

FILED
SUPREME COURT
STATE OF WASHINGTON
10/16/2019 4:16 PM
BY SUSAN L. CARLSON
CLERK

NO. 97665-1

**SUPREME COURT
OF THE STATE OF WASHINGTON**

ROBERT E. LARSON, TYLER W. GASSMAN,
and PAUL E. STATLER,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

STATE'S ANSWER TO PETITION FOR REVIEW

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Rules

RAP 13.4(b) 2

I. INTRODUCTION

The expressed purpose of the Wrongly Convicted Persons Act (WCPA) is to provide an avenue to compensation for persons wrongly convicted in the State of Washington who previously had no other remedy. RCW 4.100.010. It is meant to provide an exclusive remedy—not an additional remedy to others that might be available.

The Court of Appeals properly recognized this when it concluded that Robert Larson, Tyler Gassman, and Paul Statler (“Petitioners”) are not entitled to collect under the WCPA because they had already recovered \$2.25 million after successfully pursuing another remedy. As the Court explained, the WCPA conditions compensation on a wrongly convicted person’s ability to provide an effective waiver and legal release of claims. Because Petitioners are unable to satisfy these statutory conditions due to their prior settlement, they are ineligible to receive payment under the WCPA.

Review of the Court of Appeals decision is unwarranted. The Court of Appeals correctly resolved the routine issue of statutory construction presented in this case. The Court’s unanimous published opinion includes a narrow, straightforward application of the plain language of the WCPA to the facts of this case. The opinion provides clear and correct guidance to current and future WCPA claimants and it does not conflict with any

decisions from this Court. Petitioners have failed to establish that any of the factors justifying review in RAP 13.4(b) are present. This Court should deny the Petition for Discretionary Review.

II. ISSUE PRESENTED FOR REVIEW

May a wrongly convicted person obtain a tort recovery related to their wrongful conviction and, in addition, obtain compensation under the WCPA?

III. STATEMENT OF THE CASE

In February 2009, Petitioners were convicted of multiple felonies and were sentenced to substantial prison terms. CP 14. In 2012, the Spokane County Superior Court vacated and dismissed those convictions. CP 16. Petitioners subsequently filed a claim for compensation under Washington's Wrongly Convicted Persons Act, Chapter 4.100 RCW. CP 8.

In 2015, the WCPA claim proceeded to a bench trial. CP 9. The superior court held that Plaintiffs had failed to prove they were "actually innocent" as that term is defined by the WCPA. RCW 4.100.060(1). CP 9-10. It entered an order denying the WCPA claim.

Petitioners then filed a civil rights action pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Washington. *Statler v. Spokane County*, No. 2:15-CV-0332, 2016 WL 5219594 (E.D. Wash. September 20, 2016).

Petitioners simultaneously appealed the trial court order denying the WCPA claim to the Court of Appeals, Division III. The Court reversed, concluding that the trial court had applied too high a burden of proof when it found that Petitioners failed to prove they were actually innocent. *Larson et. al. v. State*, 194 Wn. App. 722, 742, 375 P.3d 1096, 1107 (2016). The Court of Appeals remanded the case to the trial court with instructions to “determine whether the claimants have proved by clear and convincing evidence they are actually innocent.” *Id.* at 743. On remand, the trial court found that Petitioners were “actually innocent” and therefore entitled to judgment in their favor. CP 5.

Petitioners moved in their WCPA suit for entry of judgment in the amount of \$790,377.73. CP 29-31. The State filed its objection to entry of judgment and advised the trial court that Petitioners had settled their federal tort lawsuit for a total of \$2.25 million. The State argued that the exclusive remedy provisions of the WCPA barred Petitioners from receiving a second recovery under the WCPA. CP 46-51.

The trial court stated, “RCW 4.100.080 seems very clear. It provides an exclusive means to receive compensation for those that are wrongly convicted.” CP 159. The court entered judgment, but the order expressly required that Petitioners notify counsel for the State “at least 14 days in advance of seeking payment from the State.” CP 40-44.

Shortly thereafter, Petitioners attempted to enforce the judgment and obtain payment. The State submitted proof that Petitioners had received a \$2.25 million federal tort settlement. Consequently, the Court determined that Petitioners were no longer eligible for WCPA compensation, vacated the judgment, and denied payment. CP 204, 207.

Petitioners timely appealed. CP 214. The Court of Appeals, Division III, affirmed. *Larson et al v. State*, No. 35649-3-III. The Court of Appeals held that the WCPA clearly and unambiguously provides for exclusive remedies and compensation. Petitioners who received a tort award were not eligible for a second award under the Act. Petitioners now seek discretionary review of that decision.

IV. ARGUMENT

The Court of Appeals properly applied well-established principles of statutory construction when it determined that the WCPA provides an exclusive remedy and that Petitioners were ineligible for compensation under the Act because they had previously received a federal tort recovery. The Court's published opinion provides clear and correct guidance to current and future WCPA claimants, and it does not conflict with any of this court's decisions. This Court should deny the petition for review.

