

SUPREME COURT OF LOUISIANA

No. 2006-K-2175

STATE OF LOUISIANA

VERSUS

MANOLO ANTON BAKER

ON APPLICATION FOR REHEARING

CALOGERO, Chief Justice, would grant rehearing and assigns reasons.

I would grant rehearing in this matter on two bases.

First, for the reasons assigned in my dissent on original hearing, I believe there was no rational or legal basis for overruling *State v. Firmin*, 354 So.2d 1355 (La. 1978), and *State v. Sanders*, 337 So.2d 1131 (La. 1976). *State v. Baker*, 06-2175 (La. 10/16/07), ___ So.2d ___, Calogero, C.J., dissenting. This court in those cases identified and enforced the legislative intent regarding sentencing enhancement for violations of La. Rev. Stat. 14:95.1 under the habitual offender law, La. Rev. Stat. 15:529.1, and the legislature has presumably agreed with that interpretation as it did not revise the law thereafter.

Second, I believe the defendant makes a credible argument that the majority's wholly new and substantive interpretation of La. Rev. Stat. 15:529.1 and La. Rev. Stat. 14:95.1 should not retroactively apply to his guilty plea. The law as interpreted by this court at the time of the commission of the offense, as well as when the defendant entered his guilty plea, clearly and unequivocally provided that a sentence for a violation of La. Rev. Stat. 14:95.1 could not be further enhanced under La. Rev. Stat. 15:529.1; therefore, as the defendant asserts, in entering his guilty plea, he and his counsel reasonably relied on this court's clear pronouncement of the law. Now that the majority has substantively changed the law and made that change retroactive

to the defendant, his plea, premised as it was on the law in effect at the time of the commission of the offense and when he entered his plea, is rendered unknowing and involuntary.

In *Rogers v. Tennessee*, 532 U.S. 451, 121 S.Ct. 1693, 149 L.Ed.2d 697 (2001), the United States Supreme Court noted that a judicial change in the law could deprive a defendant of his due process rights – in particular, notice, foreseeability, and the right to fair warning – if the change were unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue, citing *Bowie v. City of Columbia*, 378 U.S. 347, 84 S.Ct. 1697, 12 L. Ed. 2d 894 (1964). In the instant case, surely the majority’s substantive reinterpretation of the statutes was unexpected, as this court had specifically identified and enforced the legislative intent behind the statutes, and the legislature had left that interpretation in place for decades. Moreover, the majority’s new interpretation, which is certainly more onerous for this defendant, is not defensible given this court’s prior statements of the law, as I set forth in my earlier dissent. Accordingly, I believe that retroactive application of the majority decision to this defendant violates his due process rights, and, at a minimum, he should be allowed to withdraw his plea of guilty.