

SUPREME COURT OF LOUISIANA

No. 2019-K-00522

STATE OF LOUISIANA

versus

STEVEN DEVON HARDYWAY

**ON WRIT OF CERTIORARI TO THE SECOND CIRCUIT
COURT OF APPEAL, PARISH OF LINCOLN**

Crichton, J., would grant and assigns reasons:

Defendant failed to contemporaneously object or to move to quash the habitual offender bill of information on the ground of an allegedly breached probation revocation agreement between himself and the State. Therefore, this issue was not preserved for appellate review. *See* La.C.Cr.P. art. 841(A).

Moreover, had the claim been preserved for review, I would find that the revocation agreement defendant entered into with the State following his arrest was clear and unambiguous: If defendant admitted to violating his probation in the prior case *and* later pleaded guilty to the new charges, the State would not file a habitual offender bill of information; if defendant forced the state to prove that he violated his probation, the State would later seek habitual offender proceedings after any conviction in the instant matter. Implicit in the first part of that agreement was that if defendant admitted to violating his probation but did not plead guilty in the present matter, the State would reserve its right to file a habitual offender bill of information. *See* La.C.C. art. 1768 (“Conditions may be either expressed in a stipulation or implied by the law, the nature of the contract, or the intent of the

parties.”); *see also State v. Nall*, 379 So.2d 731 (La. 1980) (describing the contractual nature of a plea agreement between the state and a defendant). Defendant failed to plead guilty, so he was not entitled to have the State refrain from instituting habitual offender proceedings. *See* La.C.C. art. 1773 (“Whether or not a time has been fixed, the condition is considered to have failed once it is certain that the event will not occur.”).

Accordingly, I would grant the State’s application to reinstate the habitual offender adjudication and sentence, and remand to the court of appeal to consider the pretermitted claim pertaining to the defendant’s sentences for the crime of attempted first degree murder and armed robbery.

