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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 35649-III

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

Plaintiffs/Petitioners,

v.

STATE OF WASHINGTON,

Defendant/Respondent.

PETITION FOR REVIEW

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I. INTRODUCTION

This case presents issues of tremendous importance and substantial public interest that should be addressed by this Court: determining, as a matter of first impression, how the “waiver and release” provision of Washington’s Wrongly Convicted Person’s Act (WCPA or Act), RCW 4.100.080(1), should be interpreted.

Enacted in 2013, the WCPA is a remedial statute that allows exonerated individuals to obtain limited relief for the injustice of being wrongfully stripped of their liberty. This Court has yet to weigh-in on how the WCPA should be interpreted. As a consequence, and due to the language and nature of the Act, substantial uncertainty exists for wrongfully convicted Washingtonians attempting to pick up the pieces of their lives while trying to navigate the uncertain and unclear legal landscape of potential remedies for their harm.

The Petitioners here—Robert Larson, Tyler Gassman, and Paul Statler—are three such individuals. Petitioners were wrongfully convicted of crimes they did not commit, and *each* spent more than four years imprisoned. They then struggled to figure out what legal remedies were available to them and spent years fighting to obtain relief. Larson, Gassman, and Statler are not alone. Indeed, at present, at least three other WCPA suits are pending where the State has raised issues related to 4.100.080(1). This Court’s intervention is necessary to clarify the legal landscape for the wrongfully convicted, who already have enough hurdles to overcome following release from prison.

In addition, this Court should accept review of this matter because the Court of Appeals contradicted this Court's precedent concerning statutory interpretation (and the separation of powers doctrine) by effectively adding language to the statute, and, ultimately, construing a remedial statute in a manner *harmful* to the wrongfully convicted.

II. IDENTITY OF PETITIONERS

Robert Larson, Tyler Gassman, and Paul Statler, the claimants/plaintiffs below, ask this Court to accept review of the Court of Appeals' decision terminating review.

III. CITATION TO COURT OF APPEALS DECISION

The published Court of Appeals decision was filed on August 15, 2019, and is attached as Appendix A to this Petition.

IV. ISSUES PRESENTED FOR REVIEW

- 1.** Whether the WCPA is a remedial statute of which the waiver and release "exemptions" must be narrowly construed?
- 2.** Whether the specific, operational text of the WCPA should trump the statute's vague statement of general intent?
- 3.** Whether the WCPA's waiver-and-release provisions apply retroactively to deprive wrongfully convicted individuals of statutory remedies in any and all circumstances where a prior recovery has been provided to a wrongfully convicted claimant?

4. Whether the Court of Appeals erred by functionally editing the WCPA to include an “effectiveness” inquiry that is not actually a part of the statutory text?

5. Whether the waiver-and-release provisions of RCW 4.100.080(1) are ambiguous?

V. STATEMENT OF THE CASE

A. Relevant Facts and Procedural History

In 2008, a series of robberies—often called “drug rip” robberies—of individuals known or suspected to be involved in illegal drug dealing took place in Spokane. CP 10.¹ Eventually, as summarized in the Court of Appeals’ prior decision, the investigation turned to Larson, Statler, and Gassman, who were prosecuted for two of the robberies. *Larson v. State*, 194 Wn. App. 722, 375 P.3d 1096 (2016); CP 14. All three were acquitted of one of the crimes, convicted of another, and sentenced to between 20-40-plus years in prison. *Id.*

In 2012, the Innocence Project Northwest (now, the Washington Innocence Project) and its cooperating counsel brought a Criminal Rule 7.8 motion for relief from the judgment, which was granted on the basis of significant new exculpatory information. *Id.* at 15-16. The State later

¹ CP refers to the Clerk’s Papers on appeal; RP refers to the Record of Proceedings; and App. refers to the Appendix to this Petition.

dismissed all charges. *Id.* at 23. By then, Larson, Gassman, and Statler had each spent more than four years wrongfully imprisoned. *Id.* at 14-15.

Larson, Gassman, and Statler sought relief under Washington's new Wrongly Convicted Persons Act, which requires claimants affirmatively prove their innocence by clear and convincing evidence. The State opposed relief, forced Petitioners to go trial, and was ultimately successful in persuading the trial court to deny the claims. *Id.* at 8-9.

