APPENDIX A

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2021-KK-00831

VS.

CHRYSTAL CLUES-ALEXANDER

IN RE: Chrystal Clues-Alexander - Applicant Defendant; Applying for Rehearing, Parish of St. Martin, 16th Judicial District Court Number(s) 14-247175, Court of Appeal, Third Circuit, Number(s) KW 20-00471;

June 28, 2022

Application for rehearing denied.

SJC
JLW
JTG
WJC
JBM

Hughes, J., would grant.
Griffin, J., would grant.

Supreme Court of Louisiana
June 28, 2022
Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

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Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #023

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **13th day of May, 2022** are as follows:

PER CURIAM:

2021-KK-00831 *STATE OF LOUISIANA VS. CHRYSTAL CLUES-ALEXANDER (Parish of St. Martin)*

REVERSED AND REMANDED. SEE PER CURIAM.

Hughes, J., dissents for the reasons assigned by J. Griffin.
Griffin, J., dissents and assigns reasons.

APPENDIX B

SUPREME COURT OF LOUISIANA

No. 2021-KK-00831

STATE OF LOUISIANA

VS.

CHRYSTAL CLUES-ALEXANDER

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of St. Martin

PER CURIAM:

We granted the application to determine whether the court of appeal erred in ruling that defendant is entitled to withdraw her guilty plea based on *Ramos v. Louisiana*, 590 U.S. ___, 140 S.Ct. 583, 206 L.Ed.2d 583 (2020). At the time defendant pleaded guilty, the district court advised her that she had the right to a jury trial. After she pleaded guilty, the United States Supreme Court announced a new rule of criminal procedure in *Ramos v. Louisiana*, holding that a state jury must be unanimous to convict a criminal defendant of a serious offense. We find that this jurisprudential development subsequent to defendant's knowing and voluntary plea does not render her plea involuntary or unknowing. Accordingly, we reverse the ruling of the court of appeal and reinstate the district court's ruling, which denied defendant's motion to withdraw her guilty plea.

Defendant was indicted for the second degree murder of her husband. She made two motions to declare former La.C.Cr.P. art. 782(A) unconstitutional and require a unanimous jury at trial, which the district court denied. In 2018, she pleaded guilty to manslaughter. She pleaded guilty unconditionally and did not reserve any issues for review pursuant to *State v. Crosby*, 338 So.2d 584 (La. 1976). She has not yet been sentenced.

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In 2020, after the Supreme Court decided *Ramos v. Louisiana*, defendant filed a motion to withdraw her guilty plea. She contended that she accepted the State's plea offer because the jury could reach a nonunanimous verdict if she proceeded to trial. Defendant contended her primary reason for accepting the plea agreement was undermined after *Ramos* eliminated that possibility, and therefore she should be permitted to withdraw her plea.

After a hearing at which defendant testified that the possibility of a nonunanimous jury verdict was the primary reason she pleaded guilty, the district court denied the motion. The district court observed that defendant's guilty plea waived all defects prior to the plea other than jurisdictional ones, and that its advisement to defendant of the *Boykin* rights was correct at the time it was given.[1]

The court of appeal reversed the trial court's ruling. *State v. Clues-Alexander*, 20-471 (La. App. 3 Cir. 11/16/20) (unpub'd). The court of appeal found that the holding of *Ramos* applies to these proceedings because direct review of the guilty plea was not final when *Ramos* was decided. Under *Ramos*, the trial court's advisement of the right to a jury trial was not correct, according to the court of appeal, because it did not inform defendant that the jury must reach its verdict unanimously. Therefore, defendant's plea was unknowingly made, in ignorance of the law, and she must be permitted to withdraw it.

The State contends that the holding of *Ramos* does not apply here. We agree. In *Ramos*, the Supreme Court stated, "Louisiana and Oregon may need to retry *defendants convicted of felonies by nonunanimous verdicts* whose cases are still pending on direct appeal." *Ramos*, 140 S.Ct. at 1406 (emphasis added). A new rule of criminal procedure applies to cases on direct review, even if the defendant's trial

[1] *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The federal constitutional rights waived when a plea of guilty is entered in a state criminal trial are the privilege against compulsory self-incrimination, the right to a trial by jury, and the right to confront one's accusers.

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has already concluded. *See Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987). The court of appeal here cited *Griffith* for that principle when it found that the new rule of criminal procedure established in *Ramos* applies to these proceedings. However, defendant was not convicted by a jury, unanimous or otherwise; she pleaded guilty. As such, *Ramos* does not apply. The court of appeal's decision to the contrary incorrectly extended *Ramos* beyond its proper context of convictions based on non-unanimous jury verdicts, with wide ranging potential consequences for guilty pleas.

