

NO. 93008-2

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ISAIAH W. NEWTON, JR.,

Petitioner.

**RESPONDENT'S ANSWER TO MOTION FOR
DISCRETIONARY REVIEW**

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I. INTRODUCTION

The Court of Appeals correctly applied the plain language of the Wrongful Conviction Compensation Act consistent with the legislature's intent, avoiding an interpretation that would allow compensation in almost all cases where an appeal is reversed. Isaiah Newton was convicted of first degree burglary and resisting arrest by unanimous jury verdict. He appealed both convictions. The Court of Appeals reversed the burglary conviction and affirmed the resisting arrest conviction. *State v. Newton*, 180 Wn. App. 1037 (2014). The burglary was reversed on sufficiency of the evidence grounds. Relying upon this decision, Mr. Newton filed a claim for monetary damages and other relief pursuant to RCW 4.100, the Wrongful Conviction Compensation Act (WCCA) against the State.

However, as previously held by both the trial court and the Court of Appeals, Mr. Newton's claim is not appropriate for WCCA relief because a successful WCCA claim must be founded upon "significant new exculpatory information" that results in reversal or vacation of the underlying criminal charge(s). RCW 4.100.040(c)(ii). A judicial decision that was simply a review of the evidence before Mr. Newton's jury does not amount to "new information" as contemplated by RCW 4.100. Thus, the trial court properly dismissed Mr. Newton's WCCA claim as a matter of law, and the Court of Appeals rightly affirmed that decision.

In addition, in order to bring a successful WCCA claim, a person must be “actually innocent,” meaning “he or she did not engage in any illegal conduct alleged in the charging documents. RCW 4.100.040(2)(a). It is undisputed that Mr. Newton entered into and remained unlawfully within a residence – one of the elements of first degree burglary. Thus, Mr. Newton did engage in some of the illegal conduct alleged in the charging documents and his WCCA claim was properly dismissed.

II. ISSUES PRESENTED FOR REVIEW

This Court should deny review because the decision below does not meet any of the RAP 13.4(b) criteria. However, if the Court were to accept review, the following issues would be presented:

1. **Where a WCCA claimant’s conviction was reversed after a Court of Appeals finding of insufficient evidence, did the WCCA trial court properly dismiss the claim as not based on significant new exculpatory information?**
2. **Where a WCCA claimant did engage in some of the charged illegal conduct, did the trial court properly dismiss the WCCA claim?**

III. COUNTER STATEMENT OF THE CASE

For purposes of this motion, the State assumes the facts as set forth by the Court of Appeals in its April 22, 2014 Opinion reversing Mr. Newton’s burglary conviction.¹ Mr. Newton was charged with first

¹ Newton’s conviction for resisting arrest was affirmed. The Court’s Opinion is Exhibit C to Newton’s Complaint for Wrongful Incarceration. CP 23-33.

degree burglary and resisting arrest after entering his disabled mother's home while on drugs, and physically attempting to get her to walk. Newton Op. at 1. Newton's mother fell as a result, and Mr. Newton resisted Tacoma police who responded to the scene. *Id.*

Specifically, beginning at 12:51 a.m. on May 18, 2012, Mr. Newton called his mother three times. In the first and second phone calls, he said he wanted to visit her and she told him not to come over until morning. *Id.* In the third phone call, "[h]e was talking crazy," saying he wanted to share with her that he spoke with God, who told him she could walk. *Id.* He told her he was under the influence of a controlled substance that the State later argued was the hallucinogen phencyclidine, commonly known as PCP. *Id.* She again told him not to come over until morning. Soon, Mr. Newton began pounding on the front door and ringing the doorbell to Ms. Cooper's duplex unit while yelling "mama!" *Id.*

Mr. Newton then went to his mother's bedroom window, which was closed but not completely secure. He said in a "drunken" voice that "[h]e wanted [her] to open the window because . . . God and he had been talking and . . . [she] could walk again." She initially refused to open the window for him. *Id.*

Conflicting evidence concerning whether Mr. Newton had permission to come through the window was presented at trial. *Id.* at 1-2.