Having lost before the trial court under the WCPA, Larson, Gassman, and Statler filed a civil-rights action pursuant to 42 U.S.C. § 1983 in the Eastern District of Washington. *Statler v. Spokane County*, No. 2:15-CV-0332 (E.D. Wash.) (Rice, J.); *see also* CP 59 & n.1.

Meanwhile, on appeal of the WCPA claims, the Court of Appeals reversed the trial court, concluding the judge below had imposed an incorrect legal standard on Petitioners that was contrary to the remedial nature of the act. *Larson*, 194 Wn. App. at 725, 735-36. On remand, applying the correct legal standard, the trial court found Petitioners were innocent and entitled to judgment in their favor. CP 5. The trial court entered judgment and ordered the State to pay compensation to each Petitioner. *Id.* at 5, 22-25. On May 12, 2017, the trial court also ordered back child support for Mr. Larson, attorney's fees and costs, and sealed Petitioners' criminal records. *Id.* at 6, 24-25, & 28. The State did not appeal, and the judgment became final. CP161-64.

Around the same time, Petitioners also settled their independent § 1983 suit. *Id.* at 46. The State then argued RCW 4.100.080 precluded the

court from entering the judgment in Petitioners' favor on the basis that the § 1983 suit had settled and that Plaintiffs were bound by some sort of "election of remedies" concept. *Id.* at 45-48, 50. Petitioners' opposed the State's argument. *Id.* at 66-73. Petitioners' prevailed, and the trial court entered judgment in Petitioners' favor. CP 103-05.

On August 18, 2017, after the time for the State to appeal had expired, Petitioners filed a motion to direct the clerk to furnish the judgment to the office of risk management (which processes the judgment before the legislature pays the compensation). *Id.* at 106-08. The State never furnished Petitioners with the legal release, mandated by .080(1). Had the State furnished such a release, Petitioners would have signed it.

Instead, the State sought relief under CR 60. Despite the fact no irregularities happened, and no injustice had been done, the trial court vacated the final judgment declaring Larson, Statler, and Gassman innocent and ordering them financial compensation. *Id.* at 204-07; RP 32-35. Petitioners timely appealed. CP 212.

B. The Court of Appeals' Decision

The Court of Appeals affirmed the determination of the trial court but did so on a somewhat different basis. First, the Court of Appeals recognized that the WCPA permits the wrongfully convicted to simultaneously pursue claims related to a wrongful conviction under the WCPA and in other fora (*e.g.*, federal district court under 42. U.S.C. § 1983, or state trial court). App. A, at 8-9. Clarifying this aspect of the WCPA was necessary because the State had previously argued that

Petitioners were not permitted to pursue a WCPA claim and any other action simultaneously. *See* Pets. Reply Br., at 6.²

Second, the Court of Appeals rejected Petitioners' argument that the enumerated language of .080(1) operates only prospectively. At one point the Court of Appeals recognized that .080 includes a general statement of intent and that the legislature "*effectuates* that intent" by requiring a WCPA claimant: (1) waive other remedies against the State and other actors for actions related to the wrongful conviction, (2) execute a legal release before receiving payment; and (3) reimburse the State in whole or in part if the release is held invalid and the "*clamant later* recovers a tort award." App. A, at 3 (emphasis added).

Despite recognizing the manner in which the legislature "*effectuates*" its intent in the operative provisions of .080(1), the Court of Appeals nonetheless went on to *add* language to the statute that is not in its text. Specifically, the Court of Appeals added that any waiver must be "*effective*" in some sense and reasoned that a "*claimant who has received a tort award or settlement will not be able to waive claims and execute a legal release.*" *Id.* at 10; *see also id.* at 14 (discussing an "*effective waiver and legal release of claims*"). The Court of Appeals cited no authority for this proposition. Echoing the same logic, the Court of Appeals further

² The State changed its position on appeal, conceding a claimant can pursue two (or perhaps more) causes simultaneously. However, the State has taken several different positions on this issue in other pending cases.

reasoned that by having “settled their federal claims, the plaintiffs no longer had the *ability* to give up the relevant claims: they had already given them up.” *Id.* at 12 (emphasis added). The Court of Appeals imported a concept into the Act, a release “having legal substance,” which it concluded “cannot be done by a claimant who has already obtained a tort award or settlement from state actors.” *Id.* at 13 n.3.