Defendant proposes that the effect of the court of appeal's ruling can be limited to guilty pleas in which a motion to withdraw the plea is made before sentencing. Code of Criminal Procedure Article 559(A) provides that a "[u]pon motion of the defendant and after a contradictory hearing, which may be waived by the state in writing, the court may permit a plea of guilty to be withdrawn at any time before sentence." The comments to that article explain that the discretion to permit a plea of guilty to be withdrawn before sentence cannot be arbitrarily exercised, and a trial court's improper refusal to permit a change of plea is reversible error. La.C.Cr.P. art. 559, Official Revision Comment 1966. The comment also notes that "[t]he defendant should be permitted to withdraw the plea when induced to make it through ignorance, fraud, or intimidation." *Id.*, citing Orfield, Criminal Procedure from Arrest to Appeal 301 (1947).

We find that the district court did not abuse its discretion in not permitting defendant to withdraw her plea before sentencing. There is nothing suggesting that the plea was induced through ignorance, fraud, or intimidation. We also note that there is no support in the jurisprudence for a reviewing court to treat the denial of a pre-sentence motion to withdraw an unconditional guilty plea significantly differently from one denied after sentencing. Instead, "appellate review [is] confined to the question of whether the plea was voluntarily and intelligently entered, or

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should have been permitted to be withdrawn as involuntarily and unknowingly made[.]" *State v. Johnson*, 2019-02004, p. 4 (La. 12/1/20), 314 So.3d 806, 808–09.

Two years after defendant pleaded guilty, the Supreme Court declared in *Ramos* that a state jury must be unanimous to convict a criminal defendant of a serious offense. The court of appeal considered the plea made before that pronouncement to rest upon a defective advisement of the right to jury trial because it was made in ignorance of a future legal development. In support, the court of appeal cited *State v. Bouie*, 2000-2934, p. 9 (La. 5/14/02), 817 So.2d 48, for the proposition that ignorance of the law is a valid ground to withdraw a guilty plea pursuant to La.C.Cr.P. art. 559 before sentencing.

The court in *Bouie* reiterated the settled law that a district court has broad discretion in ruling on a defendant's motion to withdraw his guilty plea before sentencing, and that when circumstances indicate that the plea was constitutionally invalid, the district court should allow the defendant to withdraw her plea. *See Bouie*, 2000-2934, p. 9, 817 So.2d at 53, citing *State v. Toney*, 412 So.2d 1034, 1035–36 (La. 1982). *Bouie* does not stand for the novel principle that unawareness of a future legal development renders a guilty plea constitutionally invalid.

Ample jurisprudence suggests that legal developments that occur after a guilty plea, such as the *Ramos* decision, do not invalidate a defendant's otherwise intelligent, knowing, and voluntary guilty plea. The Supreme Court in *Brady v. United States*, 397 U.S. 742, 757, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970), rejected the principle that defendant advances here. In *Brady*, the defendant challenged the validity of his plea to kidnapping under the federal kidnapping statute. At the time he pled guilty, the offense carried a possible death penalty, but the Supreme Court subsequently held that capital punishment for a violation of the kidnapping statute was unconstitutional. The Court found that his plea was knowing and voluntary, despite the subsequent change in the law concerning the availability of the death

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penalty. The Court explained:

> A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action. More particularly, absent misrepresentation or other impermissible conduct by state agents, *cf. Von Moltke v. Gillies*, 332 U.S. 708, 68 S.Ct. 316, 92 L.Ed. 309 (1948), a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise. A plea of guilty triggered by the expectations of a competently counseled defendant that the State will have a strong case against him is not subject to later attack because the defendant's lawyer correctly advised him with respect to the then existing law as to possible penalties but later pronouncements of the courts, as in this case, hold that the maximum penalty for the crime in question was less than was reasonably assumed at the time the plea was entered.

Brady, 397 U.S. at 757, 90 S.Ct. at 1473.

