to the judiciary's exercise of the power of commutation, a power reserved to the executive branch.¹⁰⁸ The majority conceded that the commutation power¹⁰⁹ rightly belongs to the executive branch.¹¹⁰ The court's ruling in *Dick*, however, failed to take into account three principles: "1) The legislature is

102. See *State v. Dick*, 2006-2223, 2006-2226, pp. 2-4 (La. 1/26/07); 951 So. 2d 124, 134-36 (Johnson, J., dissenting).

103. See *id.* at pp. 2-4; 951 So. 2d at 135 (Johnson, J., dissenting).

104. *State ex rel. Esteen v. State*, 16-0949, pp. 2-3 (La. 1/30/18); 239 So. 3d 233, 235.

105. *Id.* at p. 3; 239 So. 3d at 235.

106. *Id.* at p. 4; 239 So. 3d at 236.

107. See *id.* at pp. 3-6; 239 So. 3d at 236-37.

108. *Id.* at p. 4; 239 So. 3d at 236.

109. The majority characterized that power as a "matter of grace from the state" that allows the executive branch to ameliorate an offender's penalty regardless of the original sentence or the range set by law. *State ex rel. Esteen v. State*, 16-0949, p. 5 (La. 1/30/18); 239 So. 3d 233, 237.

110. *Id.*

authorized to set penalties; 2) the judiciary has the power to impose sentences; and 3) anything not prohibited by the constitution is allowed.”¹¹¹

In the majority’s view, the executive’s power to commute was not interfered with when the legislature passed a law exercising its intent to retroactively apply more lenient penalties to an offender’s final sentence.¹¹² Instead, the legislature simply exercised its authority to set penalties and sought to apply them retroactively and, therefore, its declared “interest of fairness in sentencing” did not equal a “matter of grace.”¹¹³ Furthermore, nothing in the Louisiana Constitution prohibited them from doing so “in the interest of fairness.”¹¹⁴ Thus, the judiciary has the power to impose these more lenient sentences through a motion to correct illegal sentence.¹¹⁵

B. THE HOLDING: ESTABLISHING A SECOND OPTION

The court paved the road for relief when it dispelled the notion that resentencing “in the interest of fairness” equated to a “matter of grace.” The legislature reduced the sentences for Esteen’s crimes under Act No. 403, 2001 La. Acts 853 and, thus, his 150-year sentence exceeded the maximum authorized by law.¹¹⁶ Sentences not authorized by the statute governing the crime are considered “illegal sentences,” and courts can correct an illegal sentence at any time.¹¹⁷ Louisiana Revised Statute § 15:308 mandates the retroactive application of the more lenient penalties enacted by Act No. 403, 2001 La. Acts 853.¹¹⁸ Therefore, the defendant was entitled to resentencing in the district court via a motion to correct the illegal sentence.¹¹⁹ The court reversed the state’s denial of his motion and remanded the case back to the district court for resentencing.¹²⁰

111. In his dissenting opinion, Associate Justice Weimer summarized the majority’s reasoning as such. *State ex rel. Esteen v. State*, 16-0949, p. 3 (La. 1/30/18); 239 So. 3d 233, 240 (Weimer, J., dissenting).

112. *Id.* at pp. 5-6; 239 So. 3d at 237.

113. *Id.* at p. 5; 239 So. 3d at 237.

114. *Id.* at pp. 5-6 ; 239 So. 3d at 237.

115. *Id.* at pp. 6-7; 239 So. 3d at 238.

116. *State ex rel. Esteen v. State*, 16-0949, p. 6 (La. 1/30/18); 239 So. 3d 233, 237-38.

117. *Id.* at p. 6; 239 So. 3d at 238.

118. *Id.*

119. *Id.* at p. 6; 239 So. 3d at 238.

120. *Id.* at pp. 6-7; 239 So. 3d at 238.