Newton's mother testified that she refused to open the window for her son solely because she was in bed and could not reach it. *Id.* at 1. She stated, "I let him know to open the window if he wanted to come in because I couldn't get out of bed to do that." *Id.* She later reiterated how she told him "he could come in through my bedroom window . . . [i]f he could open it," and elaborated, "I had more or less invited him in to stop him from being out there, and being loud and bothering people, waking people. It was early in the morning." *Id.* Mr. Newton's mother stated this was what she initially told police, but police testimony contradicted her assertion. *Id.*

Once inside the window, Mr. Newton told his mother she could walk. *Id.* at 2. She asked him to help her to the restroom by following normal procedures. But "[h]e was convinced that [she] could walk." *Id.* Insistent and while repeating God said she could walk, Mr. Newton placed his arms around his mother and tried lifting her to her feet so she could walk. After a few attempts, they both fell to the ground. *Id.* During the incident, her nightgown accidentally tore, her drinking glass shattered, and her television and some trinkets were knocked over. *Id.* Mr. Newton's mother yelled for help. *Id.* Mr. Newton repeatedly tried lifting her but was unsuccessful. *Id.* Agitated and wanting to get his attention, she claimed she hit and kicked him while telling him to stop and get help. *Id.*

Mr. Newton did not listen, but did help his mother to a feeble standing position, clinging to the doorframe. *Id.* Afraid of falling again, Mr. Newton's mother asked Mr. Newton to help her maneuver into her wheelchair. *Id.* He did not comply with her request, instead standing still and insisting, "Mama, you can walk, God told me you can walk." *Id.*

Housemate Kathie Cooper responded to the screaming and saw Mr. Newton's mother clinging to the wall. *Id.* Ms. Cooper returned to her bedroom and called 911 emergency response, staying in her bedroom during the entire phone call because she was afraid of Mr. Newton's unstable behavior. *Id.* Neighbor David Price saw Newton run to the front door and bang and kick it while hollering for his mother to open it. Mr. Price soon heard a crash and Ms. Williams screaming to Mr. Newton, "Stop, let me go." *Id.* At the window, Mr. Price saw Mr. Newton "wrestling" with Ms. Williams, "trying to make her stand on her feet." Because of her disability, his efforts had the result of "picking her up and dropping her, picking her up and dropping her." *Id.* While doing so, Mr. Newton was telling his mother to walk, yelling loudly, "By the blood of Jesus you can walk, mama." *Id.* Mr. Price testified, "He was having some kind of episode, or he wasn't really with it." *Id.* All the while, Mr. Newton's mother was screaming, "Let me go. . . . Stop. Stop. You're hurting me. You're hurting me." *Id.* Neighbor Frank Givens joined

Mr. Price at the scene. He saw and heard much the same as Mr. Price, and dialed 911.

Police arrived and twice ordered Mr. Newton to release his mother but, given his mental state, he did not comply. *Id.* Officer Robert Hannity deployed an electroshock weapon against him and, after a struggle, soon handcuffed him with the help of other police officers. *Id.* Throughout this encounter, Newton was screaming, “Mom, mom, you don’t need you [sic] wheelchair. *Id.* You don’t need your chair. You don’t need it anymore. You don’t need your wheelchair, mom.” *Id.*

Mr. Newton was originally convicted of first degree burglary and resisting arrest, but the Court of Appeals reversed the first degree burglary conviction for insufficient evidence of intent. The trial court then entered an agreed order dismissing the burglary charge. Mr. Newton subsequently filed a wrongful conviction claim. CP 1-39. The State moved to dismiss Newton’s claim because he cannot establish “actual innocence” and he cannot show that his criminal conviction was overturned on the basis of “significant new exculpatory information.” CP 93-143; RCW 4.100.040(1)(c); RCW 4.100.020(2)(a). Moreover, he cannot show that he did not engage in *any* illegal conduct alleged in the charging documents. The trial court agreed and dismissed Mr. Newton’s claim via summary judgment. CP 203-205.