The United States Court of Appeal for the Fifth Circuit has likewise rejected the argument that changes in the legal landscape subsequent to an otherwise knowing and voluntary plea warrant a defendant's withdrawal of his plea. *See United States v. Hardy*, 838 Fed.App'x. 68 (5th Cir. 2020) (passage of legislation that removed mandatory consecutive minimum sentence subsequent to guilty plea did not render plea involuntary or unknowing). As noted in *Hardy*, other federal circuits agree. *See, e.g., United States v. Cortez-Arias*, 425 F.3d 547, 548 (9th Cir. 2005) ("[A] favorable change in the law does not entitle a defendant to renege on a knowing and voluntary guilty plea."); *United States v. Morgan*, 406 F.3d 135, 137 (2d Cir. 2005) ("[T]he possibility of a favorable change in the law after a plea is simply one of the risks that accompanies pleas and plea agreements."); *United States v. Bradley*, 400 F.3d 459, 463–64 (6th Cir. 2005) ("[W]here developments in the law later expand a right that a defendant has waived in a plea agreement, the change in law does not suddenly make the plea involuntary or unknowing or otherwise undo its binding nature. A valid plea agreement, after all, requires knowledge of existing rights, not clairvoyance."); *United States v. Haynes*, 412 F.3d 37, 39 (2d Cir. 2005) (per curiam)

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("The plea allocution shows Haynes to have been fully informed, competent, free of coercion, and cognizant of his rights at the time of the plea. While ignorance of then-existing rights can invalidate a plea agreement in some cases, ignorance of future rights is unavoidable and not a basis for avoiding a plea agreement.").

"The general rule is that a guilty plea waives all nonjurisdictional defects in the proceedings prior to the plea and precludes review thereof either by appeal or by post-conviction remedy." *State v. McKinney*, 406 So.2d 160, 161 (La. 1981), citing *State v. Torres*, 281 So.2d 451 (La. 1973) and *State v. Foster*, 263 La. 956, 269 So.2d 827 (1972). However, a defendant may plead guilty while expressly reserving the right to seek appellate review of an error the defendant believes "made useless any continued trial of their defense." *State v. Crosby*, 338 So.2d 584, 586–587 (La. 1976). Defendant here pleaded guilty unconditionally without reservation. Appellate review is confined to the question of whether the plea was voluntarily and intelligently entered, or should have been permitted to be withdrawn as involuntarily and unknowingly made (in addition to any jurisdictional defects that appear on the face of the pleadings and proceedings). *See State v. Spain*, 329 So.2d 178 (La. 1976); *State v. Knighten*, 320 So.2d 184 (La. 1975); *see also Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 1608, 36 L.Ed.2d 235 (1973) ("[An unconditional] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea ....").

The court of appeal found defendant's guilty plea was constitutionally invalid because it was made in ignorance of the law. However, the record does not show that defendant was ignorant of the law. To the contrary, defendant correctly

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understood at the time she pleaded guilty that a nonunanimous jury could have convicted her if she had proceeded to trial. Her lack of prescient knowledge that future Sixth Amendment jurisprudence would substantially alter the right to a jury trial did not make her guilty plea involuntary or unknowing or otherwise undo its binding nature. Accordingly, we reverse the ruling of the court of appeal. We reinstate the district court's ruling, which denied defendant's motion to withdraw her guilty plea. We remand for sentencing.

REVERSED AND REMANDED

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SUPREME COURT OF LOUISIANA

No. 2021-KK-00831

STATE OF LOUISIANA

VS.

CHRYSTAL CLUES-ALEXANDER

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of St. Martin

Hughes, J., dissenting.

I respectfully dissent for the reasons assigned by Griffin, J.

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SUPREME COURT OF LOUISIANA

No. 2021-KK-00831

STATE OF LOUISIANA

VS.

CHRYSTAL CLUES-ALEXANDER

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of St. Martin

GRIFFIN, J., dissents and assigns reasons.

I respectfully dissent and find the trial court abused its discretion based on the record evidence and the lack of benefit to Ms. Clues from her plea deal.[1] *See State v. Hart*, 50,295, p. 11 (La. App. 2 Cir. 11/18/15), 183 So. 3d 597, 604-05. Ms. Clues filed a notice of intent to assert a defense of justifiable homicide. The record is replete with numerous instances of domestic violence by Mr. Alexander against Ms. Clues, including immediately prior to the shooting. The open ended plea was of no benefit to Ms. Clues as she may still be given the maximum sentence. Further, the State concedes it would not be prejudiced by withdrawal of the guilty plea.

[1] I agree with the majority to the extent that the court of appeal erred in finding Ms. Clues' plea constitutionally infirm. By its terms, *Ramos* does not apply to plea agreements. *Ramos v. Louisiana*, 140 S.Ct. 1390, 1406 (2020) (limiting application to convictions). Were we to find the defendant's plea constitutionally infirm predicated on a change in the law, this would logically apply to every plea made before *Ramos* as constitutionally infirm pleas can be withdrawn after sentencing. *State v. Gross*, 95-0621, pp. 2-3 (La. App. 5 Cir. 3/13/96), 673 So.2d 1058, 1059-60. However, La. C.Cr.P. art. 559 allows trial courts the option of allowing withdrawal of a guilty plea outside of the constitutionally infirm plea context, subject only to an abuse of discretion or arbitrariness standard.

