


GENERAL OFFICE MEMORANDUM 17-025

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: PROPOSITION 47: VACATING PLEA AGREEMENTS WHEN
BENEFIT OF OUR BARGAIN IS LOST - GOM 15-034 MODIFIED

DATE: FEBRUARY 23, 2017

In April 2015, General Office Memorandum (GOM) 15-034 advised deputies to consider moving to rescind a negotiated plea agreement in certain circumstances when a defendant who pled guilty to a felony seeks a misdemeanor sentence pursuant to Proposition 47 (Prop 47). This guidance is no longer an available option. In the recently decided case of *Harris v. Superior Court* (2016) 1 Cal.5th 984, the California Supreme Court held that prosecutors are not entitled to reinstate previously dismissed charges when a defendant is resentenced under Prop 47.

Specifically, GOM 15-034 addressed the situation in which:

- a defendant pled guilty or no contest to one or more felonies pursuant to a plea agreement prior to the passage of Prop. 47
- one or more other felony charges were dismissed as part of that agreement
- after the passage of Prop. 47, each of the charges of which the defendant was convicted could be reduced to misdemeanors but at least one dismissed felony charge was not reducible, and
- the defendant had not finished serving the agreed-upon sentence.

This was the situation in *Harris*. The defendant pled guilty to a charge of grand theft person and agreed to serve a negotiated prison term in exchange for the dismissal of a pending robbery charge. While still serving his agreed-upon sentence, the defendant sought and was granted a reduction of the grand theft charge to a misdemeanor pursuant to Prop. 47. The court also granted the prosecutor's motion to reinstate the original robbery charge on the theory that the State was being denied the benefit of its bargain.

The Court of Appeal affirmed the trial court action. However, late last year, the California Supreme Court reversed the decision of the Court of Appeal, finding that prosecutors are not entitled to reinstate previously dismissed counts when a defendant exercises his or her right to be resentenced under Prop. 47.

In light of the *Harris* decision, deputies are directed not to seek the reinstatement of charges dismissed as part of a negotiated disposition when a defendant petitions for relief under Prop. 47. This instruction supersedes the guidance provided in GOM 15-034 and in the template motion attached thereto.

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