NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 0564

STATE OF LOUISIANA

VERSUS

TROY YOUNG

Judgment Rendered: NOV 05 2018

* * * * * * *

On Appeal from the 17th Judicial District Court
In and for the Parish of Lafourche
State of Louisiana
No. 262712

Honorable Walter I. Lanier, III, Judge Presiding

* * * * * * *

Kristine Russell
District Attorney
Joseph S. Soignet
Assistant District Attorney
Thibodaux, Louisiana

Attorneys for Appellee,
State of Louisiana

Sherry Watters
Louisiana Appellate Project
New Orleans, Louisiana

Attorney for Defendant/Appellant,
Troy Young

Troy Young
Angola, Louisiana

Pro Se

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

PENZATO, J.

The defendant, Troy Young, was originally charged by a grand jury indictment filed on March 30 1994, with first degree murder, a violation of La. R.S. 14:30. On October 3, 1994, based upon a plea agreement, the charge was reduced to second degree murder, a violation of La. R.S. 14:30.1. The defendant withdrew his former plea and pled guilty to the charge as amended.[1] The defendant was originally sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. In 2012, the defendant filed an application for post-conviction relief (supplemented in 2013), seeking in part to have his sentence amended to remove the parole restriction under *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).[2] On June 19, 2013, the trial court ruled that *Miller* applied to the defendant and subsequently continued the resentencing hearing without date for three years, awaiting the higher court's decision addressing the issue of retroactivity. On November 16, 2017, under *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) and *Miller*, the trial court resentenced the defendant to life imprisonment at hard labor with the benefit of parole. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning error in counseled and pro se briefs to the legality and constitutionality of his sentence and seeking to have his guilty plea vacated. For the following reasons, we affirm the conviction and sentence.

---

[1] At the time of the *Boykin* hearing, in addition to reducing the charge, the defense and prosecution agreed that should the defendant request clemency or commutation of sentence, the State would not make any objection to such a request as long as the request came after the defendant had served fifteen years. See *Boykin v. Alabama*, 395 U.S. 238, 242-43, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969).

[2] We note that the defendant filed several other motions, post-conviction relief applications, and writ applications seeking supervisory review with this court that are not directly at issue in addressing the instant appeal. There are no former appeals.

STATEMENT OF FACTS

As the defendant pled guilty in this case, the facts were not developed. At the 1994 *Boykin* hearing, the State presented the following factual basis. On or about February 28, 1994, the defendant and several other individuals were traveling in a green Ford LTD in Lafourche Parish. As they proceeded down Greenville Street, occupants of the vehicle, including the defendant, opened fire, shooting and killing Bernard Bradley, who was riding a bicycle on the side of the road.[3]

THE LEGALITY OF THE SENTENCE

In counseled assignment of error number one and each section of the pro se brief, the defendant argues that his sentence remains illegal. Specifically, in counseled assignment of error number one and pro se assignment of error number two, he argues that he should be sentenced to the maximum sentence in 1994 for the lesser included offense of manslaughter. He contends that in 2012, the method of correcting a sentence that had been found unconstitutional was determined by the law in effect at the time of the offense, 1994 in this case. He argues that the applicable jurisprudence sets forth that the only sentence that the trial court could impose is the most serious penalty for the next lesser included offense, manslaughter in this case.[4] He contends that in those cases where the penalty had been declared unconstitutional, the legislature could not enact a new penalty for an offense that occurred years earlier without violating the prohibition against ex post facto laws.

---

[3] The record reflects that the defendant's date of birth is September 2, 1976, thus he was seventeen years old at the time of the offense.

[4] The defendant notes that in *State v. Craig*, 340 So.2d 191 (La. 1976), the Court ordered a defendant convicted of aggravated rape, where the sentence was invalidated, resentenced to the maximum term of imprisonment at the time of the offense for the next available responsive verdict, i.e., attempted aggravated rape. The defendant argues that the same remedy should be applied in this case. He notes that the maximum penalty for manslaughter in 1994 was twenty-one years imprisonment at hard labor.