A. REVIEW IS NOT WARRANTED BECAUSE THE COURT OF APPEALS CORRECTLY FOLLOWED THE PRINCIPLES OF STATUTORY CONSTRUCTION

1. The Legislature's Statement of Intent Clearly States That the Remedy is Exclusive.

The Legislature explicitly stated that the purpose of the Act was to provide an avenue to compensation for persons wrongly convicted in the State of Washington who previously had no other remedy. RCW 4.100.010.

The first sentence of RCW 4.100.080(1) provides: "It is the intent of the legislature that the remedies and compensation provided under this chapter shall be exclusive to all other remedies at law and in equity against the state or any subdivision of the state." By its express terms, the WCPA provides an exclusive remedy for those who can show they were convicted, served prison time, and are actually innocent.

Relying on the plain language of RCW 4.100.080(1), the Court of Appeals properly concluded that Plaintiffs were ineligible for compensation under the Act. As the Court explained, the WCPA provides an exclusive remedy and conditions compensation on a wrongly convicted person's ability to provide a waiver and legal release of all other claims. *Larson et al v. State*, No. 35649-3-III, Slip Op. at 14 (Attached as Appendix 1).

This Court has held that "[p]lain language that is not ambiguous does not require construction." *State v. Evans*, 177 Wn.2d 186, 192,

298 P.3d 724 (2013); *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). “[I]t is settled that the plain meaning of a statute is determined by looking not only ‘to the text of the statutory provision in question,’ but also to ‘the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.’” *State v. Hurst*, 173 Wn.2d 597, 604, 269 P.3d 1023 (2012). The plain language of RCW 4.100.080(1) states that the remedies “shall be exclusive to all other remedies.”

Petitioners’ contention that the exclusive remedy provisions of the WCPA do not prohibit them from obtaining compensation from the county and then obtaining WCPA compensation from the State is directly contrary to the plain language of RCW 4.100.080(1). It is also contrary to the other provisions of the statute.

2. The Statutory Language Requires a Comprehensive Waiver and Release.

Consistent with the initial statement of intent, the statute provides procedures and mechanisms to ensure that the exclusive remedy provision is enforced. RCW 4.100.080(1) states that a claimant “waives any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant’s wrongful

conviction and imprisonment.” This confirms that the legislature intended WCPA remedies to be exclusive.

Also consistent with the statutory scheme of allowing only one remedy, RCW 4.100.080(1) requires that a claimant execute a legal release memorializing the waiver of all other claims and providing for reimbursement to the State in case the required release is held invalid for any reason. RCW 4.100.080(1). This too confirms that the legislature intended WCPA remedies and compensation to be exclusive.

The Court of Appeals correctly held that the Legislature intended that the release and reimbursement provisions would “effectuate” the exclusive nature of the WCPA remedies and compensation. *Larson et al v. State*, No. 35649-3-III, Slip Op. at 10 (Attached as Appendix 1). The Court of Appeals also correctly held that the plain language of RCW 4.100.080(1), read as a whole, establishes that WCPA recovery is contingent on the WCPA being the claimant’s exclusive remedy. Appendix 1 at 14.

3. Petitioners Cannot Recover Because They Cannot Provide Effective Release.

The Court of Appeals properly held that the required legal release is a condition of receiving payment. Appendix 1 at 10, 14.¹ The Court further

¹ Without citing to the record, Petitioners claim that “[t]he State never furnished Petitioners with the legal release mandated by .080(1).” Pet. for Review at 5. The State disputes this incorrect statement.

held that since Petitioners accepted compensation from the county and released the county from liability, Petitioners could no longer provide a legal release that would satisfy this statutory condition. If the petitioners could not waive all other actions as required in RCW 4.100.080, the release would not be effective and the remedy would not be exclusive. For that reason, Petitioners are ineligible to receive WCPA compensation. Appendix 1 at 12.

Petitioners argue that a release of less than all of the entities and persons required under .080 is not meaningless. They state that the release can include waiver of other claims besides claims under 42 U.S.C. § 1983 and the WCPA. This argument misses the point. The plain language of .080 requires that the WCPA remedy be exclusive and requires waiver of all other claims. As the Court of Appeals pointed out, “It was the Washington Legislature’s aim that the WCPA compensation, if obtained, be an exclusive remedy, and that is what its provisions ensure.” Appendix 1 at 14.

