COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MORRIS GLEN HARRIS, JR.,	) S-231489
Petitioner,	) 2nd Dist. No. B264839
v.	) (Trial Ct. No. BA408638)
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,	)
Respondent,	)
PEOPLE OF THE STATE OF CALIFORNIA,	)
Real Party in Interest.	)

OPENING BRIEF ON THE MERITS

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OF LOS ANGELES COUNTY, CALIFORNIA

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TOPICAL INDEX

TOPICAL INDEX (Continued)

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES

CASES

Statutes

TABLE OF AUTHORITIES

CASES

Page

Statutes

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OPENING BRIEF ON THE MERITS

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Proposition 47 allows convicted persons to have certain enumerated felony convictions reduced to misdemeanors. According to the language of Penal Code section 1170.18, Proposition 47 not only applies to convictions obtained after a trial, it also applies to convictions obtained through *pleas*.

The *Harris* trial court and two justices of the Court of Appeal, however, ruled that Proposition 47 really does not apply to convictions obtained through plea bargains. Well, it sort of applies but only in the most draconian way possible: all charges dismissed as a result of a plea bargain

can be reinstated *and* the defendant is once again facing the original potential maximum punishment. That potential maximum punishment may be imposed even though the plain language of Proposition 47 says that a greater sentence *may not* be imposed.

The *Harris* Court of Appeal majority's decision is unreasonable, it ignored the plain language of the initiative, and it is clearly contrary to this court's decision in *Doe v. Harris* (2013) 57 Cal.4th 64. The dissenting Justice below got it right, as did the justices ruling in four other cases. Pursuant to *Doe v. Harris*, plea agreements are deemed to incorporate and contemplate not only the existing law but also the reserve power of the state to amend the law. The trial court had no power to reinstate the original charges because Proposition 47 did not, either expressly or impliedly, grant that power.

When the voters enacted Proposition 47, they decided that non-serious, non-violent, low-grade drug and property crimes no longer merited felony punishment. They decided that felons could obtain Proposition 47 relief regardless of whether the conviction was obtained after a trial or through a plea. Both the trial court and the Court of Appeal majority seriously erred when they declined to give petitioner Morris Harris the plain benefit of the new law.

ISSUES ON REVIEW

1) When a defendant pleads guilty to a lesser felony charge pursuant to a plea bargain, and that charge is later reduced to a misdemeanor pursuant to Proposition 47, may the prosecution vacate the plea and reinstate the original, more serious charge(s)?

2) If the answer to Issue 1 is yes, is the defendant facing the original, lengthier potential maximum sentence?

STATEMENT OF FACTS AND PROCEDURE

Petitioner was charged by information with robbery in violation of Penal Code section 211. It was alleged that petitioner had a prior robbery conviction that was both a "strike" and a five-year prior. The crime occurred on February 11, 2013. (Felony Information attached to the Petition for Writ of Prohibition as Exhibit A.)

The preliminary hearing transcript establishes that on February 11, 2013, petitioner approached victim Francisco Diego from behind, hit him on the side of the face, and took his cell phone. Mr. Diego gave chase and told two nearby police officers about what had happened. The officers captured petitioner and the cell phone was recovered on the ground next to him. Mr. Diego identified petitioner as the person who stole his phone.

At pretrial, the prosecution added Penal Code section 487, subdivision (c), grand theft from the person. Petitioner pleaded guilty and admitted the prior "strike" conviction. He was sentenced to 6 years in state prison pursuant to the plea agreement. The robbery charge and the remaining allegations were dismissed. (Superior Court's Computerized Minute Orders, attached to the Petition for Writ of Prohibition as Exhibit B.)

On January 27, 2015, petitioner filed his Proposition 47 recall petition, pursuant to Penal Code section 1170.18, which was attached to the Petition for Writ of Prohibition as Exhibit C. Petitioner set forth a prima facie case that he was eligible and suitable for Proposition 47 relief.

On February 25, 2015, the prosecution filed a "Motion to Withdraw from the Plea and Reinstate Charges," which was attached to the Petition for Writ of Prohibition as Exhibit D. The prosecution argued that it was entitled to the benefit of its bargain, citing *People v. Collins* (1978) 21

Cal.3d 208. The prosecution argued that general contract provisions applied even if there was a change in the law. The prosecution's request was that it be allowed to withdraw from the plea, set it aside, and reinstate the previously dismissed robbery count.

On March 5, 2015, petitioner's counsel filed "Points and Authorities Re Entitlement to Proposition 47 Relief," which was attached to the Petition for Writ of Prohibition as Exhibit E. Petitioner relied upon *Doe v. Harris, supra,* 57 Cal.4th 64, wherein this court explained that plea agreements are deemed to incorporate and contemplate not only the existing law, but also the reserve power of the state to amend the law. The fact that the parties have entered into a plea agreement does not insulate them from changes in the law.

Petitioner argued that Proposition 47, by its own terms, applies to convictions obtained by plea and is to be construed liberally and broadly. Petitioner refuted the "benefit of the bargain" argument advanced by the prosecution. Petitioner argued that excluding plea-bargained crimes from Proposition 47 relief would gut the initiative because more than 90 per cent of criminal convictions are obtained by plea.

Petitioner explained how *Doe v. Harris* mandated that the changes brought by Proposition 47 had to be applied. Petitioner also pointed out numerous other instances where sentencing reforms were applied to defendants even though the convictions were obtained through plea bargains. Petitioner argued that *Collins* had been overruled *sub silentio* by *Doe v. Harris* and did not apply.

On March 11, 2015, respondent court issued its written Proposed Order, attached as Exhibit F to the Petition for Writ of Prohibition. The court explained that the issue was not so much whether petitioner was

entitled to Proposition 47 relief, but rather whether the prosecution is entitled to relief when the fundamental terms of the plea agreement are altered. (Exh. F, p. 4.) The court concluded it was without jurisdiction to deny the petition because petitioner was eligible and suitable. (Exh. F, p. 5.) The court granted relief. (Exh. F, p. 8.)