C. CHIEF JUSTICE JOHNSON'S CONCURRENCE

Justice Johnson (now Chief Justice) assigned reasons in the *Esteen* opinion why she thought the majority ruled correctly on the issue.¹²¹ These reasons largely echoed her dissenting opinion in *Dick*.¹²² According to Chief Justice Johnson, it was simply the legislature's intent to provide a defendant with a judicial remedy, and to hold otherwise would create a "completely discretionary system of implementation" in the committee on parole.¹²³ The committee's discretion in considering "whether" a defendant is entitled to resentencing would ignore the legislative mandate in subsection (B) of applying more lenient penalties retroactively.¹²⁴

Furthermore, according to Chief Justice Johnson, *Esteen's* ruling now followed the court's underlying reasoning in *Mayeux*, namely that statutory language and expressed legislative purpose in an amendment may override the general rule that laws in effect at the time of the commission of a crime control the sentence.¹²⁵ Like the DWI statute in *Mayeux* that directed the application of updated penalties according to the date of conviction, Louisiana Revised Statute § 15:308 directed the application of updated penalties retroactively.¹²⁶ Additionally, the DWI statute addressed policy issues such as the societal impacts of drunk driving and the high per capita prison population; Louisiana Revised Statute § 15:308 addressed similar issues such as the inequity between penalties and the significant shift in policy towards substance abuse offenses.¹²⁷

Chief Justice Johnson affirmed her position, writing that "when courts impose sentences exceeding the express sentencing provisions—either by mistake or, as in this case, because of a retroactive legislative mandate—the sentence must be considered illegal and courts are duty-bound to correct those sentences."¹²⁸

121. *See State ex rel. Esteen v. State*, 16-0949, pp. 1-3 (La. 1/30/18); 239 So. 3d 233, 238-39 (Johnson, C.J., concurring).

122. *See State v. Dick*, 2006-2223, 2006-2226, pp. 1-7 (La. 1/26/07); 951 So. 2d 124, 134-37 (Johnson, J., dissenting).

123. *State ex rel. Esteen*, 16-0949, p. 1; 239 So. 3d at 238 (Johnson, C.J., concurring).

124. *Id.* at pp. 1-2; 239 So. 3d at 239 (Johnson, C.J., concurring).

125. *Id.* at p. 2; 239 So. 3d at 239 (Johnson, C.J., concurring).

126. *Id.* (Johnson, C.J., concurring).

127. *Id.* at pp. 2-3; 239 So. 3d at 239 (Johnson, C.J., concurring).

128. *State ex rel. Esteen v. State*, 16-0949, p. 3 (La. 1/30/18); 239 So. 3d 233, 239 (Johnson, C.J., concurring).

D. THE DISSENTS

Associate Justice John Weimer steadfastly dissented with the majority in *Esteen*. He argued that in allowing a judicial remedy, the majority automatically “turn[ed] back the clock” on an offender’s final sentence.¹²⁹ Further, the majority’s decision ignored the statutory mandate of subsection (C) that the committee on parole must determine whether an offender posed a risk of danger to society.¹³⁰ Now, the only task the majority gave the committee on parole was the sole authority to evaluate the limited class of persons whose final sentences were legal: those that fall between the original sentencing range and the updated range.¹³¹

According to Justice Weimer, upholding the *Dick* ruling would give a “straightforward effect” to Louisiana Revised Statute § 15:308 and a “proper respect” to the separation of powers.¹³² To support this position, he cited a number of jurisdictions that have recognized that the power to reduce final sentences is strictly reserved to the executive branch.¹³³ Justice Weimer further cautioned against the majority’s broad interpretation of Louisiana Revised Statute § 15:308 and reiterated the principle of statutory interpretation that “[w]hen the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.”¹³⁴

In his final comments, Justice Weimer recognized Louisiana’s reputation as the “incarceration capital” of the nation.¹³⁵ According to him, regardless of any judge’s opinion on the state’s

129. State *ex rel.* *Esteen v. State*, 16-0949, p. 2 (La. 1/30/18); 239 So. 3d 233, 240 (Weimer, J., dissenting).

130. *Id.* at pp. 1-2; 239 So. 3d at 240 (Weimer, J., dissenting).

131. In a footnote, the majority added: “[I]t appears that the legislature has created two distinct avenues for relief.” *Id.* at p. 6 n.4; 239 So. 3d at 238 n.4. For illegal sentences, the legislature intended the courts to resentence. *Id.* For legal sentences, the legislature intended the committee on parole to consider the updated ameliorative penalties when an inmate applies for parole. *Id.* The majority gives the example of a legal sentence as one where a defendant is given a fifteen-year sentence in a penalty range of fifteen to thirty years, and the updated range is zero to fifteen. *Id.* Weimer criticized the majority’s footnote as “doing no service to longstanding law” because it was what he considered an advisory opinion for facts not considered in the case. *Id.* at pp. 4-5; 239 So. 3d at 241-42 (Weimer, J., dissenting).