In pro se assignments of error numbers one and three, the defendant argues the trial court erred by substituting an invalidated penalty with a "reformatory procedure" instead of a legislatively prescribed punishment in response to the substantive rule change in *Miller*. The defendant argues that due process demands he receive a penalty fixed by the legislature. The defendant contends that La. R.S. 15:574.4 does not contain a sentencing penalty for juveniles but instead contains factors the Parole Board must consider before releasing a juvenile on parole. The defendant avers that the only legislative penalty in effect for the instant offense is mandatory life imprisonment without parole, which he notes has been declared unconstitutional. Thus, he claims there is no legislatively prescribed penalty for juvenile offenders such as himself.

In counseled assignment of error number one and pro se assignment of error number two, the defendant further argues that removing the parole restriction and sentencing him to life imprisonment with the benefit of parole pursuant to La. C.Cr.P. art. 878.1(B)(2)(a) and La. R.S. 15:574.4(E)-(G) without considering other possible sentences only transferred sentencing authority to a parole board and re-imposed parole for at least twenty-five years. He argues that La. R.S. 15:574.4(E)-(G) impose a sentence and punishment that was not in existence at the time of the offense in 1994, constituting an ex post facto and "fair notice" or "fair warning" violation. He further contends that the statutes do not provide a realistic means of achieving release as required by *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) and *Miller*. The defendant argues that La. R.S. 15:574.4(G) subjects him "to the whims and politics of an executive branch, parole board instead of receiving a determinate sentence as required by law[,]" in violation of the separation of powers doctrine. He contends that to the extent that La. R.S. 15:574.4 imposes a mandatory minimum sentence, it is unconstitutional unless it extends only as necessary to ensure complete character formation. He

argues that he has demonstrated that his juvenile incapacity is over and has demonstrated maturity and reformation.[5]

United States Constitution art. I, § 10 and Louisiana Constitution art. I, § 23 prohibit ex post facto application of criminal law by the State. *State v. Everett*, 2000-2998 (La. 5/14/02), 816 So.2d 1272, 1280. The focus of the ex post facto determination is whether a change in the law alters the definition of criminal conduct or increases punishment for the crime. *Massey v. La. Dept. of Pub. Safety & Corr.*, 2013-2798 (La. 10/15/14), 149 So.3d 780, 784. "[T]he relevant inquiry is whether the change in the law 'creates a significant risk of prolonging [the inmate's] incarceration.'" *Id.* at 784 (quoting *Garner v. Jones*, 529 U.S. 244, 251, 120 S.Ct. 1362, 1368, 146 L.Ed.2d 236 (2000)).

In *Miller*, the United States Supreme Court determined that mandatory life imprisonment without parole for those offenders under the age of 18 years at the time they committed a homicide offense violates the Eighth Amendment prohibition of "cruel and unusual punishments." In *Montgomery*, 136 S.Ct. at 736, the United States Supreme Court determined that its decision in *Miller* announced a new substantive rule of constitutional law that must be applied retroactively to cases on collateral review.

Louisiana Code of Criminal Procedure art. 878.1, which along with La. R.S. 15:574.4(E)(1)[6] codified the *Miller* rule, in pertinent part, provides:

> B. (1)If an offender was indicted prior to August 1, 2017, for the crime of first degree murder (R.S. 14:30) or second degree murder (R.S.

---

[5] The State notes that it elected not to file a notice of intent to have the defendant's sentence imposed without parole eligibility.

[6] We note that La. R.S. 15:574.4 was amended in 2017 by La. Acts 2017 No. 277, § 1, to reduce the time to be served before the possibility of parole from 35 years to 25 years. Further, for juvenile homicide offenders indicted on or after August 1, 2017, Subsection E now deals with first degree murder while Subsection F addresses second degree murder. Juvenile homicide offenders who were serving life imprisonment for first or second degree murder and were indicted before August 1, 2017, such as the defendant in the instant case, are covered by Subsection G. It mirrors the provisions of the previous Subsection E, except for the reduction from 35 years to 25 years.