The court also concluded that the prosecution would be allowed to withdraw from the plea, set it aside, and reinstate the dismissed charge and allegations. (Exh. F, p. 8.) The trial court determined that the prosecution is entitled to receive the benefit of its plea bargain and that when the prosecution does not realize its benefit, then that is grounds for setting aside the agreement, vacating the plea, and reinstating any dismissed charges. (Exh. F, p. 11.) The court distinguished *Doe v. Harris* on the ground it did not deal with the issue of the prosecution's remedy for a breached plea agreement. (Exh. F, pp. 12-13.) The trial court argued that *Doe v. Harris* and *People v. Collins* are consistent because they apply the same rule. (Exh. F, p. 13.) The court concluded that because the Proposition 47 reduction to a misdemeanor deprived the prosecution of the benefit of its bargain, then under general contract law the plea agreement must be set aside. (Exh. F, pp. 14-15.) The court further stated that although it had approved the original plea agreement of a reduction from a robbery to a grand theft, it would reject such an agreement that, after Proposition 47, would only involve a misdemeanor conviction and a short stint in jail. (Exh. F, pp. 15-16.)

The court argued that petitioner had voluntarily chosen to forego the benefit of his bargain when he made the Proposition 47 motion to reduce. The court wrote that the choice is the defendant's: either seek a reduction and lose the benefit of the plea bargain or forego the benefit of Proposition

47 in order to keep the conviction of a lesser offense. The court also concluded that giving up the plea bargain did not disadvantage the defendant. (Exh. F, pp. 16-18.) The court said that if counts were reinstated, petitioner could not receive a greater sentence than he received as part of the plea agreement. (Exh. F, pp. 22-25.) The court granted the prosecution's motion to withdraw from the plea and reinstate charges. (Exh. F, p. 26.)

On April 6, 2015, petitioner's counsel filed "Objections to Proposed Order," which was attached to the Petition for Writ of Prohibition as Exhibit G. Petitioner framed the issue as whether or not, when a defendant gets the benefit of a Proposition 47 reduction to a misdemeanor, the prosecution is able to force the defendant to withdraw his plea and face the original charges. (Exh. G, pp. 1-2.)

At a hearing on April 6, 2015, the court said that reducing the conviction charge to a misdemeanor undercut the plea bargain. The court said it would never have agreed to a misdemeanor based upon the facts of the case and petitioner's record. That being said, Proposition 47 required the court to grant the motion and reduce the charge to a misdemeanor. The court also stated that the prosecution was entitled to its plea bargain, which meant a felony conviction and 6 years in state prison. (Reporter's Transcript of the Proceedings April 6, 2015, attached as Exhibit H to the Petition for Writ of Prohibition, hereafter RT, 3: 1-23.)

The court ordered petitioner out from state prison so that he could understand the consequences of the court's intended action. The only way for petitioner to avoid the consequence of having his plea vacated would be for him to withdraw his Proposition 47 petition. (RT 4: 5-28, 5: 1-21, 6: 7-15.)

On May 12, 2015, the court issued an amended proposed order. The order was attached to the Petition for Writ of Prohibition as Exhibit I. The court's amendments dealt with *T.W. v. Superior Court* (2015) 236 Cal.App.4th 646. The trial court said that *T.W.* did not address the issue of whether there could be terms of a plea agreement that are so fundamental to the agreement that they could not be altered by subsequent legislation. The trial court distinguished *T.W.* by noting that the trial judge in that case said the existence of a plea bargain completely barred Proposition 47 relief. (Exh. I, pp. 7-9 and footnotes 7, p. 8, and 8, p. 9.) On May 22, 2015, the court made the amended proposed order final. The court stayed the order. (Reporter's Transcript of the Proceedings May 22, 2015, attached to the Petition for Writ of Prohibition as Exhibit J.) The final order was attached as Exhibit K.

On June 16, 2015, petitioner filed a Petition for Writ of Prohibition in the Second District Court of Appeal. On July 10, 2015, Division 5 issued an order denying the petition. A two-judge majority wrote:

> "Petitioner was originally charged with robbery in violation of Penal Code section 211. Pursuant to a plea agreement he pled to a felony grand theft person charge in violation of Penal Code section 487 and received an agreed-upon sentence of six years. The robbery charge was dismissed. While petitioner was entitled to a reduction of his grand theft conviction to a misdemeanor and to recall his sentence pursuant to Penal Code section 1170.18, the People were also entitled to move to withdraw the plea bargain as a result of being substantially deprived of its benefits including a six year sentence. Petitioner fails to demonstrate the respondent court erred in granting the People's motion to withdraw the guilty plea and reinstate the robbery charge under Penal Code section 211. (*People v. Collins* (1978) 21 Cal.3d 208, 215; *People v. Nitschmann* (2010) 182

Cal.App.4th 705, 707-710.)"

The third justice separately wrote: "I would grant an order to show cause to decide this issue, which is one of statewide importance."

On July 17, 2015, a Petition for Review was filed. An answer and reply were filed and on September 23, 2015, this court granted review and transferred the case back to the Court of Appeal. On October 7, 2015, the Court of Appeal issued its order to show cause. The prosecution filed a written return and petitioner filed his reply. Oral argument was heard on November 16, 2015. The Court of Appeal, in a 2-1 decision, issued its published opinion on November 18, 2015. Justice Richard Mosk dissented. A modification of the dissenting opinion was filed on December 1, 2015.

The majority framed the issue as whether the People may withdraw from the plea agreement and reinstate the original charges where the plea-bargained felony charge becomes a misdemeanor as a result of Proposition 47. The majority concluded, relying upon *People v. Collins, supra,* 21 Cal.3d 208, that principles of contract law applied to plea bargains and that when the prosecution lost the benefit of its bargain through the reduction of the conviction to a misdemeanor pursuant to Proposition 47, the bargain was violated and the original charge could be reinstated. The majority distinguished *Doe v. Harris* saying that *Doe* only applied to statutory consequences of a plea (such as the sex offender registration at issue) and did not apply to negotiated terms, such as the length of the sentence. The majority distinguished the cases cited by petitioner, claiming they were either inapplicable or related to statutory terms rather than negotiated terms.

The majority also concluded that restoration of the original, more serious charge restored the status quo ante and therefore petitioner could be sentenced to the maximum possible sentence (15 years) regardless of the

six-year sentence imposed as part of the plea agreement.

