

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re T. C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T. C.,

Defendant and Appellant.

C058834

(Super. Ct. No. JV116350)

ORDER MODIFYING OPINION
AND DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

The opinion filed on April 30, 2009, is modified by adding at the end of page 19 the following:

Appellant petitions for rehearing on the ground that this court failed to address an issue in his opening brief, i.e., that the juvenile court did not honor the plea bargain, which should be specifically enforced to exclude restitution on Count 8. However, this argument is merely a variation on appellant's *Harvey* argument because, as we stated *ante*, *Harvey* itself is based on enforcing implicit promises in plea bargains. Moreover, we reject appellant's view that his plea bargain constituted an agreement for *Harvey* to govern (and bar restitution on the dismissed count). Appellant notes the juvenile court waiver form mentioned *Harvey* waivers and circled

"Not applicable" which, according to appellant, meant there was no waiver of *Harvey*, and therefore *Harvey* governs. We disagree. "Not applicable" followed the words, "Some of the charges against me have been dismissed with a Harvey Waiver. My attorney has explained a Harvey Waiver to me and I understand what it is." That this provision was "Not applicable" does not translate to a promise for *Harvey* to govern. Nor did the dismissal "outright" constitute a promise not to impose restitution, since the court expressly stated it would consider the dismissed count for disposition purposes.

This modification does not change the judgment.

Appellant's petition for rehearing is denied.

 SIMS , Acting P. J.

 RAYE , J.