The Court of Appeals affirmed, holding that “‘significant new exculpatory information’ does not include an appellate opinion reversing the claimant’s conviction based on insufficiency of the evidence presented at trial.” *Newton v. State* 192 Wn. App. 931, 933, 369 P.3d 511. Mr. Newton now seeks additional review.

IV. REASONS WHY REVIEW SHOULD BE DENIED

The legislature adopted the WCCA in 2013 “to provide an avenue for those who have been wrongly convicted in Washington to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.” RCW 4.100.010. A successful claimant can recover monetary damages, reimbursement of accrued child support arrearages, college tuition credits, attorney’s fees, and other awards. RCW 4.100.060(5). (Chapter attached as Appendix A).

In order to file an actionable WCCA claim for compensation, the claimant must, in part, “establish by documentary evidence” that:

- (i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or
- (ii) The claimant’s judgment of conviction was reversed or vacated and the charging document dismissed **on the basis of significant new exculpatory information** or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found

not guilty at the new trial or the claimant was not retried and the charging document dismissed;

RCW 4.100.040(1)(c) (emphasis added).

Significantly, not all overturned convictions will lead to WCCA claims. Rather, the Legislature narrowed the field by requiring that a claim based on reversal of a conviction must be based on significant new exculpatory information. RCW 4.100.040(1). A claimant must also establish “actual innocence” by showing that he or she “did not engage in any illegal conduct alleged in the charging documents.”

RCW 4.100.040(2)(a).

Here, Mr. Newton’s WCCA claim so clearly failed to meet the statutory requirements that further review is unnecessary.

A. The Court of Appeals’ Opinion Does Not Involve an Issue of Substantial Public Interest

Mr. Newton argues that his case presents an issue of substantial public interest, which warrants further review by this Court. RAP 13.4(b)(4). However, the Court of Appeals’ decision below involved a simple question of statutory interpretation. The Court followed well established rules of statutory construction, and came to a decision that makes logical and intuitive sense. Specifically, regarding the issue of

whether an appellate opinion reversing a conviction constitutes “significant new exculpatory information,” the Court held:

RCW 4.100.040(1)(c)(ii) and RCW 4.100.060(1)(c)(ii) state that the claimant must show that his or her conviction was reversed “*on the basis of*” significant new exculpatory information. (Emphasis added.) Under this language, the significant new exculpatory information necessarily refers to something other than the appellate reversal itself. The appellate reversal must be *based on* some new information. Logically, an appellate reversal cannot be based on itself.

Newton, 192 Wn. App. at 938.

This clear and sensible analysis need not be disturbed or revisited. Discretionary review would certainly be appropriate if the decision below “invite[d] unnecessary litigation on that point and create[d] confusion generally.” See *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005). However, this decision is unlikely to lead to any such confusion. Thus, Mr. Newton has not established that his case satisfies the RAP 13.4(b)(4) prerequisite for review, and his motion should be denied.

B. The Court of Appeals Was Correct that Newton’s Complaint Was Properly Dismissed Because He Failed To Establish That His Conviction Was Overturned Due To “New” Information

Mr. Newton argues that the Court of Appeals “wrongly interpreted the phrase ‘significant new exculpatory information’ to mean ‘significant new exculpatory evidence.’” Motion at 6. This argument misconstrues the Court’s analysis. Pursuant to the statute, the focus is on

whether or not the claim is supported by a change of circumstance that resulted in reversal or vacation of the underlying criminal conviction. Thus, the Court focused on whether something “new” supported the WCCA claim, not the semantic issue of whether it was supported by “information” or “evidence.”

From there, Mr. Newton argues that the Division Three’s decision in his criminal case was itself “new information” for purposes of his WCCA Claim. However, to have an actionable WCCA claim, the statute actually requires that the Court of Appeals must have based its decision to reverse on new information. Specifically, Newton must show his conviction “was *reversed* or vacated and the charging document dismissed *on the basis of new exculpatory information.*” RCW 4.100.040(1)(c)(ii) (emphasis added).

“If [statutory] language is unambiguous, we give effect to that language and that language alone because we presume the legislature says what it means and means what it says.” *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795, 798 (2004) (citing *State v. Radan*, 143 Wn.2d 323, 330, 21 P.3d 255 (2001)).