The dissent concluded that Proposition 47 did not give the court power to rescind the plea, recall the sentence, or reinstate the original charges. The dissent relied upon *Doe v. Harris* for the proposition that plea bargains are deemed to incorporate the power of the state to change the law and that the plea bargain was not breached or made revocable by Proposition 47. The dissent argued that the law had changed, that petitioner was entitled to the reduction, and that no law allowed the court to reinstate the original charges. The dissent distinguished *Collins*, finding that it involved a case where the defendant gained *total* relief from vulnerability to sentence because his crime of conviction had been repealed. *Collins* is not applicable because petitioner did not escape vulnerability to punishment but remained convicted with a lesser punishment. The dissent also wrote that allowing plea bargains to be revoked would frustrate the voters' intent and expectations and could also impact any statute that would retroactively reduce a sentence. The dissent was undoubtedly referring to Proposition 36, the Three Strikes resentencing initiative.

This court granted review on February 24, 2016.

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ARGUMENT

I

STANDARD OF REVIEW

There are no disputed factual issues. The issues presented are purely legal and are subject to independent, de novo review. (*People v. Cromer* (2001) 24 Cal.4th 889, 893-894.)

II

PRINCIPLES OF STATUTORY CONSTRUCTION

Proposition 47, a voter initiative, is construed in the same manner as statutes enacted by the Legislature.

> "In interpreting a voter initiative we apply the same principles that govern statutory construction. [Citation.] Thus, 'we turn first to the language of the statute, giving the words their ordinary meaning.' [Citation.] The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate's intent]. [Citation.] When the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.' [Citations.] In other words, 'our primary purpose is to ascertain and effectuate the intent of the voters who passed the initiative measure.' [Citation.]" (*People v. Briceno* (2004) 34 Cal.4th 451, 459, some internal quotation marks omitted.)

If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine intent is unnecessary. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919.) Courts are not at liberty to seek hidden meanings not suggested by the statute. (*People v. Knowles* (1950) 35 Cal.2d 175, 183.)

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III

THE TRIAL COURT DID NOT HAVE JURISDICTION TO VACATE THE PLEA BARGAIN AND REINSTATE THE ORIGINAL CHARGES

The Court of Appeal majority concluded that the Proposition 47 reduction of the conviction crime to a misdemeanor violated the terms of the plea agreement, resulting in the prosecution not receiving the benefit of its bargain. Relying upon *People v. Collins* (1978) 21 Cal.3d 208, 215, the majority held that the prosecution was entitled to withdraw from the plea bargain and reinstate the original counts – including the original maximum sentence. The majority's conclusion was incorrect. *Doe v. Harris* (2013) 57 Cal.4th 64 controls and the change in the law wrought by Proposition 47 is deemed to be incorporated into the plea agreement. Proposition 47 did not authorize the plea bargain to be vacated and the original charges reinstated.

Proposition 47 enacted Penal Code section 1170.18, which creates a comprehensive statutory scheme requiring a court to resentence defendants who have been convicted of qualifying crimes, who are statutorily eligible, and would not pose an unreasonable risk of danger to public safety (which petitioner will refer to as suitability). There has been no dispute that petitioner was both eligible and suitable for Proposition 47 relief.

The Court of Appeal majority erred when it allowed the prosecution to withdraw from the plea agreement and reinstate the original charge. There is nothing in Penal Code section 1170.18 that gives courts that power. That statute only allows courts to reduce a qualifying charge to a misdemeanor, resentence the defendant, and place him on parole. Courts have no power to do anything else and the court acted in excess of its

jurisdiction when it vacated the plea agreement and reinstated the original charge. Justice Mosk's dissent got it right. The majority failed to recognize that it had no power to read Proposition 47 to add provisions not envisioned by the voters or contained in the language of the initiative.

In pertinent part, Penal Code section 1170.18 states:

> (a) A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ("this act") had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.
>
> (b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.
>
> (d) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. . . .
>
> (e) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence.
>
> (i) The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of

> paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

Assuming that a defendant is eligible and suitable, a court only has the authority to recall the sentence and resentence the person to a misdemeanor. The person must be given credit for time served and placed on parole unless parole is waived. The court cannot impose a longer sentence than the original sentence.

Courts do not have inherent power to recall a prison sentence and resentence the inmate. That power is strictly a creation of statute. Courts do not have to power to enlarge the recall statutes and perform actions that the statutes do not explicitly allow. The trial court and the majority seriously departed from the provisions of Proposition 47. The trial court erred as a matter of law, vastly exceeded its jurisdiction, and made a void order. The majority compounded that error.

The well-established rule is that courts lose resentencing jurisdiction once sentence has been executed. (See *People v. Thomas* (1959) 52 Cal.2d 521; *Holder v. Superior Court* (1970) 1 Cal.3d 779, 783.) In 1976 the Legislature enacted Penal Code section 1170, subdivision (d). The Legislature created an exception to the general rule and gave courts the power to recall a sentence within 120 days of commitment on the court's own motion and within specified parameters. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) Trial courts do not have a free-floating power to recall prison sentences. The power granted by Penal Code section 1170, subdivision (d), is limited and subject to certain conditions. (*People v. Delson* (1984) 161 Cal.App.3d 56, 62.) Penal Code section 1170, subdivision (d)'s provisions must be strictly followed. The 120-day time

frame, for example, is mandatory and courts do not have the power to extend it for any reason. (*People v. Lockridge* (1993) 12 Cal.App.4th 1752, 1755.)

Penal Code section 1170.126, enacted by Proposition 36, is another sentence recall statute. Courts acting pursuant to Penal Code section 1170.126 must strictly follow the conditions set forth in the statute.

In *People v. Brown* (2014) 230 Cal.App.4th 1502 an inmate who was ineligible for 1170.126 resentencing argued that the trial court had the power to dismiss disqualifying priors pursuant to Penal Code section 1385. The *Brown* court explained that Proposition 36 did not give trial courts the power to resentence beyond the conditions specified in the statute. The only power the trial court had was to deny the resentencing petition if the defendant did not statutorily qualify.

Proposition 47 is an additional exception to the rule that courts do not have the inherent power to recall executed prison sentences. Just as with Penal Code sections 1170, subdivision (d), and 1170.126, courts are without power to act beyond the power granted by the statutory scheme.

Proposition 47 created a complete statutory scheme. In so doing the voters precluded the court from imposing other conditions. This inherent prohibition is similar to that found in the deferred entry of judgment and former diversion statutes. There, courts only have the powers enumerated in the statutes. Courts lack the power to impose additional conditions not permitted by the statute, such as a search and seizure condition. (*Frederick v. Justice Court* (1975) 47 Cal.App.3d 687, 689-690; *see also Terry v. Superior Court* (1999) 73 Cal.App.4th 661.)