> 14:30.1) where the offender was under the age of eighteen years at the time of the commission of the offense and a hearing was not held pursuant to this Article prior to August 1, 2017, to determine whether the offender's sentence should be imposed with or without parole eligibility, the district attorney may file a notice of intent to seek a sentence of life imprisonment without the possibility of parole within ninety days of August 1, 2017.... If the district attorney fails to timely file the notice of intent, the offender shall be eligible for parole pursuant to R.S. 15:574.4(E) without the need of a judicial determination pursuant to the provisions of this Article. If the court determines that the sentence shall be imposed without parole eligibility, the offender shall not be eligible for parole.

Louisiana Revised Statutes 15:574.4(G) provides a list of conditions that must be met for parole consideration pursuant to La. C.Cr.P. art. 878.1. Among those conditions, under La. R.S. 15:574.4(G)(1)(a), a juvenile homicide offender must serve twenty-five years of the sentence imposed before being considered for parole.

Herein, the defendant argues that the application of La. R.S. 15:574.4(G) in this case violates the ex post facto clause. At the outset, we note that the defendant failed to preserve for appellate review any constitutional issue regarding an alleged ex post facto violation. The unconstitutionality of a statute must be specially pleaded and the grounds for the claim particularized. Further, the specific plea of unconstitutionality and the grounds therefore must be raised in a pleading. See *State v. Hatton*, 2007-2377 (La. 7/1/08), 985 So.2d 709, 719-20. In this case, the defendant did not raise a plea of unconstitutionality in any such pleading, thus, any issues regarding the constitutionality of La. C.Cr.P. art. 878.1 and/or La. R.S. 15:574.4 are not properly before this court.

Moreover, we find that La. C.Cr.P. art. 878.1 (and, by extension, La. R.S. 15:574.4(G)) is clearly applicable to the defendant's case. As noted above, the *Montgomery* court found that *Miller* was to be given retroactive effect, thereby allowing those defendants sentenced to life without parole prior to the *Miller* decision the opportunity to be resentenced to life with parole under *Miller*. Since

La. C.Cr.P. art. 878.1 is merely the codification of the *Miller* rule, that is, the procedural directive of when and how a *Miller* hearing is to be conducted, the article necessarily is given retroactive effect.

This was made clear when recently, as a result of the *Montgomery* decision, our supreme court granted certiorari in several cases where the defendant was convicted and sentenced prior to the *Miller* decision. The Louisiana Supreme Court, in noting the retroactive applicability clarified in *Montgomery*, remanded these cases to the trial courts for further proceedings consistent with the views expressed in *Montgomery* and for resentencing pursuant to La. C.Cr.P. art. 878.1. See *State ex rel. Lewis v. State*, 2016-1908 (La. 1/9/17), 208 So.3d 882 (per curiam); *State ex rel. Hudson v. State*, 2016-1731 (La. 1/9/17), 208 So.3d 882 (per curiam); *State v. Alexander*, 2015-1879 (La. 10/28/16), 202 So.3d 990 (per curiam); *State ex rel. Evans v. State*, 2015-1058 (La. 10/28/16), 202 So.3d 991 (per curiam); *State ex rel. Tolliver v. State*, 2013-2893 (La. 10/28/16), 202 So.3d 991 (per curiam).

Further, the application of La. C.Cr.P. art. 878.1 and La. R.S. 15:574.4(G) in resentencing under *Miller* to remove a parole restriction does not subject the defendant to a harsher sentence or a longer period of incarceration. Louisiana Revised Statutes 15:574.4(G) neither criminalized any previously innocent conduct, increased any criminal penalty, nor deprived the accused of any defense. Thus, the application of La. C.Cr.P. art. 871 and La. R.S. 15:574.4(E-G) to this case does not violate the ex post facto principles. See *State v. Jones*, 2013-2039 (La. 2/28/14), 134 So.3d 1164 (per curiam) (wherein the Louisiana Supreme Court ordered implementation of *Miller* through the application of La. C.Cr.P. art. 878.1 and La. R.S. 15:547.4(E)); *State v. Graham*, 2014-1769 (La. App. 1 Cir. 4/24/15), 171 So.3d 272, 278, writ denied, 2015-1028 (La. 4/8/16), 191 So.3d 583.