132. *Id.* at p. 3; 239 So. 3d at 241 (Weimer, J., dissenting).

133. *See id.* at p. 2 n.1; 239 So. 3d at 240 n.1 (Weimer, J., dissenting) (internal quotations omitted).

134. State *ex rel.* *Esteen v. State*, 16-0949, pp. 3-4 (La. 1/30/18); 239 So. 3d 233, 241 (Weimer, J., dissenting) (quoting LA. STAT. ANN. § 1:4 (2018)).

135. *Id.* at p. 5; So. 3d at 242 (Weimer, J., dissenting).

notoriety, an inmate's release should not be "automatic" by the court.¹³⁶ Instead, the committee on parole should determine release on a case-by-case basis.¹³⁷ Justice Weimer further warned that "potentially dangerous offenders will be released without the statutorily-mandated vetting."¹³⁸

Following the court's denial of the state's rehearing application after the *Esteen* decision, Justice Weimer assigned additional reasons why he disagreed with the majority and why he would grant a rehearing.¹³⁹ According to him, the majority effectively created a "one-man pardon board" in the judge, a delicate position possibly subject to harassment by a defendant's friends, families, and attorneys.¹⁴⁰ Furthermore, the majority ignored the original bill's modification leaving out the judicial remedy from the final version.¹⁴¹ When the legislature made the final edit, it must have considered the executive branch's inherent authority to commute sentences and thus intended to make the Panel, a part of the executive branch, the sole remedy.¹⁴²

Associate Justice Marcus Clark agreed with Weimer and also assigned reasons why he strayed from the majority's broad interpretation of Louisiana Revised Statute § 15:308.¹⁴³ According to Justice Clark, sentences agreed upon pursuant to valid plea deals should not be disregarded or subject to review by Louisiana Revised Statute § 15:308.¹⁴⁴ Accordingly, such offenders should be bound by their agreement and should not be allowed to "seek a reduction [of] their sentence[]"¹⁴⁵

136. *State ex rel. Esteen v. State*, 16-0949, pp. 5-6 (La. 1/30/18); 239 So. 3d 233, 242 (Weimer, J., dissenting).

137. *Id.* at p. 6; 239 So. 3d at 242 (Weimer, J., dissenting).

138. *Id.* at p. 6 n.1; 239 So. 3d at 242 (Weimer, J., dissenting).

139. *See State ex rel. Esteen v. State*, 16-0949 (La. 3/13/18); 239 So. 3d 266 (Weimer, J., assigning reasons).

140. *Id.* at pp. 1-2; 239 So. 3d at 266 (Weimer, J., assigning reasons) (internal quotations omitted); *see also* LA. CODE CRIM. PROC. ANN. art. 881 cmt. (a) (2018) (discussing reasons why judges opposed a rule that would allow them to amend sentences).

141. *See State ex rel. Esteen*, 16-0949, pp. 2-3; 239 So. 3d at 266-67 (Weimer, J., assigning reasons).

142. *See id.* at p. 3; 239 So. 3d at 267 (Weimer, J., assigning reasons).

143. *See State ex rel. Esteen v. State*, 16-0949, p. 1 (La. 1/30/18); 239 So. 3d 233, 242-43 (Clark, J., dissenting).

144. *See id.* at p. 1; 239 So. 3d at 242 (Clark, J., dissenting).

145. *See id.* at p. 1; 239 So. 3d at 242-43 (Clark, J., dissenting).

V. ANALYSIS

While the *Dick* decision controlled the disposition of defendants seeking resentencing under Louisiana Revised Statute § 15:308 for almost twelve years, its ruling, based on a debate regarding the separation of powers, failed to capture the clear legislative intent to provide relief for defendants “in the interest of fairness in sentencing.”¹⁴⁶ *Esteen* finally resolved this debate and achieved the legislature’s original purpose in enacting the bill. Just a few short months after *Esteen*, Louisiana was no longer in the top ranking for highest incarceration rate per capita in the nation.¹⁴⁷ While this decision achieved the legislature’s intent, questions remain regarding the importance of the committee on parole and district court judges’ task in acting as a “one-man parole board.”¹⁴⁸

A. WHAT *ESTEEN* GOT RIGHT AND THE DECISION’S EFFECT ON THE CRIMINAL REFORM MOVEMENT

The main thrust of the State’s argument on Louisiana Revised Statute § 15:308 was Louisiana jurisprudence’s long adherence to determining a defendant’s sentence based on the penalties in effect at the time of the commission of a crime. However, Chief Justice Johnson correctly argued that this rule does not apply in every case.

