

SUPREME COURT OF LOUISIANA

No. 14-K-1370

STATE OF LOUISIANA

VERSUS

BRETT GERALD

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF EAST FELICIANA**

CRICHTON, J., additionally concurring:

I concur in the denial of this writ application, because the defendant did not timely object to his sentence, which waives any sentencing claim on appeal. La. Code Crim. P. art. 881.1(D).

I certainly agree with the trial court that the defendant's crimes call for a substantial sentence commensurate with their horrendous nature. However, I write separately to question the retroactive application of a substantive change in the law to the defendant. The collision in this matter occurred on May 30, 2012. This Court's decision in *State v. Oliphant*, 2012-1176, (La. 3/19/13), 113 So. 3d 165, in which the Court held vehicular homicide to be a crime of violence, was rendered in 2013. Likewise, it was not until 2014 that the Legislature amended La. R.S. 14:2 to add a provision categorizing vehicular homicide as a "crime of violence" when the vehicle operator's "blood alcohol concentration exceeds 0.20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood." La. R.S. § 14:2(B)(46).

Because both the decision in *Oliphant* and the amendment to the Revised Statute occurred after the collision, the Act should not apply to the defendant. As a substantive change in the law, the classification of vehicular homicide as a "crime of violence" is not retroactive and should only apply prospectively. *See* La. R.S. 1:2 ("No Section of the Revised Statutes is retroactive unless it is expressly so

stated.”); La. Civ. Code art. 6 (“In the absence of contrary legislative expression, substantive laws apply prospectively only.”). *See also Church Mut. Ins. Co. v. Dardar*, 2013-2351 (La. 5/7/14), 145 So. 3d 271, 279 (same).