Finally, the Court of Appeals rejected Petitioners’ argument that, as this Court’s precedent recognizes, exemptions from relief under remedial statutes be construed narrowly. *Id.* at 14. Adopting a broad interpretation of .080(1), which will prevent recovery by Petitioners and other wrongfully convicted individuals in Washington, the Court of Appeals concluded that interpreting .080(1) to preclude relief “is not fairly characterized as an exemption.” *Id.*

VI. ARGUMENT AND GROUNDS FOR REVIEW

A. Interpretation of the WCPA, an Issue of First Impression, Raises Issues of Substantial Public Importance

There should be no dispute that the Washington legislature, and indeed the State’s criminal justice system, treats as important the wrongful conviction and incarceration of the innocent. According to the National Registry of Exonerations, which tracks and documents exonerations, to date there have been 50 men and women exonerated in Washington State. *See* Nat’l Registry of Exonerations, <https://tinyurl.com/y64419k5> (last visited 9/16/2019). The WCPA was enacted in 2013 because Washington

had become an outlier in having no statute to address the needs of this vulnerable and wronged population. 2013 WA H.B. 134, Committee Report (April 1, 2013). The WCPA, then, addresses important and pressing issues concerning the wrongfully convicted; recognition not only that they have been wronged but also that they should be afforded redress.

Unfortunately, in the six years since the WCPA was enacted, there has been substantial uncertainty and lack of clarity about how litigation under the Act works. This case is illustrative: Petitioners faced legal obstacles in both state and federal court challenging their very *ability* to obtain relief, even after their WCPA claim had been (improperly) denied by the trial court. Petitioners here are not alone. Instead, citing the waiver-and-release provisions of .080(1), the State has sought dismissal of at least three other currently-pending WCPA claims where the claimant received some payment before pursuing a WCPA claim—even doing so despite the fact that for Merideth Town and Doris Green the prior payment preceded passage of the WCPA and was an amount less than Town and Green would be eligible for under the Act. *See Doris Green v. State*, No. 16-2-00660-2 (Chelan County); *Meredith Town v. State*, 16-2-00655-2 (Chelan County); *Donovan Allen v. State*, #18-2-01330-08 (Cowlitz County).³

³ The *Green* and *Town* matters underscore how important the issues are here: the legislature created a remedy for the wrongfully convicted, and that remedy is greater than what they received in prior settlements before the WCPA was ever passed. Nonetheless, a potential upshot of the Court of Appeals' decision is that due to agreements reached before the Act ever existed, they cannot avail themselves of the WCPA whatsoever.

This Court should grant review to interpret the Act so that people wrongfully convicted in Washington can have clear guidance about how an important remedial statute works—including the right time and manner to file a WCPA claim, and whether a wrongfully convicted person’s rights under the statute might be compromised by the timing of a filing. *Cf. State v. T.J.S.-M.*, 193 Wn.2d 450, 454 (2019) (finding timing issues in juvenile sentencing to be a substantial public interest this Court should review and noting the “need for future guidance” as a further reason for review).⁴ In so doing, as explained below, this Court should clarify that the wrongfully convicted can pursue remedies under the WCPA regardless of whether they have previously recovered so long as they are willing, at the time payment is sought, to sign the legal release required by .080(1).

B. The Court of Appeals Contradicted This Court’s Binding Precedent

In at least three separate ways, the Court of Appeals’ decision runs contrary to precedent from this Court.

⁴ This Court’s decisions concerning whether there is a substantial public interest to review a decision that has become moot are illustrative here analogy here. The Court considers three things: (1) whether the questions are public in nature, including involving constitutional questions and statutory interpretation; (2) the desirability of an authoritative determination for future guidance, and (3) whether the situation is likely to recur. *See State v. Beaver*, 184 Wn. 2d 321, 330 (2015). Each one of these criterion are satisfied here: interpretation of the WCPA is public; there is a need for authoritative determination for not only public officials but also the wrongfully convicted; and the issue has already recurred.

1. The Court of Appeals Refused to Narrowly Construe a Remedial Exemption

The WCPA creates a narrow, prospective waiver of remedies by conditioning the payment of compensation on a release of future claims, actions, or proceedings. As the Court of Appeals recognized early in its decision but departed from at a later point, .080 sets forth three steps concerning obtaining payment after the substantive showing of innocence is made: (1) a waiver, (2) a legal release, and (3) reimbursement if the release is subsequently held invalid and there is another qualifying payment. App. A, at 3. Nothing in the operative text of the WCPA creates a process for evaluating the scope of a settlement, partial or complete, of a *prior* claim before seeking payment under a successful WCPA judgment.