B. THE COURT OF APPEALS OPINION PROVIDES GUIDANCE TO FUTURE CLAIMANTS

Petitioners argue that review is warranted because this case raises an issue of substantial public interest. They urge this Court to accept review in order to provide guidance to people wrongly convicted in Washington. Pet. for Review at 8-9. But review is unnecessary. The Court of Appeals’

opinion provides clear and correct guidance on the exclusive remedy requirement to future WCPA claimants. To the extent that other questions remain about the application of the WCPA in different fact patterns, the best course of action is for those cases to work their way through the appellate courts. Granting review in this case will not provide clarity or guidance about other issues not raised by this appeal.

The issue decided by the Court of Appeals is very narrow. The Court correctly applied the rules of statutory construction to the clear language of RCW 4.100.080. Any confusion encountered by these claimants was a result of rejecting the plain language of .080 and engaging in a strained, result-oriented interpretation. The word “exclusive” is not ambiguous. The Court of Appeals recognized this and held that a wrongly convicted person may not recover from the State under the WCPA and recover from the State or its subdivisions in some other claim.

Petitioners also claim that guidance is needed because in the past the state has taken varying positions regarding whether or not a claimant can pursue a WCPA claim and a separate tort claim at the same time. Pet. for Review at 5. But the Court of Appeals decision provides appropriate guidance. The Court of Appeals held in this case that the law “allows for concurrent actions as long as the claimant does not both recover relief from the State or state actors *and* receive and retain compensation under the

WCPA.” Appendix 1 at 9. The Court’s opinion provides adequate guidance on the exclusivity of the WCPA remedy to future claimants. Review is not warranted.

C. THE COURT OF APPEALS APPLIED AND FOLLOWED THE SUPREME COURT’S PRECEDENTS REGARDING STATUTORY CONSTRUCTION

1. The Court of Appeals Followed this Court’s Precedent in Giving Meaning to Statutory Terms – It Did Not Add Any Terms.

Petitioners argue that the Court violated the principals of statutory construction by adding language to RCW 4.100.080 when it ruled that .080 requires an “effective” release. Rather than adding language to the statute as Petitioners argue, the Court of Appeals gave meaning to the waiver and release language of .080, consistent with the clear legislative intent. In so ruling, the Court of Appeals did not contradict any precedents of this court by adding language to the statute.

The Court of Appeals recognized that a release that does not include all individuals and entities required by the statute is ineffective. Such a “release” would not ensure an exclusive remedy as intended by the legislature. The Court pointed out “The Plaintiffs do not make the specious argument that ‘execute a legal release’ means no more than to sign a document entitled ‘Release,’ which can be done as easily after receiving an award or settlement payment as before receiving such an award or

settlement.” Appendix 1 at 13, footnote 3. The Court’s opinion made it clear that payment under the WCPA is conditioned on the claimant executing a release which waives all other causes of action. Review is not warranted.

2. The Court of Appeals Followed This Court’s Direction Regarding Statements of Legislative Intent and Plain Meaning Analysis.

Petitioners also claim that the Court of Appeals allowed the declaration of intent to “trump” the specific operational language of the statute. That is incorrect. Here, the Court applied the operational language consistent with the legislature’s statement of intent and determined that a so-called release that did not release all other claims (because they had already been paid) could not satisfy the statute.

Petitioners argue that the waiver operates only prospectively, stating that the Legislature only required release of future claims, and that the State and courts must ignore any prior claims, settlements, judgments, or releases. Petition for Review at 12. Pursuant to such an interpretation, claimants would be free to litigate claims against any allegedly responsible individuals or entities, obtain compensation, execute a release, and then obtain compensation from the State under the WCPA.

This strained interpretation ignores the Act’s exclusive remedy provision. The Court properly rejected Petitioners’ prospective waiver argument and held that this argument is inconsistent with the plain language

of the legislature's clear expression of legislative intent. Appendix 1 at 9-13.

In *G-P Gypsum Corp. v. Dep't. of Revenue*, 169 Wn.2d 304, 310, 237 P.3d 256 (2010), this Court soundly rejected the same argument that Petitioners make here, holding that "an enacted statement of legislative purpose is included in a plain reading of a statute." *Id* at 310. This court has also held that "[t]he court's fundamental objective is to ascertain and carry out the legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to the plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell and Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). The Court of Appeals ruling is not inconsistent with this court's precedents.

3. The Court of Appeals Correctly Rejected Petitioners' Argument That the Exclusive Remedy Provision is Actually a Remedial Exemption.

Petitioners also argue that the conditions of recovery established in the Act are actually exemptions from recovery and, because it is a remedial act, should be construed narrowly to allow them to obtain compensation. Pet. for Review at 10. The Court properly rejected this argument, holding that "RCW 4.100.080(1) is not fairly characterized as an exemption. It

creates conditions that apply to every individual requesting relief under the act.” Appendix 1 at 14. Those conditions are consistent with the clearly expressed legislative intent.