In making its arguments, the State relied on case law regarding updated penalty statutes in which the length of sentencing was the only change in the statute’s text.¹⁴⁹ However,

146. LA. STAT. ANN. § 15:308(B) (2018).

147. Louisiana is now ranked second behind Oklahoma. Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, PRISON POL’Y (June 2018), <https://www.prisonpolicy.org/global/2018.html>.

148. *State v. Guillory*, 404 So.2d 453, 459 n.4 (La. 1981).

149. The *Dick* opinion, the State’s *Esteen* brief, and Weimer’s dissenting opinion in *Esteen* relied upon *State v. Sugasti*, 2001-3407, p. 4, 7 (La. 6/21/02); 820 So. 2d 518, 520, 522 (holding that penalties in place at the time of defendant’s crime applied to the defendant and thus, defendant was not entitled to subsequent reduced penalties that eliminated “without benefit of probation or suspension of sentence” from the statute). See *State v. Dick*, 2006-2223, 2006-2226, p. 5 (La. 1/26/07); 951 So. 2d 124, 127; State’s Original Brief in Opposition to Application for Writs at 9, *State v. Esteen*, 16-949 (La. 11/13/17); 239 So. 3d 233, 2017 WL 6519835 at *9; *State ex rel. Esteen v. State*, 16-0949, p. 4 n.3 (La. 3/13/18); 239 So. 3d 233, 241 (Weimer, J., dissenting). The *Dick* opinion and Weimer’s dissenting opinion in *Esteen* also relied upon *State v. Narcisse*, 426 So. 2d 118, 130-31 (La. 1983) (holding that defendant was correctly sentenced to first degree murder and was not entitled to updated statute that did not include retroactive application provisions) and *State v. Wright*, 384 So. 2d 399, 401 (La 1980) (holding that defendant was not entitled to sentencing according to updated theft of

in *Mayeux*, the case Justice Johnson relied upon in her dissent in *Dick*, the statute in question changed more than the penalty provisions.¹⁵⁰ There, the statute added text indicating when to apply the more lenient provisions and also a statement of purpose indicating why the legislature intended to stray from the general sentencing rule.¹⁵¹ The court in *Dick* disregarded the principles of *Mayeux*, but the court in *Esteen* embraced them. Thus, *Esteen* stood as another case where the rule does not apply.

The *Esteen* court further, and correctly, conceded that commutation is a power exclusive to the executive branch, but unlike *Dick*, the court did not rest its decision on Louisiana Revised Statute § 15:308's judicial remedy equating to commutation.¹⁵² A "matter of grace" from the state is issued solely by the executive branch and is not limited by any other branch of government.¹⁵³ In Louisiana Revised Statute § 15:308, however, the legislature appropriately abided by its inherent power to enact laws.¹⁵⁴

Furthermore, basing its text on the *Mayeux* principles, the legislature correctly vested the judiciary with the power to sentence a defendant along guidelines authorized by law, not the power to commute.¹⁵⁵ Because the Louisiana Code of Criminal Procedure allows a court to correct an illegal sentence at any time,¹⁵⁶ Chief Justice Johnson correctly believed that redundancy was the reason the legislature edited the judicial remedy from Louisiana Revised Statute § 15:308's final version.¹⁵⁷ Therefore, resentencing in the district court was not a violation of the separation of powers.

B. WHAT *ESTEEN* GOT WRONG AND THE IGNORED IMPORTANCE OF THE COMMITTEE ON PAROLE

After the *Esteen* decision, defendants now have two avenues of relief for resentencing: the committee on parole and the district

livestock penalty that only changed the sentencing range). See *Dick*, 2006-2223, 2006-2226, pp. 4, 5; 951 So. 2d at 127; *State ex rel. Esteen v. State*, 16-0949, p. 4 n.3 (La. 1/30/18); 239 So. 3d 233, 241 (Weimer, J, dissenting).