It is undisputed that the WCPA is a remedial statute, and that this Court's precedents provide that "remedial statutes are liberally construed to suppress the evil and advance the remedy." *Go2net, Inc. v. FreeYellow.com, Inc.*, 158 Wn.2d 247, 253 (2006). As a consequence, exemptions to obtaining redress under a remedial statute—like that found in RCW 4.100.080—should be narrowly construed. *See Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870 (2012) (en banc) (explaining that remedial legislation "is given a liberal construction" and that "exemptions from its coverage are narrowly construed and applied only to situations which are plainly and unmistakably consistent with the terms and spirit of the legislation" (citing *Int'l Ass'n of Fire Fighters*,

Local 46 v. Everett, 146 Wash.2d 29, 45 (2002), and quoting *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 301, 996 P.2d 582 (2000)).

The Court of Appeals' decision conflicts with these authorities. Here, there is no dispute that the Court's interpretation of the WCPA excluded Petitioners' from obtaining relief under the Act. Nor does the statute define or require a prerequisite about an "effective waiver," and particularly not the one imagined by the Court of Appeals, which finds no basis in the statutory text. In short, rather than interpreting the WCPA by its text, and rather than interpreting .080(1) narrowly as required by this Court's precedents, the Court of Appeals broadly interpreted an exemption from the ability to obtain relief under the Act, which was error.

2. The Court of Appeals' Decision Contradicts This Court's Precedent That Specific Language Controls Over General Statements of Intent

This matter centers on interpretation of the waiver-and-release language in RCW 4.100.080(1), which, in relevant part provides

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.

...

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) (emphasis added).⁵

Before the operational language just quoted, .080(1) states:

“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.” *Id.* In other words, the operational language *effectuates* the legislature’s intent by requiring a (1) waiver when payment is sought, (2) a signed release, and (3) reimbursement if the release is later deemed invalid. *Id.*

Courts are “required to assume the Legislature meant exactly what it said and apply the statute as written.” *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). In considering that language, there is an established “rule of statutory interpretation that the specific controls over the general.” *Young v. Remy*, 149

⁵ The entire WCPA is attached as Appendix B.

Wn. App. 1033 (2009) (citing *ETCO, Inc. v. Dep't of Labor & Indus.*, 66 Wn. App. 302, 305-06 (1992)).

As a result, this Court has held: “the legislature’s codified declaration of intent cannot ‘trump the plain language of the statute.’” *State v. Granath*, 415 P.3d 1179, 1183 (Wash. 2018) (quoting *State v. Reis*, 183 Wn.2d 197, 212 (2015)). That fact remains “true even when the codified intent speaks directly to the enacted statute.” *Reis*, 183 Wn.2d at 212. Accordingly, “statements of legislative intent are irrelevant to a court’s analysis when the statutory language is unambiguous.” *Little Mountain Estates Tenants Ass’n v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 270 (2010). In *Granath*, this Court specifically refused to allow vague language of intent to trump statutory language.

The Court of Appeals, however, cited *Granath* but then directly contradicted it by allowing a broad statement of intent—which is irrelevant under *Little Mountain Estates*—to somehow control the specific statutory language. The Court conflated the *what* (i.e., the “intent”) with the *how* (the waiver-and-release language), and thus refused to presume the legislature “meant exactly what it said” when it declined to create a different sort of regime for effectuating its intent. *Duke*, 133 Wn.2d 80 at 87.

The legislature had many other options. For example, the Legislature could have required, as a condition for proving a WCPA claim (as specified in RCW 4.100.060), there be evidence of no prior payments whatsoever. But, it did not. Alternatively, as the Legislature has done elsewhere, the Act could have created an “offset” whereby any remedy under the WCPA is offset by another recovery in specified circumstances. *E.g.*, RCW 51.35.225 (offsets in context of workers compensation); RCW 8.04.080 (offsets in the eminent domain context). Again, the Legislature did not choose this method of effectuating its intent.

