

SUPREME COURT OF LOUISIANA

NO. 95-C-1649

ALINE SEGURA TUCKER

v.

VIVIAN CROWSON MAGETTE TUCKER FOWLER

MARCUS, J. (dissenting)

I disagree with the majority's conclusion that once the sheriff obtains possession of a writ of fieri facias, his right to collect a commission attaches regardless of whether the writ is executed. In my view, La. R.S. 33:1428 A(13)(a) presupposes a seizure. The statute lists five enumerated circumstances in which the judicial sale does not take place. In these situations, the sheriff is entitled to receive a fee or commission "as in the case of a sale." Clearly, a seizure must precede a sale. It follows that if no seizure takes place, there could not have been a sale, so the sheriff cannot be entitled to a fee or commission "as in the case of sale." By allowing the sheriff a commission where nothing of value has been seized, the majority's opinion is contrary to the clear language of the statute.

Accordingly, I respectfully dissent.