Within the WCCA, the legislature unambiguously requires a WCCA claimant to show a post-conviction change in circumstance in order to plead an actionable claim. RCW 4.100.040(1)(c)(ii). If such a

requirement were not imposed, every person who successfully had a conviction overturned would be entitled to WCCA compensation. Obviously, such was not the intent of the legislature.

There is no supporting authority for Newton's assertion that the appellate opinion, itself, fulfills the new information requirement. Rather, reversal for insufficient evidence has been deemed inadequate to support a wrongful conviction claim in other states addressing the issue. *See, e.g., Piccarreto v. State*, 144 A.D.2d 920, 921, 534 N.Y.S.2d 31, 32 (1988) (“[I]nability of the People to meet their burden in a criminal trial is not the equivalent of the statutory requirement that claimants, who have the burden of proof on this claim, state facts in sufficient detail to permit the court to find that they are likely to succeed at trial in proving that they did not commit the acts charged in the accusatory instrument.”); *State v. Dohlman*, 725 N.W.2d 428, 432-33 (Iowa 2006) (“The only law of the case found by the court of appeals is its legal finding that when it viewed the evidence in the light most favorable to the State, there was insufficient evidence to support a finding that Dohlman was guilty beyond a reasonable doubt. We disagree the reversal of Dohlman's convictions by the court of appeals proves his [wrongful conviction] claim.”). Likewise, Newton's claim also fails.

Here, no new information was before the Court of Appeals. The record was limited to the events of the trial court proceeding, and even the sufficiency of evidence argument had already been made to both the trial judge and Mr. Newton's jury. The Court's reversal was based solely on facts, information and argument that were available and utilized during Newton's trial. The Court of Appeals interpreted the plain language of the statute and came to the same conclusion as the trial court. There is no need for yet another review of this relatively straightforward issue. This Court should deny discretionary review.

C. Mr. Newton's WCCA Claim was also Properly Dismissed Because He Cannot Establish "Actual Innocence" as Required by RCW 4.100.020

The trial court also correctly dismissed Mr. Newton's claim because it is undisputed that he is not "actually innocent" as defined by the WCCA.² In order to file an "actionable" WCCA claim, the claimant must "state facts in sufficient detail for the finder of fact to determine that ... [t]he claimant did not engage in *any illegal conduct* alleged in the charging documents[.]" RCW 4.100.040(2)(a) (emphasis added).

Here, although Mr. Newton's first degree burglary conviction was reversed by the Court of Appeals, the Court specifically found that "a

² Although the Court of Appeals did not reach this issue, it does provide another reason why further review of Mr. Newton's WCCA claim is unnecessary.

rational jury could, viewing the evidence in the light most favorable to the State, find he entered or remained unlawfully in [the alleged victim's] bedroom beyond a reasonable doubt." Newton Opinion at 8. The Information filed in Newton's underlying criminal case alleged, in part, that Newton did "enter or remain unlawfully in a building." Entering or remaining unlawfully in a building is illegal conduct. RCW 9A.52.070(1) – Criminal trespass in the first degree. Therefore, Newton did engage in some of the illegal conduct alleged in count one of his underlying criminal Information. For that reason, his claim is not actionable and must be dismissed.

V. CONCLUSION

Newton has not established a basis for review by this Court. The State respectfully requests that the Court deny his motion for discretionary review.

RESPECTFULLY SUBMITTED this 20th day of June, 2016.

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WASHINGTON STATE SUPREME COURT

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DECLARATION OF
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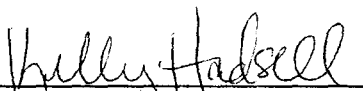
I, Kelly Hadsell, declare as follows:

On June 20, 2016, I served via electronic mail and regular U.S. Mail, postage prepaid, a true and correct copy of the Respondent's Answer To Motion For Discretionary Review and Declaration of Service via electronic mail, addressed as follows:

Douglas Cloud
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 20th day of June, 2016, at Seattle, Washington.


KELLY HADSELL

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