

SUPREME COURT OF LOUISIANA

NO. 96-K-0786

STATE OF LOUISIANA

versus

ROBERT CALHOUN

TRAYLOR, J., dissenting.

We granted certiorari in this case to determine whether Robert Calhoun, the defendant, was entitled to withdraw his plea of guilty to La R.S. 14:81.2, molestation of a juvenile, where the trial court failed to advise Calhoun at the time of his plea of the registration requirements of La.R.S. 15:540-549. I believe the First Circuit Court of Appeal properly affirmed Calhoun's conviction and sentence. Further, I believe the trial court's failure, although contrary to the statutory requirements, did not invalidate or diminish the voluntariness of the defendant's waiver of rights and subsequent plea, and was therefore harmless error. Recognizing that a trial court must timely inform a defendant of the registration and notification requirements under the sex offender statute, in the absence of that notice we should not automatically permit a guilty plea to be withdrawn. In the instant case, Calhoun did not specifically assert, brief or orally argue that he would not have pled guilty had he been informed of the requirements. Moreover, Calhoun swore under oath that he fully understood his rights and the nature and benefits of his plea bargain. Therefore, I believe that this factual situation amounts to harmless error and thus does not warrant withdrawal of Calhoun's plea. We should not expand the *Boykin* requirements for an informed plea to include statutory requirements. Here, Calhoun, pursuant to a mutually agreed upon pleabargain, avoided having certain evidence presented against him at trial, received less than the minimum sentence, was afforded concurrent not consecutive sentences and benefitted from the dismissal of the sexual battery charge. La. C.Cr.P. art.881.2(A)(2) states as follows:

The defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea.

As evidenced by this article, the legislature and This Court clearly defer to the finality of a plea voluntarily given by a defendant. Both the state and Calhoun benefitted from this agreement.

The remedy of withdrawal of a guilty plea before sentencing is authorized by La.C.Cr.P. article 559 and not to be dispensed frivolously. I maintain “[a] guilty plea is a conviction and, therefore, should be afforded a great measure of finality.” *State v. Thornton*, 521 So. 2d 598, 600 (La. App. 1st Cir.), *writ denied*, 530 So. 2d 85 (La. 1988). Accordingly, I respectfully dissent.