Instead of doing either of those things, the Legislature created a limited form of reimbursement under the WCPA—reimbursement applicable only after a release has been executed and later declared invalid. RCW 4.100.080(1). The inquiry is wholly prospective, and the Legislature’s omission of a retrospective remedy confirms this interpretation. *In re Det. of Williams*, 147 Wn.2d 476, 491 (2002) (“Under *expressio unius est exclusio alterius*, a canon of statutory construction, to express one thing in a statute implies the exclusion of the other. Omissions are deemed to be exclusions.” (citation omitted)).

The Court of Appeals thus erred and conflicted with this Court’s precedent—like *Granath*, *Reis*, and *Little Mountain Estates*—by allowing a vague statement of “intent” that should have been considered irrelevant to trump the operational language of the Act, warranting review by this Court. RAP 13.4(b)(1).

3. The Court of Appeals Contradicted Precedent By Effectively Adding Statutory Language

A core aspect of the Court of Appeals’ decision was its reasoning that Petitioners having already settled *a* particular § 1983 suit against Spokane County and two officers somehow invalidated their ability to sign a waiver such that signing the WCPA release could not be “effective.” App A, at 12, 13 n.3, &14. To the Court of Appeals, then, .080(1) functionally reads as follows: “The claimant must execute a[n] effective legal release prior to the payment of any compensation under this chapter,” where “effective legal release” means that there has been absolutely no other settlement or recovery in any way related to a wrongful conviction. This interpretation flows from the (unsupported) conclusion that a “claimant who has received a tort award or settlement will not be able to waive claims and execute a legal release.” *Id.* at 10.

But the concept of an “effective legal release” proffered by the Court of Appeals, an apparent policy preference, finds no home in the text

or structure of the WCPA. The decision thus runs contrary to myriad authorities from this Court (and dictated by the constitutional separation of powers doctrine) that prohibit courts from modifying statutory language to serve particular ends. *E.g.*, *Duke*, 133 Wn.2d at 87; *Wash. State Human Rights Comm'n v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 121 (1982); *Am. Cont'l Ins. Co. v. Steen*, 151 Wash. 2d 512, 519 n.1 (2004) (It is “the province of the legislature, not this court, to make the policy decision.”).

In addition, the Court of Appeals’ decision rests on an overbroad and inaccurate view of what Petitioners did when they settled their § 1983 suits. Rather than doing what the WCPA requires—waiving “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,” RCW 4.100.080(1)—the release applicable to Petitioners’ § 1983 suit applied only to the “released parties,” *i.e.*, the defendants in that suit. CP 147-50. That release did not waive “any and all” other remedies Petitioners’ might have had.

The decision below rests on an *assumption*, that *any* settlement related to a wrongful conviction *necessarily* means that the wrongfully convicted plaintiff/claimant has no other claims that can be waived in the future and that a legal release has *no* meaning. App. A, at 10.

But this assumption—unsupported by the law and factual record—is incorrect. Suppose that Larson, while incarcerated, had filed a suit related to the conditions of his confinement, alleging he received inadequate medical care under the Eighth Amendment. Would that have rendered “ineffective” his WCPA release? For Petitioners’ the answer is a plain “no.” Despite the fact that such a suit would not have challenged the *basis* for his wrongful confinement, the answer seems to be “yes,” at least according to the Court of Appeals’ broad and undefined language. *See* App. A, at 13 n.3 (reasoning a plaintiff cannot execute a legal release if they have “already obtained a tort award or settlement from state actors”).

To be sure, the statute itself uses the phrase “related to his or her wrongful conviction and incarceration,” RCW 4.100.080(1), but this phrase is undefined, and the Court of Appeals magnified any uncertainty about what this provision means by adding the concept of *effectiveness* to the mix, and by defining effectiveness as any prior tort suit against state actors. App A, at 13 n.3. It thus bears emphasizing that those subject to criminal prosecution and imprisonment might bring a variety of claims “related to” their wrongful conviction. For example, in addition to claim under *Brady v. Maryland*, 373 U.S. 83 (1963), as raised in Petitioners’ § 1983 suit, an individual might bring excessive force claim related to the underlying arrest or against a prison guard while incarcerated, a due

process claim concerning deprivations of liberty within the prison, or, as noted, an Eighth Amendment claim concerning confinement. Petitioners might have also brought a claim for injunctive relief against the Prosecuting Attorney's office, which would not have touched on financial compensation at all. In addition, as a new statute, there are wrongfully convicted people—like Town and Green—who had *no* opportunity to pursue claims under the WCPA at the time they filed a prior action related to their wrongful conviction.