With Proposition 47, voters gave trial courts the power to do only those things enumerated in Penal Code section 1170.18. The trial court

determines eligibility and suitability; the court can put the person on parole; and cannot resentence to a greater term. There is no provision in the statutory scheme for the court to do anything else. There is no provision in the statutory scheme for the court to vacate the plea bargain and then reinstate dismissed counts as the trial court did and the majority approved. The voters did not open that door when they approved Proposition 47. The trial court's error was jurisdictional and therefore its order is void. (*People v. Brewer* (2015) 235 Cal.App.4th 122, 136-137.)

The trial court properly considered and granted petitioner's Proposition 47 reduction petition. The court then veered off of the Proposition 47 pathway and issued an order that it had absolutely no jurisdiction to issue. Proposition 47 did not give the court that authority and the court had no inherent authority to reinstate counts and vacate a plea bargain. The majority erred when it upheld the trial court's action. This court should hold that the trial court had no authority or jurisdiction to vacate the plea agreement and reinstate the original charges and that nothing in Proposition 47 gives trial courts that power.

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IV

DOE V. HARRIS ESTABLISHES THAT PLEA BARGAINS ARE SUBJECT TO THE POWER OF THE STATE TO CHANGE THE LAW; THERE WAS NO LEGAL BASIS TO GRANT THE PROSECUTION'S MOTION TO WITHDRAW FROM THE PLEA BARGAIN AND REINSTATE THE ORIGINAL CHARGE AND POTENTIAL SENTENCE

In its written order, the trial court phrased the issue this way: "whether the terms that are altered by the application of Penal Code section 1170.18 were so fundamental to the plea agreement that it would be illegal to apply them to the plea bargain in this case." (Exh. K, p. 7.) The Court of Appeal majority similarly stated that Proposition 47 altered a material term of the plea agreement (the sentence and felony conviction) and therefore the plea could not stand.

The issue is this: What happens when a plea-bargained felony charge becomes a misdemeanor as a result of Proposition 47? Does the defendant get the benefit of the Proposition 47 reduction? If yes, can the defendant be forced to withdraw his plea and once again face the original, more serious felony charge(s)?

The original charge here was a robbery, which is a strike. The negotiated disposition was a plea to grand theft person, a non-strike, for 6 years in state prison. Grand theft person is now a Proposition 47 misdemeanor, petitioner was both eligible and suitable for the reduction, and the court properly granted the reduction. The prosecution, however, moved to withdraw from the plea agreement and reinstate the original charge and enhancements. The trial court improperly granted the

prosecution's motions. The majority improperly upheld the trial court's ruling.

The rule in California is very clear.

> "We ... rephrased the question as: 'Under California law of contract interpretation as applicable to the interpretation of plea agreements, does the law in effect at the time of a plea agreement bind the parties or can the terms of a plea agreement be affected by changes in the law?' We respond that the general rule in California is that the plea agreement will be 'deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy.' (*People v. Gipson* (2004) 117 Cal.App.4th 1065, 1070.) That the parties enter into a plea agreement thus does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them." (*Doe v. Harris, supra,* 57 Cal.4th 64, 66, some internal quotation marks omitted.)

Doe v. Harris, when applied to this case, means exactly what it says: the law has changed and petitioner is entitled to the benefit of that change.

As stated above, there is nothing in Proposition 47 that endows a trial court with the power to force a defendant to withdraw his plea and to reinstate dismissed counts. *Doe v. Harris* cannot reasonably be read to allow such an occurrence. The fact is that this court has repeatedly *rejected* the argument that when there is a disadvantageous change in the law defendants can avoid that change by hiding behind the terms of a plea agreement.

> "Both *Swenson* [*Swenson v. File* (1970) 3 Cal.3d 389] and *Gipson* recognize that the Legislature, for the public good and in furtherance of public policy, and subject to the limitations imposed by the federal and state Constitutions, has the authority to modify or invalidate the terms of an agreement. Our explanation in *Swenson* that, as a general

rule, contracts incorporate existing but not subsequent law, does not mean that the Legislature lacks authority to alter the terms of existing contracts through retroactive legislation. Nor should it be interpreted to mean that the parties, although deemed to have existing law in mind when executing their agreement, must further be deemed to be unaware their contractual obligations may be affected by later legislation made expressly retroactive to them, or that they are implicitly agreeing to avoid the effect of valid, retroactive legislation. *Gipson* explains that the parties to a plea agreement—an agreement unquestionably infused with a substantial public interest and subject to the plenary control of the state—are deemed to know and understand that the state, again subject to the limitations imposed by the federal and state Constitutions, may enact laws that will affect the consequences attending the conviction entered upon the plea. The holdings in the cases are not inconsistent; both reflect California law. *Gipson*, however, applies here, while *Swenson* does not." (*Doe v. Harris* at p. 71.)

This language is very strong and very clear. The Legislature, and the voters via initiative, can change the law and alter the terms of plea bargains, subject to Constitutional limitations.

This court further explained:

> "As we have said, the general rule in California is that plea agreements are deemed to incorporate the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. As an adjunct to that rule, and consistent with established law holding that silence regarding a statutory consequence of a conviction does not generally translate into an implied promise the consequence will not attach, prosecutorial and judicial silence on the possibility the Legislature might amend a statutory consequence of a conviction should not ordinarily be interpreted to be an implied promise that the defendant will not be subject to the amended law." (*Doe v. Harris* at p. 71.)

> "For the reasons we have explained, the general rule in California is that a plea agreement is 'deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. (*People v. Gipson, supra*, 117 Cal.App.4th at p. 1070.) It follows, also as a general rule, that requiring the parties' compliance with changes in the law made retroactive to them does not violate the terms of the plea agreement, nor does the failure of a plea agreement to reference the possibility the law might change translate into an implied promise the defendant will be unaffected by a change in the statutory consequences attending his or her conviction. To that extent, then, the terms of the plea agreement can be affected by changes in the law." (*Doe v. Harris* at pp. 73-74.)

This is clear language. A plea agreement is *not* breached just because there has been a change in the law that disadvantages one side or the other. This is not a situation where one side or the other has breached the plea agreement, thus allowing a remedy such as specific enforcement of the plea agreement or withdrawal of the plea. (See, for example, *People v. Mancheno* (1982) 32 Cal.3d 855, 860.)