“Remedial acts are liberally construed to suppress the evil and advance the remedy.” *Larson et al v. State*, 194 Wn. App. 722, 725, 375 P.3d 1096 (2016). The *evil* to be suppressed here was the fact that before enactment of the WCPA the majority of persons wrongfully convicted in Washington had *no remedy*. The *remedy* to be advanced was to provide *an avenue* to compensation for those wrongly convicted persons who previously had no remedy. RCW 4.100.010.

As the Court correctly explained, “[T]he stated intent of the WCPA is not to add one more remedy to others that might be available. It is addressed to the “majority of those wrongfully convicted in Washington state [who] have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system,” to “provide *an* avenue for those who have been wrongfully convicted in Washington state.” Appendix 1 at 14.

Petitioners were not without a remedy. The Court of Appeals recognized that allowing them to obtain WCPA compensation in addition to receiving \$2.25 million from Spokane County would not only violate the exclusive remedy provisions of the WCPA, but it would in no way advance

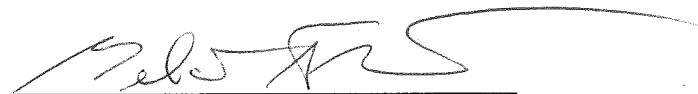
the remedial purposes of the WCPA. The Court of Appeals correctly affirmed the trial court's vacation of judgment so that payment of WCPA compensation could not occur.

V. IV. CONCLUSION

The exclusive remedy provision of RCW 4.100.080(1) is clear and unambiguous. The Court of Appeals correctly applied the plain language of this statute to the facts of this case, consistent with the clearly stated legislative purpose and intent. Petitioners have already received \$2.25 million from Spokane County for their wrongful convictions. The Court of Appeals correctly held that Petitioners are no longer eligible for WCPA compensation. The Court of Appeals opinion provides clear guidance for current and future WCPA litigants. This court should deny review.

RESPECTFULLY SUBMITTED this 16th day of October, 2019.

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Appendix 1

FILED
AUGUST 15, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ROBERT E. LARSON; TYLER W.)	
GASSMAN; and, PAUL E. STATLER,)	No. 35649-3-III
)	
Appellants,)	
)	
v.)	
)	PUBLISHED OPINION
STATE OF WASHINGTON,)	
)	
Respondent.)	

SIDDOWAY, J. — Robert Larson, Tyler Gassman, and Paul Statler were wrongly convicted of crimes and spent roughly four years in prison before their convictions were vacated and the charges against them were dismissed. They later established their right to assert a claim under Washington’s “Wrongfully Convicted Persons Act” (WCPA), chapter 4.100 RCW, which provides damages to a wrongly convicted individual based on years of incarceration, damage-based attorney fees, and certain costs. The three men also filed a federal lawsuit against Spokane County and two of its law enforcement officers under 42 U.S.C. § 1983 (the Section 1983 action). They reached a \$2.25 million settlement against the defendants in that lawsuit at around the same time they established their rights under the WCPA.

At issue is whether their judgment for money damages under the WCPA remained viable after the three men settled the Section 1983 action. Given the operative provisions of the WCPA and the legislative intent that its remedies and compensation be exclusive, we hold that their judgment for WCPA compensation no longer remained viable. The superior court's order vacating the judgment is affirmed.

FACTS AND PROCEDURAL BACKGROUND

In 2008, Messrs. Larson, Gassman, and Statler (the plaintiffs) were arrested in connection with a Spokane robbery. At their trial in February 2009, they presented alibi evidence. A jury nonetheless found each guilty of first degree robbery, first degree assault, and drive-by shooting. Each was sentenced to more than 20 years of incarceration. They began serving their sentences in July 2009.

In 2012, the superior court granted their CrR 7.8 motion for relief from judgment, finding they had received ineffective assistance from trial counsel, who failed to investigate potentially exculpatory evidence. Their convictions were vacated and they were released from prison. Rather than retry them, the State dismissed the charges against them in May and July 2013.

In May 2013, the Washington Legislature enacted the WCPA. LAWS OF 2013, ch. 175. It became effective on July 28, 2013, and afforded individuals wrongly convicted before that date a three year period within which to file suit. *Id.* at § 9 (codified at RCW 4.100.090). It expressly addresses its relationship to other civil remedies that a wrongly

convicted person might have. As more fully examined below, it states the intent of the legislature that WCPA remedies and compensation “be exclusive to all other remedies at law and in equity” against the state and its political subdivisions. *Id.* at § 8 (codified at RCW 4.100.080). It effectuates that intent by requiring that a WCPA claimant (1) waive other remedies against the state and certain state actors related to the claimant’s wrongful conviction and imprisonment, including remedies under 42 U.S.C. § 1983, (2) execute a legal release before receiving payment of any WCPA compensation, and (3) reimburse the State in whole or in part if the claimant’s release is held invalid and the claimant later recovers a tort award.