But the operative language of the WCPA does not include an inquiry about what sort of claims *might* have been raised beforehand. The Act does not ask Courts to inquire about prior settlements, whatever the form, at all; that inquiry is the result of the Court of Appeals adding language to the statute. Instead, .080 sets out provisions set out a one-way ratchet: they require a waiver-and-release of “any and all” remedies at the time payment is sought. That certain particular remedies might have been previously resolved is irrelevant. This straightforward reading of the plain language of the statute should control, not only because it is the plain meaning of the Act but also because it avoids the difficult and unclear questions created by the Court of Appeals' new “effectiveness” concept.

Finally, it is worth noting that the Court of Appeals' notion of “effectiveness”—in addition to not being part of the Act—is overbroad. If

Petitioners would have been presented with a legal release described in .080, which far extends beyond the release they signed in their § 1983 suit, that *would have been effective*. They would have been prevented from pursuing any “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,” RCW 4.100.080(1). Petitioners would have been barred from seeking a host of potential actions—like those described above—if they would have signed the WCPA release. Having previously settled one lawsuit would not have rendered the release ineffective or altered its binding nature.

* * *

In short, the Court of Appeals erred by adding new language to the WCPA that is simply not there. In so doing, the decision has raised additional elements of ambiguity and uncertainty for wrongfully convicted individuals attempting to put their lives together but also assess the legal landscape that exists for their possible compensation for being wrongfully convicted. This Court’s intervention is thus imperative to both correct the Court of Appeals’ decision and to provide guidance to the legislature, state actors, and the wrongfully convicted. Review is warranted.

C. This Court Should Clarify Whether the WCPA Is Ambiguous

Guidance is finally needed to clarify for the wrongfully convicted and the Legislature whether, as a matter of law, .080 is ambiguous. A statute is “ambiguous if it can be reasonably interpreted in more than one way.” *Vashon Is. Comm. for Self-Gov’t v. Wa. State Boundary Review Bd.*, 127 Wn.2d 759, 771 (1995). In this very litigation, the State of Washington has taken two different positions about how .080 should be interpreted. In addition, the Court of Appeals resorted to *adding* a substantive concept not defined in the Act whatsoever and did so without any briefing on the issue from the parties. This Court should intervene.

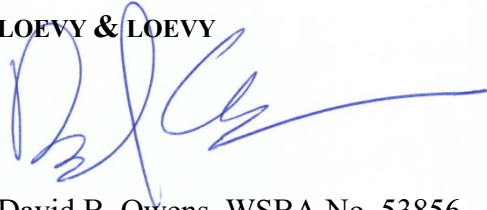
If this Court finds the statute ambiguous, among other things, this Court can examine legislative history. *State v. Armendariz*, 160 Wash.2d 106, 110-11 (2007). The limited legislative history favors Petitioners’ interpretation of the Act as entirely prospective. The report of the amendment text notes that the effect of the amendment changing .080 was to “[r]equire[] claimant to waive *further* claims against the state and political subdivisions.” H. 1341, 63rd Leg., April 11 Reg. Sess. (Wn. 2013) (emphasis added).

V. CONCLUSION

Review of the Court of Appeals’ decision is warranted under RAP 13.4(b). Respectfully, this Petition should be granted.

RESPECTFULLY SUBMITTED this 16th day of September,
2019.

LOEVY & LOEVY

A handwritten signature in blue ink, appearing to read 'D. Owens', with a long horizontal flourish extending to the right.

David B. Owens, WSBA No. 53856
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Attorney For Petitioners

CERTIFICATE OF SERVICE

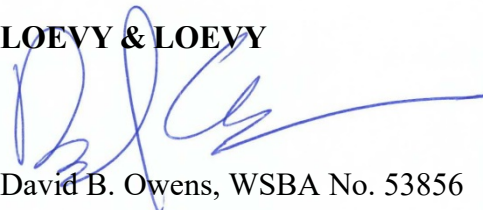
I certify that, on September 16, 2019, I caused a true and correct copy of the foregoing to be served on the following via electronic delivery.

Richard L. Weber
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Attorneys for Defendant/Respondent State of Washington

DATED this 16th day of September, 2019.