This court reinforced the meaning of *Doe v. Harris* in 2015 in *Johnson v. Department of Justice* (2015) 60 Cal.4th 871.

> "As for offenders who entered plea agreements, the general rule in California is that a plea agreement is deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. (*Doe v. Harris* (2013) 57 Cal.4th 64, 73.) It therefore follows that requiring the parties' compliance with changes in the law made retroactive to them does not violate the terms of the plea agreement, nor does the failure of a plea agreement to reference the possibility the law might change translate into an implied promise the defendant will be unaffected by a change in the statutory consequences attending his or her

conviction. (*Id.* at pp. 73–74.)" (*Johnson* at p. 888, fn. 10, internal quotation marks omitted.)

The fact that the change in the law was unknown to the prosecution, the defendant, and the court is of no moment. What is significant is that when legislation is retroactive, and not merely prospective, it will act to defeat the expectations of those who acted in reliance upon then-existing law. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1213-1214.)

Although *Evangelatos* involved civil law, the concept is equally applicable to criminal law, within Constitutional limitations. Proposition 47's terms are very clear: it is to be applied as if it were in existence at the time of the commission of the crime. (Pen. Code § 1170.18, subds. (a) and (f).)

Another case that has applied *Doe v. Harris* is *People v. Smith* (2014) 227 Cal.App.4th 717, which considered how an amendment to Penal Code section 1203.4 impacted a plea agreement. The *Smith* Court examined, explained, and applied *Doe v. Harris.*

> "We start from the premise that, in the absence of constitutional restrictions, the general rule governs here (*Doe, supra*, 57 Cal.4th at p. 68), and that rule is plea agreements do not insulate the parties thereto 'from changes in the law that the Legislature has intended to apply to them.' (*Id.* at p. 66.) The corollary to that rule also governs here: 'prosecutorial and judicial silence on the possibility the Legislature might amend a statutory consequence of a conviction should not ordinarily be interpreted to be an implied promise that the defendant will not be subject to the amended law.' (*Id.* at p. 71.)" (*Smith* at p. 730.)
>
> "In other words, in the absence of constitutional constraints, the contract to which a grant of probation gives rise must be 'deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in

> pursuance of public policy.' (*Doe, supra*, 57 Cal.4th at p. 66, quoting *People v. Gipson* (2004) 117 Cal.App.4th 1065, 1070.) We conclude, in the absence of constitutional constraints, a probationer's entitlement to relief under section 1203.4 is not frozen at the time of the probationary grant but is subject to subsequent legislative amendments to the statute." (*Smith* at p. 731).

Another way to look at it is this: "The subsequent change in the law supersedes the terms of the plea agreement." (*People v. Murillo* (2002) 102 Cal.App.4th 1414, 1420.) Although the majority claims that new laws only trump statutory consequences of plea and not negotiated terms such as sentence, *Murillo* undercuts that claim. In *Murillo* the defendant had entered into a plea agreement for 16 months in prison if she failed probation. (*Murillo* at p. 1420.) The *Murillo* court held that Proposition 36 (the drug initiative, not the Three-Strike initiative) controlled and that the plea agreement was superseded. This is an example of how the majority got it wrong.

T.W. v. Superior Court (2015) 236 Cal.App.4th 646 specifically applied *Doe v. Harris* in a Proposition 47 case to allow a plea bargained charge to be reduced to a misdemeanor. It is yet another case where a change in the law superseded the plea bargain. *T.W.* did not merely involve the application of statutory consequences of a plea, but instead the very terms of the negotiated disposition. This case cannot be distinguished from our case.

In *T.W.* the juvenile court refused to reduce the minor's charge to a misdemeanor because it concluded that Proposition 47 did not apply to plea bargains. Much like our facts, the prosecution bargained to dismiss a charge of robbery in return for a plea to a lesser charge, receiving stolen property.

The *T.W.* court examined the statutory scheme and noted that it plainly applied to convictions obtained both by trial and plea. The court analyzed Proposition 47's language with an eye toward implementing the intent of the voters, and concluded that the language and intent of Proposition 47 plainly applied to plea bargains. The *T.W.* court applied *Doe v. Harris* to support its conclusion.

> "This outcome is consistent with the general rule announced by our Supreme Court in *Doe v. Harris* (2013) 57 Cal.4th 64: [T]he general rule in California is that the plea agreement will be deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy. . . . [Citation.] That the parties enter into a plea agreement thus does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them. (*Id.* at p. 66.)" (*T.W.* at p. 653, fn. 4.)

Our case is very similar to *T.W.* in that the most serious charge, which was dismissed as part of the plea agreement, is a robbery charge. The conviction charge in our case is a less-serious grand theft, while the adjudicated charge in *T.W.* is less-serious receiving stolen property. Really, there is no difference between the two cases and *T.W.* undercuts the majority's holding. As *T.W.* makes very clear, there is nothing in Penal Code section 1170.18 that reflects an intent to disqualify a petitioner simply because the conviction was obtained by plea agreement. (*T.W.* at p. 652.)

Three other cases have now fully rejected the arguments advanced by the *Harris* majority. *People v. Gonzalez* (2016) 244 Cal.App.4th 1058 is like Mr. Harris's case in that Ms. Gonzalez also was originally charged with a robbery. The prosecution added a felony charge of grand theft and a misdemeanor charge of battery. Consistent with the plea agreement, Ms.

Gonzalez pleaded guilty or no contest to the added charges, the robbery and a felony burglary charge were dismissed, and she was placed on probation. After Proposition 47 passed, she petitioned to have the felony grand theft charge reduced to a misdemeanor. When that petition was granted, the prosecution appealed, making the same arguments advanced in this matter.

The *Gonzalez* Court of Appeal rejected the position taken by the *Harris* Court of Appeal majority that *Collins* controlled. Instead, the *Gonzalez* Court of Appeal concluded that *Doe v. Harris* clearly established that plea bargains are deemed to incorporate and contemplate the reserve power of the state to enact changes in the law. Proposition 47 was one of those changes.