In January 2014, the plaintiffs brought this action, asserting claims for compensation under the WCPA. At the conclusion of a 2015 bench trial, the superior court concluded they had not met their burden of proof and entered judgment in favor of the State. The plaintiffs appealed. While the State appeal was pending, the plaintiffs filed suit in federal court against Spokane County and two of its law enforcement officers under 42 U.S.C. § 1983.

In June 2016, this court held that the superior court had applied too high a burden of proof on the plaintiffs in certain respects, and remanded for the court to reconsider the required element of actual innocence. *Larson v. State*, 194 Wn. App. 722, 725, 375 P.3d 1096 (2016).

Spokane County responded to this court's revival of the plaintiffs' WCPA claim by moving the federal district court to dismiss the Section 1983 action, citing the WCPA's "exclusive remedy" and waiver language. Reading RCW 4.100.080(1) as a whole, the federal district court construed it as allowing concurrent actions, even though "[p]laintiffs must execute a legal release of all their other claims, including § 1983 claims, prior to the payment of compensation under the WCPA." Clerk's Papers (CP) at 59 (boldface and underscore omitted). Accordingly, the Section 1983 action proceeded, as did the WCPA claim.

In April 2017, after applying the law as clarified by this court, the superior court concluded that the plaintiffs were entitled to recover under the WCPA. The WCPA provides that a wrongfully convicted individual is entitled to \$50,000.00 per year of actual incarceration, attorney fees capped at the lesser of 10 percent of the claimant's damages or \$75,000, costs, and any child support payments that went unpaid due to a claimant's incarceration. RCW 4.100.060(5)(a), (c), (e). The superior court determined that the plaintiffs were entitled to \$710,697.70 in WCPA damages, \$78,380.06 in attorney fees and costs, and that Mr. Larson was entitled to \$1,299.97 in unpaid child support payments.

In mid-June 2017, the plaintiffs moved the court to enter judgment for their WCPA remedies. The State opposed the motion, notifying the superior court that it had learned on June 26 that the plaintiffs had settled their Section 1983 claims for a total of

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\$2.5 million. The State also represented that the settlement had been paid, but admitted relying only on hearsay. It argued that having obtained a federal remedy against Spokane County and its officers, the plaintiffs could not recover compensation under the WCPA.

The superior court entered judgment in favor of the plaintiffs, as requested.

Although a transcript of the hearing has not been made a part of the record, the superior court would later explain that in entering the judgment, it had

attempted to emphasize the distinction between obtaining a judgment versus enforcing a judgment. [When the judgment was entered], the plaintiffs hadn't been compensated on their [Section] 1983 claim or there was no evidence that they'd been compensated under their [Section] 1983 claim. Rather, they had just settled the claim. The language consistently used in RCW 4.100 relates to being compensated rather than just making other claims.

Report of Proceedings (RP) at 31-32. The superior court later explained that at the time it agreed to enter judgment,

I found that the plaintiffs were entitled to a judgment because they had met all the requirements of the statute and there was no evidence that they'd been compensated on another claim. I then predicted everyone would be back when the plaintiffs try to enforce the judgment if they get compensated on their [Section] 1983 claims.

Id. at 32. To ensure the State's ability to return to court if the plaintiffs received the federal settlement and then took steps to collect the Washington judgment as well, the judgment provided that "[p]laintiffs shall notify [the State's attorneys] at least 14 days in advance of seeking payment from the State." CP at 105.

In August 2017, the plaintiffs sought payment of the state court judgment, moving the superior court to direct the clerk of court to furnish a certified copy of the judgment to the Washington Office of Risk Management. The State opposed their motion and obtained an order to show cause why the court should not vacate the judgment under CR 60(b). This time, the State provided a copy of the Washington Counties Risk Pool check in payment of the settlement amount, which turned out to be \$2.25 million.

Following a hearing on the cross motions, the superior court denied the plaintiffs' motion and granted the State's, vacating the plaintiffs' money judgment.¹ The plaintiffs appeal.

ANALYSIS

I. FAIRLY READ, THE WCPA CONDITIONS COMPENSATION ON A WRONGLY CONVICTED PERSON'S ABILITY TO PROVIDE AN EFFECTIVE WAIVER AND LEGAL RELEASE OF CLAIMS AGAINST THE STATE AND STATE ACTORS

The appeal presents an issue of statutory construction, which we review de novo.

City of Spokane v. Spokane County, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006). "The

¹ Although the superior court vacated the entire judgment, it recognized that the plaintiffs might be entitled to their statutory attorney fees and costs and that Mr. Larson might be entitled to his unpaid child support payments. This was based on RCW 4.100.080(1), under which the reimbursement amount to which the State is entitled from an individual who is compensated under the WCPA and receives a tort award related to his or her wrongful conviction excludes past child support awarded pursuant to RCW 4.100.060(5)(c) and attorney fees and costs awarded pursuant to RCW 4.100.060(5)(e). The superior court offered to entertain further argument on that issue.