Finally, we note that despite the defendant's assertion and his reliance on

State v. Craig, 340 So.2d 191 (La. 1976), he is not entitled to a sentence that is less than life or a fixed number of years. This issue of sentencing under the next available responsive verdict, or to a particular number of years, arose in the context of non-homicide offenses in *Graham v. Florida*. In *Graham v. Florida*, 560 U.S. at 82, 130 S.Ct. at 2034, the United States Supreme Court held that the Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. In *State v. Shaffer*, 2011-1756 (La. 11/23/11), 77 So.3d 939, 942 (per curiam), our supreme court found that *Graham v. Florida* required the relators, and all other persons similarly situated, to have a meaningful opportunity to secure release as a regular part of the rehabilitative process. The *Shaffer* court rejected the suggestion that the proper remedy was resentencing under a lesser and included offense and held the appropriate remedy was to delete the restrictions on parole eligibility. Further, in *Shaffer*, 77 So.3d at 941 n.3, the court addressed the older jurisprudence on the issue of resentencing to the next lesser and included responsive verdict and expressly declined to follow it. *State v. Graham*, 171 So.3d at 279-80.[7]

Thus, under *Shaffer* and *Graham v. Florida*, the appropriate remedy for a minor sentenced to life imprisonment without parole for a non-homicide crime is to let stand the life sentence, but delete the mandatory restriction on parole eligibility. As with this *Graham v. Florida* line of cases, our courts have used the same approach in applying *Miller* to sentencing juveniles for homicide offenses. *State v. Graham*, 171 So.3d at 280; *State v. Fletcher*, 49,303 (La. App. 2 Cir. 10/1/14), 149 So.3d 934, 941-42, writ denied, 2014-2205 (La. 6/5/15), 171 So.3d 945. Accordingly, the defendant was not entitled to be sentenced to the next

[7] The abrogation of *Craig*, 340 So.2d at 193-94, was recognized by this court in *State v. Straub*, 2012-0270 (La. App. 1 Cir. 9/21/12), 111 So.3d 38, 41. See also *State v. Walder*, 2012-0051 (La. App. 1 Cir. 9/24/12), 104 So.3d 137, 141, writ denied, 2012-2534 (La. 4/19/13), 111 So.3d 1032.

available responsive verdict of manslaughter. The only other sentence available to the defendant under *Miller* was life imprisonment with parole eligibility (barring any deviation from the mandatory minimum sentence, pursuant to *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So.2d 672 and *State v. Dorthey*, 623 So.2d 1276 (La. 1993)). In accordance with the above, we find that counseled assignment of error number one and the pro se assignments of error lack merit.

EXCESSIVE SENTENCE

In counseled assignment of error number two, the defendant argues that his sentence is unconstitutionally excessive. He notes that his motion and supplemental motion to correct the sentence requested individualized sentencing as set forth in *Miller*. The defendant notes that he was seventeen years old at the time of the offense in February of 1994, pled guilty at eighteen years old, and has remained incarcerated for nearly twenty-four years. He contends that while he opened fire along with the other shooters, he was not the shooter who struck the victim in this case. He argues that the trial court nonetheless did not consider any facts or circumstances about the defendant, who he was in 1994, and who he has become since 1994. He contends that he provided documentation of his history of neglect and abuse during the first sixteen years of his life and documentation of his diagnosis of depression. Further, the defendant contends that he presented ample evidence that he has developed maturity and responsibility, has rehabilitated himself, and has remorse for his role in the offense. He claims that the guilty plea colloquy revealed additional mitigating circumstances, specifically citing mental incapacity, issues with the representation, his lack of understanding of the options, and an incomplete examination of the right to remain silent.

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of cruel or excessive punishment. Although a sentence falls within statutory limits, it may be excessive.

State v. Sepulvado, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *State v. Andrews*, 94-0842 (La. App. 1 Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See *State v. Holts*, 525 So.2d 1241, 1245 (La. App. 1 Cir. 1988).