> "We conclude, therefore, that the voters of California expressly changed the law for reasons of public policy in a way that is intended to affect the sentences of offenders like Gonzalez, notwithstanding the plea agreement, and that Gonzalez was therefore eligible for resentencing." (*Gonzalez* at p. 1067.)
>
> "Though it is true a party to a plea agreement cannot unilaterally alter its terms, changes in the law can do so. 'That the parties enter into a plea agreement ... does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them.' (*Harris, supra*, 57 Cal.4th at p. 66.) Here, the plain terms of Proposition 47, most importantly its creation of a petitioning procedure to reclassify existing convictions and reduce attendant sentences, including those obtained by plea agreements, indicate that the voters specifically intended to affect the plea agreements of defendants like Gonzalez. (§ 1170.18, subds. (a) & (b).)" (*Gonzalez* at p. 1068.)
>
> "In this case, the voters have expressly given Gonzalez the right to seek to modify the terms of her plea agreement and have mandated that the trial court grant her petition if she qualifies, making her guilty of a misdemeanor and reducing the appropriate sentence to informal probation." (*Gonzalez* at p. 1069.)

The *Gonzalez* Court of Appeal also addressed and rejected a particularly pernicious argument adopted by both the trial court and the *Harris* majority: by seeking Proposition 47 relief, petitioner repudiated the plea agreement. As such, it was petitioner who willfully breached the plea agreement and therefore the deal's off and the original charges may be reinstated.

This assertion is ludicrous. The law has changed and petitioner has done nothing more than avail himself of the change in the law that applies to him. A defendant cannot be punished for asserting his or her rights. "For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right." (*United States v. Goodwin* (1982) 457 U.S. 368, 372.)

The *Gonzalez* Court of Appeal refused to accept the prosecution's argument that seeking the benefits of Proposition 47 was somehow a rejection of the plea agreement. *Gonzalez* also adopted the argument that petitioner makes in Section III, above, that nothing in Proposition 47 gave the trial court jurisdiction to reinstate charges.

> "Proposition 47 does not give the trial court a basis for reopening the case against Gonzalez. Nothing in section 1170.18 or any other provision of Proposition 47 permits a trial court to vacate a conviction or allow the prosecution to withdraw a plea agreement and reinstate dismissed counts. Proposition 47 gave the trial court the authority to determine whether petitioners qualify for resentencing and, if so, to resentence them. (§ 1170.18, subd. (b).) That statutory grant of authority is narrow. . . ." (*Gonzalez* at p. 1071.)
>
> "Unlike the defendant in *Collins*, Gonzalez did not appeal or otherwise attack her conviction or her guilty plea. On the contrary, her conviction remains in place even after

> the trial court granted her petition. She merely took advantage of a process created by Proposition 47 allowing her to reduce her sentence because it was for a minor theft. As a result, the Supreme Court's decision in *Collins* does not control this case. We see no basis in that decision or in Proposition 47 for allowing the prosecution to withdraw from the plea agreement and reopen its case against Gonzalez simply because she availed herself of a collateral procedure specifically designed to allow her to reduce her sentence." (*Gonzalez* at p. 1072.)

The defendant in *People v. Brown* (2016) 244 Cal.App.4th 1170 entered into a plea agreement where two counts of receiving stolen property and three counts of identify theft were dismissed in return to a plea to one count of receiving stolen property and two years in the county jail. When Proposition 47 passed, Ms. Brown petitioned to have her crime reduced to a misdemeanor. The trial court granted the petition and the prosecution appealed. The prosecution in *Brown* made the same arguments as those found in *Gonzalez.* And, just as in *Gonzalez,* those arguments were rejected.

The *Brown* Court of Appeal held that *Doe v. Harris* controlled and that Proposition 47 changed the plea agreement. *Brown* rejected the *Harris* court's conclusion that *Doe v. Harris* only applied to collateral consequences of a plea. Instead, *Brown* agreed with the *Harris* dissent: "There is no meaningful distinction in the context of this case between the 'statutory consequences' of a plea-agreed conviction as in *Doe* [*v. Harris*] and a negotiated term of a plea agreement. Both involve the consequences of the plea agreement and the conviction resulting from it." (*Brown* at p. 1179.)

The *Brown* court also specifically rejected an argument made by the trial court that he would not have approved the plea agreement had it

involved a plea to a misdemeanor grand theft. "Nothing in the text, legislative history, or spirit of Proposition 47 suggests a defendant convicted by guilty plea must also demonstrate she would have received the same plea offer had she committed her crime after passage of Proposition 47, and we decline to impose such a requirement." (*Brown* at p. 1180.)

People v. Perry (2016) 244 Cal.App.4th 1251 is another case where the defendant was originally charged with a robbery who ended up pleading to a grand theft person and a strike prior. In return, Perry received six years in state prison. Perry's subsequent Proposition 47 petition was granted, his crime was reduced to a misdemeanor, and he was released with time served.

Perry follows *Brown* and *Gonzalez* and their rejection of the entirety of the *Harris* majority's opinion. The *Perry* court held that the Proposition 47 did not give courts the power to set aside pleas and reinstate the original charges; that Proposition 47 plainly applies to plea agreements; and that *Doe v. Harris* controlled and *Collins* did not. *Perry* tracks and agrees with all of the arguments petitioner put forth both in the trial court and to reviewing courts.

Aside from these Proposition 47 cases, California law is replete with examples of cases that hold that plea bargains are deemed to incorporate the reserve power of the state to amend the law or enact additional laws. (*See, e.g., Way v. Superior Court* (1977) 74 Cal.App.3d 165; *People v. Acuna* (2000) 77 Cal.App.4th 1056; and *People v. Gipson, supra,* 117 Cal.App.4th 1065.) The passage of Proposition 47 is not the first time that sentences have been reduced for inmates serving terms they agreed to as part of plea bargains. Courts have long held that legislation reducing the punishment for offenders may be applied to inmates serving sentences. (*See Way v.*

Superior Court, supra, 74 Cal.App.3d 165; *People v. Community Release Bd.* (1979) 96 Cal.App.3d 792; *Freeman v. United States* (2011) *564* U.S. 522.

In California, sentences were reduced for many inmates serving indeterminate sentences under the Indeterminate Sentencing Law when the state transitioned to the Determinate Sentencing Law ("DSL"). These sentence reductions were challenged under several theories including the argument that the new law did not apply to plea bargains.

The court in *Way* held that the "plea bargain between the prosecution and the defendant is merely an agreement between them as to a disposition which will be submitted to the judge for his adoption, if he so chooses. It vests no rights other than those which relate to the immediate disposition of the case." (*Way* at p. 180.) *Way* upheld the retroactive application of the DSL to inmates who resolved their cases through plea bargains, even though that could result in the early release of prisoners.