Without conceding liability for those amounts, the State paid them, so the issue was not decided by the superior court and is not presented for review.

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court's paramount duty in statutory interpretation is to give effect to the legislature's intent." *In re Pers. Restraint of Nichols*, 120 Wn. App. 425, 431, 85 P.3d 955 (2003). If a statute's meaning is plain on its face, then the court will give effect to that plain meaning as an expression of legislative intent. *State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004). Plain meaning is discerned not only from the provision in question but also from closely related statutes and the underlying legislative purposes. *Id.* Only if the language is ambiguous do we look to aids of statutory construction, such as legislative history. *State v. Armendariz*, 160 Wn.2d 106, 110-11, 156 P.3d 201 (2007). A statute is ambiguous only if susceptible to two or more reasonable interpretations; it is not ambiguous merely because different interpretations are conceivable. *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005).

The first section of the WCPA is entitled "Intent," and states:

The legislature recognizes that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. Having suffered tremendous injustice by being stripped of their lives and liberty, they are forced to endure imprisonment and are later stigmatized as felons. A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongly convicted in Washington state 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.

The critical subsection of the WCPA for present purposes is RCW 4.100.080(1), which appears in the section entitled “Remedies and compensation exclusive—Admissibility of agreements.” Reformatted for ease of reading and analysis, it provides:

(1) It is the intent of the legislature that the remedies and compensation provided under this chapter shall be exclusive to all other remedies at law and in equity against the state or any political subdivision of the state.

As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant’s wrongful conviction and imprisonment. This waiver shall also include all state, common law, and federal claims for relief, including claims pursuant to 42 U.S.C. Sec. 1983.

A wrongfully convicted person who elects not to pursue a claim for compensation pursuant to this chapter shall not be precluded from seeking relief through any other existing remedy.

The claimant must execute a legal release prior to the payment of any compensation under this chapter. If the release is held invalid for any reason and the claimant is awarded compensation under this chapter and receives a tort award related to his or her wrongful conviction and incarceration, the claimant must reimburse the state for the lesser of:

(a) The amount of the compensation award, excluding the portion awarded pursuant to RCW 4.100.060(5) (c) through (e); or

(b) The amount received by the claimant under the tort award.

RCW 4.100.080(1).

We agree with the plaintiffs and the federal court that notwithstanding the requirement that a WCPA claimant “waives any and all other remedies, causes of action, and other forms of relief or compensation” against the state and state actors, *see id.*, the WCPA allows for concurrent actions as long as the claimant does not both recover relief

from the State or state actors *and* receive and retain compensation under the WCPA. This is implied by the fact that before WCPA compensation is paid, the claimant must execute a legal release. *Id.* Execution of a release would be unnecessary if the waiver was binding at the inception of a request for relief under the WCPA. It is also implied by the subsection's recognition that even a claimant who has requested relief and signed a legal release might recover a tort award if the release were held invalid. *See id.*

We reject the plaintiffs' contention that the requirement that a WCPA claimant release claims operates only prospectively, and has no application if a claimant's first recovery is for non-WCPA claims, followed by the payment of compensation under the WCPA. The plaintiffs argue that the trial court erred by allowing the legislature's stated intent to create an "exclusive remedy" to trump plain language of the WCPA's operative provisions.² We begin our analysis with the operative provisions.

The gloss that the plaintiffs wish to put on the WCPA conflicts with its plain language. They argue that "[t]he WCPA creates a narrow, *prospective* waiver of remedies by conditioning the payment of compensation on a release of *future* claims, actions, or proceedings." Appellants' Opening Br. at 18 (emphasis added). But the relevant language in RCW 4.100.080 does not say, "As a requirement to making a

² The plaintiffs cite *State v. Granath* for the rule that "[t]he legislature's codified declaration of intent cannot 'trump the plain language of the statute.'" 190 Wn.2d 548, 556, 415 P.3d 1179 (2018) (quoting *State v. Reis*, 183 Wn.2d 197, 212, 351 P.3d 127 (2015)).

request for relief under this chapter, the claimant *prospectively* waives any and all other remedies, causes of action, and other forms of relief or compensation . . . related to the claimant’s wrongful imprisonment . . . [and] must execute a legal release *of future claims* prior to the payment of any compensation under this chapter.” It says, instead:

As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation . . . related to the claimant’s wrongful . . . imprisonment . . . [and] must execute a legal release prior to the payment of any compensation under this chapter.

Elsewhere, the plaintiffs contend that there is a “particular way in which the legislature codified a waiver and any idea of ‘exclusive remedies’ within the Act: there must be a legal release; it must then be held invalid; and there must be a *subsequent* tort payment ‘related to his or her wrongful conviction and incarceration.’” Appellants’ Opening Br. at 25 (emphasis added). That is the manner in which *reimbursement* language of RCW 4.100.080(1) operates, because one can only reimburse something that was previously disbursed. When the tort award or settlement is received first, the way in which the legislature effectuated the requirement that WCPA compensation be an exclusive remedy was with the requirement that “[t]he claimant must execute a legal release prior to the payment of any compensation under this chapter.” RCW 4.100.080(1). A claimant who has received a tort award or settlement will not be able to waive claims and execute a legal release.