150. *State v. Mayeux*, 2001-3195, pp. 4-5 (La. 6/21/02); 820 So. 2d 526, 529.

151. *Id.* at p. 5; 820 So. 2d at 529.

152. See generally *State ex rel. Esteen*, 16-0949; 239 So. 3d 233.

153. *Id.* at p. 5; 239 So. 3d at 237.

154. *Id.*

155. See *id.* at pp. 5-6; 239 So. 3d at 237.

156. LA. CODE CRIM. PROC. ANN. art. 881.5 (2018).

157. See *State v. Dick*, 2006-2223, 2006-2226, p. 6 (La. 1/26/07); 951 So. 2d 124, 137.

court judge.¹⁵⁸ The significance of the committee on parole, however, is overlooked. Despite its misgivings and discretionary process, the committee on parole serves a critical role in rewarding rehabilitation with reentry and protecting communities from offenders.

Aside from the difficulties prisoners face pursuing parole,¹⁵⁹ the process of parole and pardons (aimed at reducing risk and recidivism) is organized and formulaic. Justice Weimer cautioned that the *Esteen* majority diverted an important task away from the committee on parole and created a “one-man pardon board” in the judge.¹⁶⁰ Trial court judges must already navigate criminal and civil dockets, trials, and hearings. Now they are also tasked with duties previously reserved to a seven-person panel that was professionally trained to determine offender release eligibility.¹⁶¹

Thus, risk and recidivism compete with the “interest of fairness in sentencing” making for a troubling balance of duty and justice. While *Esteen* correctly applied the principles of separation of powers and statutory interpretation, the court’s ruling failed to acknowledge the committee on parole’s primary function in determining whether an offender is ready to be released into society.

C. TEN YEARS ‘TIL ABROGATION: WHAT HAPPENED AND WHAT NOW?

One question begs an answer following the court’s abrogation of *Dick*: What changed during the time between 2007 and 2018? Was it simply the makeup of the court itself or a stronger shift in policy toward non-violent drug offenses? The majority in *Dick* heavily considered the importance of constitutional separation of

158. See *State ex rel. Esteen v. State*, 16-0949, p. 6 (La. 1/30/18); 239 So. 3d 233, 238.

159. See Beth Schwartzapfel, *How Parole Boards Keep Prisoners in the Dark and Behind Bars*, WASH. POST (July 11, 2015), https://www.washingtonpost.com/national/the-power-and-politics-of-parole-boards/2015/07/10/49c1844e-1f71-11e5-84d5-eb37ee8eaa61_story.html?noredirect=on&utm_term=.adbf6d60b731; see also Julia O’Donoghue, *For Louisiana Prisoners, Parole Is Still An Uphill Climb*, TIMES PICAYUNE (Nov. 1, 2017, 11:13 AM), https://www.nola.com/politics/index.ssf/2017/10/louisiana_parole_pardon_change.html; Lex Talamo, *Louisiana Prisons Can’t Track Inmates Accurately, Audit Finds*, SHREVEPORT TIMES (Nov. 13, 2017, 6:10 AM), <https://www.shreveporttimes.com/story/news/2017/11/13/louisiana-prisons-cant-track-inmates-accurately-audit-finds/844975001/>.

160. See *State ex rel. Esteen*, 16-0949, pp. 1-2; 239 So. 3d at 240 (Weimer, J., dissenting).

161. See LA. STAT. ANN. § 15:574.2 (2018).

powers and preserving the executive's power to commute.¹⁶² The majority in *Esteen* placed great weight on the legislature's ability to enact laws, especially those not unauthorized by the Louisiana Constitution.¹⁶³ In what appeared to be a battle of two models of reasoning, the *Esteen* decision harmoniously preserved the executive's power of commutation, expanded the legislature's ability to set penalty provisions, and reaffirmed the judiciary's authority to resentence offenders retroactively.