The majority, apparently seeing that *Way* is on point, relegated *Way* to a footnote and tried to distinguish it by claiming that it did not address plea bargains nor did it consider reinstating the original charges. In fact, the *Way* court *did* consider plea bargains and retroactivity and held as quoted above.

Way also undercuts the majority's claim that *Doe v. Harris* and the other cases cited by petitioner only applied to statutory consequences of a plea and not negotiated items such as sentence length. *Way* specifically involved some defendants with plea-bargained sentences and the fact that those sentences would be shortened by the change from the Indeterminate Sentencing Law to the Determinate Sentencing Law. *Way* is not distinguishable.

In *People v. Acuna, supra,* 77 Cal.App.4th 1056, the defendant pleaded guilty to violating Penal Code section 288. At the time of the defendant's plea and sentencing, Penal Code section 1203.4 permitted him to apply to the court to have his conviction expunged after probation concluded. However, in 1997, the statute was amended to prohibit "expungement" for convictions of Penal Code section 288. On appeal, Acuna argued that the application of the amended statute to his case deprived him of the benefit of an implied term of his plea bargain that he would be permitted to seek expungement under the law in effect at the time of his plea. (*Acuna* at p. 1062.) The Court of Appeal rejected those arguments and ruled that the retroactive application of the amendment to the defendant did not deny him the benefit of his plea bargain. (*Ibid.*)

In *People v. Gipson, supra,* 117 Cal.App.4th 1065, the Court of Appeal considered whether a prior conviction could be used as a "strike" when the conviction was sustained prior to the passage of the Three Strikes Law. Gipson asserted that his 1992 plea bargain "was a contract between the State and him which the Legislature could not impair by subsequent enactments." Gipson further asserted that the subsequently enacted Three Strikes provisions under which he was sentenced violated the contract clauses of both the federal and state Constitutions. (*Gipson* at p. 1068.) The Court of Appeal denied the defendant's contract clause challenge and held that the plea bargain contemplated the Legislature's ability to change the law. (*Gipson* at p. 1070.)

These cases stand for the proposition that regardless of whether a subsequent change in the law is beneficial or detrimental to a defendant, retroactive application of changes in the law does not violate a plea bargain. Petitioner respectfully requests that this court so hold.

V

PEOPLE V. COLLINS IS DISTINGUISHABLE AND HAS BEEN IMPLIEDLY OVERRULED BY *DOE V. HARRIS*

The trial court, and the Court of Appeal majority, relied upon *People v. Collins* (1978) 21 Cal.3d 208. *Collins* is factually distinguishable from petitioner's case. In addition, *Collins* has been limited or overruled *sub silentio* by *Doe v. Harris*.

Collins is readily distinguishable because that case involved a statute defining a crime that was repealed entirely. As stated by this court, "[w]hen a defendant gains *total relief* from his vulnerability to sentence, the state is substantially deprived of the benefits for which it agreed to enter the bargain." (*Collins* at p. 215, emphasis added) In *Collins*, the defendant was indicted in 1974 on fifteen separate felony counts. Pursuant to a plea bargain, defendant pleaded guilty to one count of non-forcible oral copulation, and all other charges were dismissed. Between the time that the defendant pleaded and was sentenced, the Legislature completely repealed his conviction charge. Mr. Collins objected to being sentenced to prison on the now-repealed crime.

On appeal, this court agreed that the defendant could not be sentenced on the repealed crime. This court held that the prosecution was deprived of the benefit of its bargain by the relief the court was granting (reversing the sole conviction), and concluded that dismissed counts could be restored. (*Collins* at p. 215)

Collins presents a significantly different factual scenario. In *Collins*, the entire crime had been repealed. As this court wrote, "it is [the defendant's] escape from vulnerability to sentence that fundamentally alters the character of the bargain." (*Collins* at p. 215.) Here, petitioner remains

convicted and his punishment has been reduced due to Proposition 47. The Court of Appeal in *People v. Gonzalez, supra,* 244 Cal.App.4th 1058 at pp. 1070-1073, similarly distinguished *Collins,* as did *People v. Perry, supra,* 244 Cal.App.4th 1251, 1258, and *People v. Brown, supra,* 244 Cal.App.4th 1170, 1182-1183.

Moreover, to the extent that *Collins* might be said to apply to Proposition 47 cases, it cannot be reconciled with *Doe v. Harris. Collins* was not cited in *Doe.* Overruling a prior case may be done expressly or indirectly, and when done indirectly, overruling may occur in two stages. (1) A prior authority may be first overlooked, ignored, or purportedly distinguished on untenable grounds. (2) Then, in a later decision, it may be recognized that the early case was impliedly overruled by the later one. (Witkin, *California Procedure* (5th ed. 2008) Ch. XIII, § 541.)

The Courts of Appeal in *Gonzalez, Brown,* and *Perry,* similarly found that either *Collins* was simply not applicable in this case or no longer reflected the current state of the law. The Court of Appeal in *Gonzales,* at page 1073, wrote that if *Collins* held, as the *Harris* majority claims, that *Collins* is authority allowing the prosecution to withdraw from the plea agreement, then it was overruled by *Harris.* The *Gonzales* Court of Appeal declined to adopt this interpretation of *Collins* but instead said it was in harmony with *Doe v. Harris,* that it was distinguished, and *Doe v. Harris* controlled. *Collins* is not consistent with *Doe v. Harris* and thus cannot be said to reflect the current state of the law.

This court could hold that *Collins* has been overruled by *Doe v. Harris* or that in light of *Doe, Collins* no longer is a correct statement of the law. This court could also hold that *Collins* is inapplicable and that *Doe v. Harris* controls. In any event, it should be clear that *Doe v. Harris* contains

the most recent and applicable statement of the law and that *Doe* controls this case.

VI

REINSTATING THE ORIGINAL POTENTIAL SENTENCE WAS ERROR

The majority not only allowed the original charge to be reinstated, it also reinstated the original potential maximum sentence. This is very clear error.

The majority claims that by filing a Proposition 47 petition, petitioner repudiated the plea agreement. Nothing could be further from the truth. Petitioner did nothing more than the law allows. He cannot be punished for asserting his Constitutional and statutory rights. (*United States v. Goodwin, supra,* 457 U.S. 368, 372.)