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STATE OF LOUISIANA

COURT OF APPEAL, THIRD CIRCUIT

NO: KW 20-00471

Judgment rendered and mailed to all parties or counsel of record on November 16, 2020.

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CLERK OF COURT
ST. MARTIN PARISH

STATE OF LOUISIANA
VERSUS
CHRYSTAL CLUES-ALEXANDER

FILED: 09/29/20

On application of Chrystal Clues-Alexander for Writ of Review in No. 14247175 on the docket of the Sixteenth Judicial District Court, Parish of St. Martin, Hon. Keith Rayne Jules Comeaux.

Counsel for:
Thomas E. Guilbeau
Chrystal Clues-Alexander

Jason Wayne Robideaux
Katherine G. Guillot

Counsel for:
M. Craig Colwart
State of Louisiana

Hon. M. Bofill Duhe
W. Claire Howington

Lake Charles, Louisiana, on November 16, 2020.

WRIT GRANTED AND MADE PEREMPTORY: Defendant filed a writ application with this court seeking supervisory review of the trial court's August 20, 2020, ruling denying Defendant's "Motion to Withdraw Plea of Guilty." "Upon motion of the defendant and after a contradictory hearing . . . , the court may permit a plea of guilty to be withdrawn at any time before sentence." La.Code Crim.P. art. 559(A). The standard for reviewing a ruling on a properly filed motion to withdraw guilty plea is abuse of discretion. *State v. Jackson*, 13-1409 (La. 11/15/13), 129 So.3d 520 (per curiam); *State v. Bouie*, 00-2934 (La. 5/14/02), 817 So.2d 48.

It is true that guilty pleas usually waive all non-jurisdictional **pre-plea** defects that are not reserved. *State v. McCullough*, 615 So.2d 26, 28 (La.App. 3 Cir. 1993) (citing *State v. Fontenot*, 535 So.2d 433, 434 (La.App. 3 Cir. 1988), and *State v. Crosby*, 338 So.2d 584, 586 (La.1976)). However, the waiver of non-jurisdictional **pre-plea** defects does not apply in the instant case. Instead, Defendant is alleging a defect in the proceedings at the time of her plea, not before her plea; she basically

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argues that *Ramos v. Louisiana*, 590 U.S. ___, 140 S.Ct. 1390 (2020) means the trial court's advisement of the right to trial by jury was incorrect based on everyone's understanding of what a trial by jury meant. As a result, the defense is asserting Defendant (and all the other parties) lacked knowledge and understanding of the right to trial by jury.

Ignorance of the law is a valid ground for withdrawing a guilty plea. *See Bouie*, 817 So.2d at 53; Official Revision Comment (1966) to La.Code Crim.P. art. 559. As shown by the plea colloquy and as pointed out by both the trial court and the prosecution, the district court informed Defendant that she had a right to a trial by jury without stating the number of jurors necessary to return a verdict. However, the trial court's finding that the advisement of the right to trial by jury (and therefore Defendant's understanding thereof) was correct and "perfect" because it did not reference non-unanimity is specious. The advisement, under the law of the case (due to the prior denial of a pretrial motion seeking a unanimous jury verdict) and the law in effect at the time of Defendant's plea, was absolutely an advisement that Defendant could be convicted by a vote of 10-2 or 11-1.

The *Ramos* decision applies to all cases where conviction and sentence are not yet final. *State v. Norman*, 20-109 (La. 7/2/20), 297 So.3d 738 (citing *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708 (1987)). This includes cases where the defendants entered pleas prior to *Ramos* and where those convictions and sentences are not yet final. *See* La.Code Crim.P. art. 922; *see also*, *State v. Callegan*, 19-1243 (La.App. 1 Cir. 9/24/20) (unpublished opinion) (2020 WL 5688757). Thus, the trial court abused its discretion in denying Defendant's "Motion to Withdraw Plea of Guilty."

Therefore, this court reverses the trial court's denial of Defendant's "Motion to Withdraw Plea of Guilty," sets aside Defendant's conviction, and remands the case for further proceedings consistent with this court's ruling.

EAP
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DKS
DKS

JWP
JWP

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Lake Charles, LA 11-16-20

Renée R. Simien
Clerk, Court of Appeal, Third Circuit

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