“Waiver” and “release” have well-settled legal meanings. “Waive” means:

1. To abandon, renounce, or surrender (a claim, privilege, right, etc.); to give up (a right or claim) voluntarily. • Ordinarily, to waive a right one must do it knowingly — with knowledge of the relevant facts.

BLACK'S LAW DICTIONARY at 1894 (11th ed. 2019). Relevant meanings of “release” are:

1. Liberation from an obligation, duty, or demand; the act of giving up a right or claim to the person against whom it could have been enforced <the employee asked for a release from the noncompete agreement>. — Also termed discharge; surrender. 2. The relinquishment or concession of a right, title, or claim <Benson’s effective release of the claim against Thompson’s estate precluded his filing a lawsuit>.

Id. at 1530 (some emphasis omitted). To “give up a right or claim” is a meaning common to both terms.

Whether an individual is waiving or releasing a past or future claim will generally be determined from the description of the claim being waived or released, not from the use of the words “past” or “future.” Thus, upon buying a ticket for a baseball game, one might give up a claim for any injury arising from the playing of that game, a claim that would inherently arise in the future. Conversely, an agreement to waive or release a claim for injury of a baseball game that occurred last year gives up a claim that inherently arose in the past.

The claims that the WCPA requires be waived are “remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers *related to the claimant’s wrongful conviction and imprisonment.*” RCW 4.100.080(1) (emphasis added). “[T]he

claimant's wrongful conviction and imprisonment" necessarily refers to the conviction and imprisonment that occurred in the past and gives rise to the claimant's rights under the WCPA.

Having settled their federal claims, the plaintiffs no longer had the ability to give up the relevant claims: they had already given them up. The "Settlement Agreement and Release of All Claims" signed with the federal defendants "release[d] and fully discharge[d]" the State, the officers, and various agents, from

any and all manner of claims, demands, liabilities, obligations, damages, causes of action or suits . . . which Plaintiffs . . . may have against the released parties herein, arising from or in any way connected with [the Section 1983 action] . . . includ[ing] . . . all claims, demands, liabilities, obligations, damages, causes of action or suits . . . which have been . . . alleged in [the Section 1983 action] or otherwise arise from the events described in the [Section 1983 action].

CP at 147 (some capitalization omitted). The only claims carved out from the broad scope of the settlement agreement and release were the plaintiffs' pending WCPA claims.

Following settlement and execution of the settlement agreement and release of all claims, the plaintiffs were no longer capable of satisfying the conditions to compensation required by the WCPA: the condition that they waive all remedies, causes of action, and other forms of relief or compensation against the State and state actors related to their

wrongful conviction and imprisonment, and the condition that they execute a legal release.³

This plain reading of the operative provisions of the WCPA is, of course, strongly supported by the introductory language of RCW 4.100.080(1) that “the remedies and compensation provided under this chapter shall be exclusive to all other remedies at law and in equity against the state or any political subdivision of the state.”

The plaintiffs direct our attention to *State v. Oakley*, a Texas Supreme Court decision that construed Texas statutes as permitting a wrongfully convicted individual to sue for and recover a federal remedy before, but not after, obtaining wrongful imprisonment compensation from the State. 227 S.W.3d 58, 63 (Tex. 2007). The Texas statute was forward-looking, stating that a person compensated under the state statute “may not bring” another action involving the same subject matter against any governmental unit or an employee of any governmental unit. *Id.* (quoting TEX. CIV. PRAC. & REM. CODE § 103.153(b), a statute entitled “Employees Not Liable *After* Payment of Compensation” (emphasis added)).

³ The plaintiffs do not make the specious argument that “execute a legal release” means nothing more than to sign a document entitled “Release,” which can be done as easily after receiving a tort award or settlement payment as before receiving such an award or settlement. Fairly read, “execute a legal release” is an act having legal substance that cannot be done by a claimant who has already obtained a tort award or settlement from state actors.

In holding that a wrongly convicted person could be compensated in two forums under the Texas statute, the Texas Supreme Court observed that if “bar[ring] duplicative recoveries . . . had . . . been the [legislative] aim, legislators could have said simply that no one can recover both.” *Id.* It was the Washington Legislature’s aim that WCPA compensation, if obtained, be an exclusive remedy, and that is what its provisions ensure.

