

SUPREME COURT OF LOUISIANA

No. 17-OK-0785

STATE OF LOUISIANA

v.

CONSTANT ALLAH

**ON SUPERVISORY WRITS TO THE CRIMINAL
DISTRICT COURT, PARISH OF ORLEANS**

PER CURIAM:

Writ granted in part. Because defendant pleaded guilty to three counts of second degree battery, an offense enumerated as a crime of violence in R.S. 14:2(B), he was not entitled to deferred sentences. *See* La.C.Cr.P. art. 893(E)(1)(b) (prior to amendment by 2016 La. Acts 509). Similarly, defendant was not entitled to an expungement of these convictions under the provisions in effect at the time he filed his motion, though he may be in the future. *See* La.C.Cr.P. art. 978 (prior to amendment by 2016 La. Acts 125, adding Paragraph E). However, the court of appeal erred in declaring defendant's pleas under La.C.Cr.P. art. 893 to be absolute nullities. At the time of defendant's pleas, Article 893(A) allowed for suspended sentences to be imposed for second degree battery convictions, and defendant received suspended sentences. As a result, on review, we cannot conclude that the pleas constituted absolute nullities.

When a district court finds, even after sentencing, that a plea of guilty is constitutionally infirm, it retains the authority to vacate the sentence and set aside the plea. *See State v. Lewis*, 421 S.2d 224, 226 (La. 1982); *see also State ex rel. Clark v. Marullo*, 352 So.2d 223 (La. 1977). On remand, the district court should

first ascertain whether defendant—bearing in mind that he may nonetheless be eligible for expungement in the future—desires to withdraw his guilty pleas. If he so wishes, only then should the district court hold a contradictory hearing to determine whether the pleas were constitutionally infirm and decide whether the pleas were induced by what defendant justifiably believed to be a plea bargain which, as a matter of law, could not be kept. *See State v. Dixon*, 449 So.2d 463, 464 (La. 1984).