For the defendant's second degree murder conviction, the trial court imposed the mandatory life sentence at hard labor. See La. R.S. 14:30.1(B). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. However, there is no need for the trial court to justify a sentence under La. C.Cr.P. art. 894.1 when it is legally required to impose that sentence. As such, the failure to articulate reasons as set forth in Article 894.1 when imposing a mandatory life sentence is not an error; articulating such reasons or factors would be an exercise in futility since the court has no discretion. *State v. Felder*, 2000-2887 (La. App. 1 Cir. 9/28/01), 809 So.2d 360, 371, writ denied, 2001-3027 (La. 10/25/02), 827 So.2d 1173. See *State v. Ditcharo*, 98-1374 (La. App. 5 Cir. 7/27/99), 739 So.2d 957, writ denied, 99-2551 (La. 2/18/00), 754 So.2d 964; *State v. Jones*, 31,613 (La. App. 2 Cir. 4/1/99), 733 So.2d 127, 146, writ denied, 99-1185 (La. 10/1/99), 748 So.2d 434; *State v. Williams*, 445 So.2d 1264, 1269 (La. App. 3 Cir.), writ denied, 449 So.2d 1346 (La. 1984).

In *Dorthey*, 623 So.2d at 1280-81, the Louisiana Supreme Court opined that if a trial court were to find that the punishment mandated by La. R.S. 15:529.1 makes no "measurable contribution to acceptable goals of punishment" or that the

sentence amounted to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime", it has the option, indeed the duty, to reduce such sentence to one that would not be constitutionally excessive. In *Johnson*, 709 So.2d at 676-77, the Louisiana Supreme Court reexamined the issue of when *Dorthey* permits a downward departure from the mandatory minimum sentences in the Habitual Offender Law. While both *Dorthey* and *Johnson* involve the mandatory minimum sentences imposed under the Habitual Offender Law, the Louisiana Supreme Court has held that the sentencing review principles espoused in *Dorthey* are not restricted in application to the penalties provided by La. R.S. 15:529.1. See *State v. Fobbs*, 99-1024 (La. 9/24/99), 744 So.2d 1274 (per curiam); *State v. Collins*, 2009-1617 (La. App. 1 Cir. 2/12/10), 35 So.3d 1103, 1108, writ denied, 2010-0606 (La. 10/8/10), 46 So.3d 1265.

Mandatory sentences have been repeatedly upheld as constitutional and consistent with the federal and state constitutional provisions prohibiting cruel, unusual, or excessive punishment. See *State v. Jones*, 46,758-59 (La. App. 2 Cir. 12/14/11), 81 So.3d 236, 249, writ denied, 2012-0147 (La. 5/4/12), 88 So.3d 462. To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that he is exceptional, which means that because of unusual circumstances he is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. *Johnson*, 709 So.2d at 676.

At the outset, we note that the defendant's contention that he is entitled to a full hearing on resentencing is without merit. In *Montgomery*, the United States Supreme Court stated:

Miller's conclusion that the sentence of life without parole is

> disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.
>
> Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. *A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them....* Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

Montgomery, 136 S. Ct. at 736 (emphasis added).

Contrary to the defendant's assertion otherwise, *Miller* does not require an individualized sentence, only the opportunity to be considered for parole. In *Miller*, the Court explained that the Eighth Amendment does not prohibit a court from imposing a sentence of life imprisonment with the opportunity for parole for a juvenile homicide offender, nor does it require the court to consider the mitigating factors of youth before imposing such a sentence. Instead, a sentencing court's obligation to consider youth-related mitigating factors is limited to cases in which the court imposes a sentence of life, or its equivalent, without parole. See *Miller*, 132 S.Ct. at 2463-69. Herein, at the November 16, 2017 hearing, the trial court resentenced the defendant to life imprisonment with the possibility of parole. Consequently, we find that the trial court sentenced the defendant in compliance with *Miller* and *Montgomery*.

Louisiana Code of Criminal Procedure art. 878.1(D) specifically provides that "[s]entences imposed without parole eligibility should normally be reserved for the worst offenders and the worst cases." As the defendant was granted parole eligibility, in this case there was no need for a determination that the defendant was the worst offender for his role in the killing of Bernard Bradley or that this was the worst case. Moreover, there are no circumstances in this case that would justify a downward departure under *Dorthey*. The record before us established an adequate

factual basis for the sentence imposed. The defendant failed to prove by clear and convincing evidence that he was exceptional such that a mandatory life sentence would not be meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. See *Johnson*, 709 So.2d at 676. Thus, no downward departure from the presumptively constitutional mandatory life sentence was warranted. The sentence imposed is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. Accordingly, the defendant's new sentence of life imprisonment at hard labor with parole eligibility is neither unconstitutional nor excessive. See *Sepulvado*, 367 So.2d at 767; *Holts*, 525 So.2d at 1245. Counseled assignment of error number two is without merit.

