

IN THE SUPREME COURT FOR THE
STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

DARREN S. HARRIS,
Appellant.

NO. 1023111

ANSWER AND CROSS-PETITION
FOR REVIEW

I. INTRODUCTION

This is a direct appeal where Mr. Harris, a juvenile sentenced in adult court, challenged the adequacy of his pre-*Houston-Sconiers* sentencing hearing. The Court of Appeals found that Harris was sentenced without the consideration of the “mitigating qualities of youth” and entitled to relief but held that it would violate the plea agreement “if Mr. Harris were to present evidence or argument at a resentencing that qualities of his youth at the time of the crime made 244 months a disproportionate sentence.” *State v. Harris*, 533 P.3d 135, 141 (Wash. Ct. App. 2023).

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3 Consequently, the Court of Appeals held that Mr. Harris was not
4 entitled to a new sentencing hearing. Instead, “he is entitled to the
5 opportunity to move to withdraw his plea.” *Opinion*, p. 20.

7 The State petitions this Court for review. The State’s petition
8 seeks review of the following issues:
9

10
11 1. Should this court grant review under RAP 13.4(b)(4) so it
12 can provide a proper interpretation of *Houston-Sconiers* in the
13 context of an agreed plea recommendation?

14 2. Under RAP 13.4(b)(1), does Division Three's holding conflict
15 with *Houston-Sconiers* in finding that the case gives rise to error
16 in Harris's 2012 negotiated plea agreement and sentence and that
17 the error was not harmless?

18 3. Should this Court grant review under RAP 13.4(b)(1) and (2)
19 because the opinion below conflicts with long-standing case law
20 that a voluntary guilty plea intelligently made in light of then
21 applicable law does not become vulnerable because of later judicial
22 decisions?

23 Harris opposes review of the first issue which he understands as
24 whether a defendant’s agreement to recommend a certain sentence
25 entirely relieves a judge from considering and weighing the mitigating
26 qualities of youth. That constitutional requirement is not overridden by
27 a recommendation that a court need not follow. It is so well established
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1 in Washington that a judge is never required to follow a sentence
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3 recommendation, even if made by both parties, that it is written into
4 the standard plea statement. That issue does not satisfy the standard
5
6 for review.

7 On the other hand, this Court should review the remedy imposed
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9 by the lower court. Harris joins in the request for review of the second
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11 and third claims subject to the following reframing:

12 Does a juvenile sentenced in adult court prior to *Houston-Sconiers*
13 violate a plea agreement to recommend 244 months by (a)
14 presenting evidence of the mitigating qualities of youth at the new
15 sentencing; or (b) by arguing for a sentence less than 244 months
16 in light of the changed circumstances?

17 If either constitutes a breach, is Harris entitled to notice prior to
18 sentencing of what constitutes a breach and, if he indicates the
19 intent to breach the agreement, is the State entitled to move to
20 vacate the conviction?

21 II. ARGUMENT

22 This Court should accept review, but only of the remedy question.
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24 This Court should not review whether Mr. Harris had a *Houston-*
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26 *Sconiers* compliant sentencing. It is beyond peradventure that he did
27
28 not. Because this is a direct appeal, the State was required to prove
29 the harmlessness of both the procedural and substantive requirements
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1 set forth by this Court beyond a reasonable doubt. The lower court
2 correctly determined that the State failed to do so. This Court should
3 not revisit that issue which involved the correct application of the facts
4 to settled law.
5

6
7 Instead, this Court should accept review limited to the issue of
8
9 remedy.

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11 If this Court accepts review of that issue, Mr. Harris will urge
12 this Court to adopt the approach set forth in *Harris v. Superior Ct.*, 1
13 Cal. 5th 984, 991, 383 P.3d 648, 652 (2016), and *Doe v. Harris*, 57
14 Cal.4th 64, 158 Cal.Rptr.3d 290, 302 P.3d 598 (2013), that when
15
16 parties enter into a plea agreement that agreement does not have the
17 effect of insulating them from changes in the law. Likewise, allowing
18
19 and even requiring the parties' compliance with changes in the law
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21 made retroactive to them does not violate the terms of the plea
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23 agreement. Nor does the failure of a plea agreement to reference the
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25 possibility the law might change translate into an implied promise the
26
27 defendant will be unaffected by a change.

28 III. CONCLUSION

29 This Court should grant review limited to the remedy issue.
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1 Otherwise, this Court should deny review.
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3 CERTIFICATE OF WORD COUNT

4 This *Answer* has 775 words.
5

6 DATED this 21st day of September 2023.
7

8 RESPECTFULLY SUBMITTED:

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ALSEPT & ELLIS

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