Although petitioner has argued that *Collins* is no longer valid law, there is one part of *Collins* that does remain and is controlling here. In *Collins* this court made it very clear that principles of double jeopardy preclude imposing a greater sentence upon reversal than was imposed originally. (*Collins* at pp. 216-217.)

Proposition 47 itself also contains clear language prohibiting what the majority is allowing: "Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence." (Pen. Code § 1170.18, subd. (e).)

The Court of Appeal in *People v. Perry, supra,* 244 Cal.App.4th 1251, at page 1260, clearly and forcefully rejected the idea that a greater sentence could be imposed.

> "Finally, the plain language of section 1170.18, subdivision (e) provides that '[u]nder no circumstances may resentencing under this section result in the imposition of a

> term longer than the original sentence.' The invalidation of the plea agreement and reinstatement of the previously dismissed charges against Perry, however, would result in a minimum sentence exposure of nine years and a maximum of 15 years. The People argue that because the reinstated charges would not be covered by Proposition 47, the limits of subdivision (e) would not apply to Perry. This suggests that a defendant who clearly falls within the language of Proposition 47 and files a petition pursuant to the statute may be penalized for exercising that right. '[W]hile an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right.' (*United States v. Goodwin* (1982) 457 U.S. 368, 372.)"

The Court of Appeal majority was just plain wrong and they cited nothing that supports their conclusion. This court need not reach this issue if it finds that Proposition 47 does not allow a plea to be vacated and the original charges reinstated. This court, however, should use the claim that a Proposition 47 petitioner can receive a greater sentence as an additional reason to reverse the *Harris* majority's holding.

VII

THE MAJORITY'S RULING LEADS TO ABSURD CONSEQUENCES, WOULD GUT THE INITIATIVE, AND IS CONTRARY TO THE INTENT OF THE VOTERS

Proposition 47 by its own language contemplates its application to cases that are resolved by pleas, including plea bargains. (Penal Code § 1170.18(a).) The reality of criminal practice in California is that approximately 95 per cent of all criminal cases are resolved through plea bargains. (*Plea Bargains are Ubiquitous. But are they Un-American?* by San Francisco Public Defender Jeff Adachi, San Francisco Examiner, June 21, 2015, http://www.sfexaminer.com/justice-matters-plea-bargains-are-

ubiquitous-but-are-they-un-american/ as of March 18, 2016.) The Court of Appeal majority in this case, however, construed Proposition 47 so that it cannot be applied to cases where the terms of a plea bargain would be altered by the application of the initiative. Why would the voters pass a law that applies to pleas but not to plea bargains? The conclusion that this is what the voters intended is unreasonable.

The Court of Appeal in *People v. Gonzales, supra,* 244 Cal.App.4th 1058, at p. 1072, rejected the argument that the voters intended prosecutors to be able to reinstate dismissed charges:

> "We conclude neither the drafters of Proposition 47 nor the electorate anticipated prosecutors would be permitted to withdraw from plea agreements. As we have discussed above, we understand the Supreme Court's decision in *Harris* to establish the relevant background rule, which is that subsequent legislative changes in policy may alter the terms of plea agreements. We impute knowledge of that holding to the drafters of Proposition 47 and the electorate and conclude adopting the People's position would frustrate the purpose of the statute."

Proposition 47's language makes the initiative's goals extremely clear. The initiative seeks to channel incarceration spending to serious crime, to maximize alternatives to incarceration for nonserious crime, and to invest the savings in children's and adult programs. These goals apply to individuals convicted of all qualifying offenses, including convictions after trial or plea.

Proposition 47 includes a Purpose and Intent clause enumerating, with greater specificity, the intent and expectation that substantial cost savings be realized by the passage of the initiative. These lofty cost-savings estimates would be unachievable if individuals convicted by plea

bargain were excluded from relief. The savings anticipated from reductions in the population of prisoners would largely evaporate.

The statute specifically includes convictions obtained by plea and does not exclude convictions obtained by plea bargain. The holding of the majority is inconsistent with the statutory requirement that Proposition 47 must be liberally construed. The last sentence of the Proposition reads: "This act shall be liberally construed to effectuate its purposes." (Prop. 47, Sec. 18.)

Justice Mosk's dissent said it so well it was adopted by the *Perry* Court of Appeal.

> "As the dissent in *Harris* observed: 'If applying Proposition 47 to plea agreements can result in vacating the plea and reinstating the original [charges], such application would lead to absurd results and would be contrary to the intent of the voters. . . . If a reduction of a sentence under Proposition 47 results in the reinstatement of the original charges and elimination of the plea agreement, the financial and social benefits of Proposition 47 would not be realized, and the voters' intent and expectations would be frustrated.' (*Harris v. Superior Court, supra*, 242 Cal.App.4th at p. 263 (dis. opn. of Mosk, J.).)" (*People v. Perry, supra,* 244 Cal.App.4th 1251, 1260-1261.)

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CONCLUSION

On every level, the majority decision in *Harris* is wrong. It took Proposition 47's plain language applying its terms to pleas and turned it on its head. The *Harris* majority's decision is not only inconsistent with the voter's intent, it is the polar opposite. This court is respectfully requested to reverse the decision of the *Harris* majority and to hold that Proposition 47 fully applies to plea agreements, that trial courts have no jurisdiction to vacate pleas and reinstate charges, and that Proposition 47 did not authorize that power.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel of record certifies pursuant to California Rules of Court, rule 8.520(c). That OPENING BRIEF ON THE MERITS in this action contains 9,948 words. Counsel has relied on the word count of the word processing program used to prepare this brief.

DATED: March 22, 2016

MARK HARVIS

DECLARATION OF PROOF OF SERVICE

I, the undersigned, declare I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012; that on March 22, 2016, I served the within OPENING BRIEF ON THE MERITS, MORRIS GLEN HARRIS, JR., on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail in the County of Los Angeles, addressed as follows:

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HONORABLE HENRY J. HALL, JUDGE
LOS ANGELES SUPERIOR COURT, DEPARTMENT 111
CLARA SHORTRIDGE FOLTZ CRIMNAL JUSTICE CENTER
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I further declare that I served the above referred-to document by hand delivering a copy thereof addressed to:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on March 22, 2016 at Los Angeles, California.

Rose Trenado

ROSE TRENADO