VIOLATION OF GUILTY PLEA AGREEMENT

In the final counseled assignment of error, the defendant contends that the State violated the plea agreement. He specifically notes that as part of the plea agreement, the State promised that if the defendant applied for clemency or commutation of his sentence after serving fifteen years imprisonment, the State would not object. The defendant notes that he had served eighteen years imprisonment by the time he sought to have his sentence reduced under *Miller*. He notes that the State filed an opposition to his post-conviction relief application and noticed an intent to seek writs should the court apply *Miller*. The defendant notes that in 1994, the only means to reduce the sentence was by commutation. He concedes that at the time of the plea agreement, the changes in the law were not foreseeable. Nonetheless, the defendant argues that the State continues to actively oppose his efforts to reduce his sentence and contends that he is entitled to vacate the plea and proceed with a new trial.

Once the defendant has been sentenced, only guilty pleas which are constitutionally infirm may be withdrawn as the result of an appeal or post-

conviction relief. See *State v. West*, 97-1638 (La. App. 1 Cir. 5/15/98), 713 So.2d 693, 695. A guilty plea is constitutionally infirm when the defendant is induced to enter that plea by a plea agreement which is not fulfilled. *State v. Dixon*, 449 So.2d 463, 464 (La. 1984). A criminal plea agreement is analogous to a civil compromise. See La. C.C. art. 3071, *et seq.*; *State v. Roberts*, 2001-3030 (La. App. 1 Cir. 6/21/02), 822 So.2d 156, 160, writ denied, 2002-2054 (La. 3/14/03), 839 So.2d 31. Thus, in determining the validity of agreements not to prosecute or plea agreements, the courts generally refer to rules of contract law. *State v. Louis*, 94-0761 (La. 11/30/94), 645 So.2d 1144, 1148. The first step under contract law is to determine whether a contract was formed in the first place through offer and acceptance. See La. C.C. art. 1927. Under the Louisiana Civil Code, the interpretation of a contract is the determination of the common intent of the parties. La. C.C. art. 2045. The offer and acceptance may be verbal unless the law prescribes a requirement of writing. *Louis*, 645 So.2d at 1149. While contractual principles may be helpful by analogy in deciding disputes involving plea agreements, the criminal defendant's constitutional right to fairness may be broader than his or her rights under contract laws. *State v. Canada*, 2001-2674 (La. App. 1 Cir. 5/10/02), 838 So.2d 784, 787 (quoting *Louis*, 645 So.2d at 1148).

At the outset of the *Boykin* hearing in this case, the trial court inquired as to the conditions of the guilty plea in addition to reducing the conviction from the original charge of first degree murder to second degree murder. In response, the prosecutor stated, "The only other condition that the State will state for the record that we will have no comment on any request for a commutation of sentence after fifteen years." The defense attorney agreed, stating, "Yes, your Honor, that's correct." Prior to the acceptance of the guilty plea in this case, the trial court stated:

Mr. Young, I understand from what Mr. Caillouet [the prosecutor] says

> and your lawyer has agreed with that, that you wish to enter a plea of guilty to the charge of second degree murder with the understanding that if you make a request for clemency or commutation of sentence, the State will not make any objection to that request, so long as you have served fifteen years at the time.

The defendant agreed that he understood the foregoing, replying, "Yes, sir."

As noted, on appeal the defendant concedes that at the time of the plea agreement the changes in the law were not foreseeable. Thus, the changes in the law did not form a part of the common intent of the parties. As noted by the State in its reply brief, its actions have not amounted to an objection to any request for clemency or commutation of sentence, the specific term of the plea agreement at issue. Moreover, the State did not contest the removal of the parole restriction in this case. Accordingly, we find that the State did not breach the plea agreement in this case. Thus, counseled assignment of error number three lacks merit.

CONVICTION AND SENTENCE AFFIRMED.