Finally, the plaintiffs emphasize that in the prior appeal, this court recognized that the WCPA, being a remedial statute, must be “liberally construed to suppress the evil and advance the remedy.” Appellants’ Opening Br. at 18 (quoting *Larson*, 194 Wn. App. at 735). They argue that this requires us to narrowly construe what they characterize as the “exemption” created by RCW 4.100.080(1). *Id.* RCW 4.100.080(1) is not fairly characterized as an exemption, however. It creates conditions that apply to every individual requesting relief under the act. Moreover, the stated intent of the WCPA is not to add one more remedy to others that might be available. It is addressed to the “majority of those wrongly convicted in Washington state [*who*] *have no remedy available* under the law for the destruction of their personal lives resulting from errors in our criminal justice system,” to “provide *an* avenue for those who have been wrongly convicted in Washington state.” RCW 4.100.010 (emphasis added).

Fairly read, the WCPA conditions compensation on a wrongly convicted person’s ability to provide an effective waiver and legal release of claims. The plaintiffs were unable to satisfy the statutory conditions.

II. THE TRIAL COURT DID NOT ERR IN VACATING THE PLAINTIFFS' JUDGMENT UNDER CR 60

The plaintiffs also briefly argue that the trial court improperly relied on CR 60(b)(11) to vacate their judgment. They infer that the court relied on that subsection. Citing case law that characterizes subsection (11) as “a catch-all provision, intended to serve the ends of justice in extreme, *unexpected* situations,” the plaintiffs argue their settlement with the federal defendants was *expected* at the time their judgment was entered, and the judgment was not appealed. Appellants' Opening Br. at 46-47 (quoting *In re Det. of Ward*, 125 Wn. App. 374, 379, 104 P.3d 751 (2005)).

We review a trial court's decision on a motion to vacate for an abuse of discretion. *DeYoung v. Cenex*, 100 Wn. App. 885, 894, 1 P.3d 587 (2000). A trial court abuses its discretion when it exercises it on untenable grounds or for manifestly unreasonable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The State moved for the judgment to be vacated under CR 60(b)(6), not CR 60(b)(11). The former subsection authorizes a trial court to relieve a party from a final judgment when “[t]he judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.” The plaintiffs argue that it would be untenable to find inequity, because even the trial court recognized that

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\$2.25 million was not sufficient compensation for three individuals' wrongful incarceration for four years.

In orally granting the motion, the trial court used language suggesting it might be relying on CR 60(b)(1), stating that it would vacate the judgment

under CR 60(b) due to *irregularities* that have occurred here with two different actions proceeding at the same time, one of those occurring after this case had been finalized and on appeal. The Court possesses the authority under CR 60(c) and (b) to make that finding.

RP at 35 (emphasis added). CR 60(b)(1) identifies, as a reason authorizing a trial court to relieve a party from a final judgment, “[m]istakes, inadvertence, surprise, excusable neglect or *irregularity* in obtaining a judgment or order.” (Emphasis added.)

We can affirm a trial court on any basis supported by the record. *Nast v. Michels*, 107 Wn.2d 300, 308, 730 P.2d 54 (1986). The State reasonably identified CR 60(b)(6) as providing authority to vacate. CR 60(b)(6) does not turn on whether the judgment provides a *remedy* that is inequitable; it turns on whether “it is no longer equitable that the judgment should have prospective application.” Applying the rule of *eiusdem generis*, inequity in a “judgment . . . hav[ing] prospective operation” should be construed to embrace reasons similar to the reasons for vacating judgments that have been satisfied, released, discharged, or that were based on a judgment that has been reversed or otherwise vacated. In this case, the similar inequity is that the judgment was predicated

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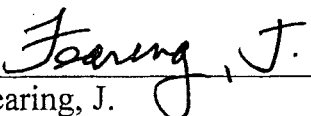
on the plaintiffs' waiver and release of other claims—claims that, as it turns out, were not waived and could not be released.


The plaintiffs also make a passing challenge to the fact that the statutory procedure of presenting the plaintiffs with a legal release to execute was not followed. As the State argues, however, the law does not require futile acts. *E.g., Ancheta v. Daly*, 77 Wn.2d 255, 263, 461 P.2d 531 (1969).

Affirmed.


Siddoway, J.

WE CONCUR:


Fearing, J.


Pennell, A.C.J.

NO. 97665-1

SUPREME COURT OF THE STATE OF WASHINGTON

LARSON, ROBERT E.; GASSMAN,
TYLER W.; AND STATLER, PAUL E.,

DECLARATION OF
SERVICE

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

I, Joslyn Wallenborn, declare as follows:

On October 16, 2019, I sent via electronic mail and United States mail true and correct copies of the State's Answer to Petition for Review and Declaration of Service, addressed as follows:

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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 16th day of October, 2019, at Seattle, Washington.



JOSLYN WALLENBORN

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

October 16, 2019 - 4:16 PM

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Appellate Court Case Title: Robert E. Larson, et al v. State of Washington
Superior Court Case Number: 14-2-00090-6

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