In March 2017, the Louisiana Justice Reinvestment Task Force published a report on the Louisiana criminal justice system and issued proposals on legislative reform.¹⁶⁴ A few months later, the legislature passed ten bills described as "the most comprehensive justice reform in state history."¹⁶⁵ Of the estimated \$262 million in savings, 70% will be reinvested in local programs aimed at reform.¹⁶⁶ In November of the same year, 2000 inmates, much to the dismay of law enforcement officials, were released from prisons across the state.¹⁶⁷ Under *Esteen*, a multitude of other inmates, some serving life sentences, were resentenced in district courts, credited for time served, and released.¹⁶⁸

It is unclear which route eligible offenders will take in seeking resentencing pursuant to Louisiana Revised Statute § 15:308. What is clear, however, is the uphill climb these individuals face. Be it a one-person or a seven-person board, both avenues exercise wide discretion along wide penalty guidelines. Furthermore, even lower penalty provisions were enacted in 2017, but they are not subject to consideration in resentencing by Louisiana Revised Statute § 15:308.¹⁶⁹ Now that *Esteen* stands for the proposition

162. See generally *State v. Dick*, 2006-2223, 2006-2226 (La. 1/26/07); 951 So. 2d 124.

163. See generally *State ex rel. Esteen v. State*, 16-0949 (La. 1/30/18); 239 So. 3d 233 (Weimer, J., dissenting).

164. *Louisiana Justice Reinvestment Package*, LOUISIANA (June 7, 2017), http://gov.louisiana.gov/assets/docs/LA_FinalPackageSummary_2017-6-7_FINAL.pdf.

165. *Louisiana's 2017 Criminal Justice Reforms*, PEW TRUSTS (Mar. 1, 2018), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/louisianas-2017-criminal-justice-reforms#0-overview>.

166. *Id.*

167. See Grace Toohey, *Almost 2,000 Louisiana Prisoners Released; What Comes Next?*, ADVOCATE (Nov. 1, 2009, 7:07 PM), https://www.theadvocate.com/baton_rouge/news/crime_police/article_14364936-bf51-11e7-b43a-cb597328a645.html.

168. See Matt Sledge, *La. Supreme Court Ruling Gives Hope to Inmates Sentenced Under Harsh 1990s Laws*, ADVOCATE (July 14, 2018, 6:30 PM), https://www.theadvocate.com/new_orleans/news/courts/article_bd9004c4-87a9-11e8-ad6b-5b75e3256755.html.

169. See Act No. 281, 2017 La. Acts 471.

that the legislature has been able to exercise its original intent, perhaps the evolution of Louisiana's criminal justice reform movement will unveil further legislation "in the interest of clarity" and afford all those facing harsh sentences the same opportunities that many others across the state are given.

VI. CONCLUSION

At his resentencing hearing, the court resentenced John Esteen from one hundred fifty years to seventy-five years.¹⁷⁰ His original sentence of fifty years for each count of possession fell among the median sentencing range, but the district court judge resentenced him to thirty years on each count, the maximum authorized by current law.¹⁷¹ Others received minimum sentences and were released credited for time served.¹⁷²

Since its enactment, Louisiana Revised Statute § 15:308 has perplexed inmates, attorneys, and judges alike.¹⁷³ While *Dick* sought to be the final decision regarding a defendant's remedy for resentencing, *Esteen* resolved the statute's interpretation problem and provided a balance among the Louisiana government's branches of power. In doing so, the Louisiana Supreme Court made an important step towards eliminating the state's notoriety as a mecca of incarceration, and yet created a procedural framework that seemingly ignored the executive branch's vast responsibility in evaluating offenders' risks and releasing them from prison.

Curtis J. Case

170. *State v. Esteen*, 18-392, p. 2 (La. App. 5 Cir. 12/19/18); 262 So. 3d 1064, 1066.

171. *Id.* Esteen's original fifty-year sentence fell between the thirty to sixty-year range. *Id.* Although the district court judge reduced Esteen's sentence to thirty years, it imposed a maximum sentence in the updated range of fifteen to thirty years. *Id.* The parole board granted Esteen parole in 2019 on the same day as his mother's birthday. Matt Sledge, *John Esteen, Inmate Behind Landmark La. Supreme Court Decision, Wins Parole From 100-Year Sentence*, *ADVOCATE* (Mar. 12, 2019, 11:54 AM), https://www.nola.com/news/courts/article_e58e1332-0bc2-5213-ab72-a523e1915bd9.html.

172. *See* Sledge, *supra* note 168.

173. *See Weaver v. LeBlanc*, 2009-0244, p. 4 (La. App. 1 Cir. 9/14/09); 22 So. 3d 1014, 1017.