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APPENDIX A

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

\$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.

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

\$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 *ejusdem 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

No. 35649-3-III
Larson v. State

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

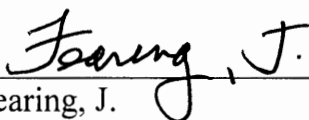
The plaintiffs also make a passing challenge to the fact that the statutory procedure of presenting the plaintiffs with a legal release to execute was not followed. As the State argues, however, the law does not require futile acts. *E.g., Ancheta v. Daly*, 77 Wn.2d 255, 263, 461 P.2d 531 (1969).

Affirmed.

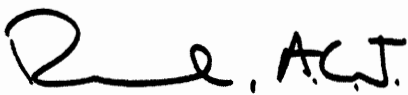


Siddoway, J.

WE CONCUR:



Fearing, J.



Pennell, A.C.J.

APPENDIX B

§ 4.100.010. Intent.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.010. Intent

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.

Cite as RCW 4.100.010

History. Added by 2013 c 175, §1, eff. 7/28/2013.

§ 4.100.020. Claim for compensation-Definitions.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.020. Claim for compensation-Definitions

- (1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.
- (2) For purposes of this chapter, a person is:
 - (a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; and
 - (b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.
- (3)
 - (a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of the claimant by an authorized agent.
 - (b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046.

Cite as RCW 4.100.020

History. Added by 2013 c 175, §2, eff. 7/28/2013.

§ 4.100.030. Procedure for filing of claims.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.030. Procedure for filing of claims

- (1) All claims under this chapter must be filed in superior court. The venue for such actions is governed by RCW 4.12.020.
- (2) Service of the summons and complaint is governed by RCW 4.28.080.

Cite as RCW 4.100.030

History. Added by 2013 c 175, §3, eff. 7/28/2013.

§ 4.100.040. Claims-Evidence, determinations required-Dismissal of claim.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.040. Claims-Evidence, determinations required-Dismissal of claim

- (1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:
 - (a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;
 - (b)
 - (i) The claimant is not currently incarcerated for any offense; and
 - (ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;
 - (c)
 - (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; and
 - (d) The claim is not time barred by RCW 4.100.090.
- (2) In addition to the requirements in subsection (1) of this section, the claimant must state facts in sufficient detail for the finder of fact to determine that:
 - (a) The claimant did not engage in any illegal conduct alleged in the charging documents; and
 - (b) The claimant did not commit a substantive offense, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or

a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

- (3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in RCW 4.100.020 and this section.
- (4) The claimant must verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant must verify the claim.
- (5) If the attorney general concedes that the claimant was wrongly convicted, the court must award compensation as provided in RCW 4.100.060.
- (6)
 - (a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it may dismiss the claim, either on its own motion or on the motion of the attorney general.
 - (b) If the court dismisses the claim, the court must set forth the reasons for its decision in written findings of fact and conclusions of law.

Cite as RCW 4.100.040

History. Added by 2013 c 175, §4, eff. 7/28/2013.

§ 4.100.050. Appeals.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.050. Appeals

Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action is de novo.

Cite as RCW 4.100.050

History. Added by 2013 c 175, §5, eff. 7/28/2013.

§ 4.100.060. Compensation awards-Amounts-Proof required-Reentry services.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.060. Compensation awards-Amounts-Proof required-Reentry services

- (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:
 - (a) The claimant was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
 - (b)
 - (i) The claimant is not currently incarcerated for any offense; and
 - (ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim;
 - (c)
 - (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;
 - (d) The claimant did not engage in any illegal conduct alleged in the charging documents; and
 - (e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

- (2) Any pardon or proclamation issued to the claimant must be certified by the officer having

lawful custody of the pardon or proclamation, and be affixed with the seal of the office of the governor, or with the official certificate of such officer before it may be offered as evidence.

- (3) In exercising its discretion regarding the weight and admissibility of evidence, the court must give due consideration to difficulties of proof caused by the passage of time or by release of evidence pursuant to a plea, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.
- (4) The claimant may not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any conviction other than the felony or felonies that are the basis for the claim.
- (5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court must order the state to pay the actually innocent claimant the following compensation award, as adjusted for partial years served and to account for inflation from July 28, 2013:
 - (a) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial and an additional fifty thousand dollars for each year served under a sentence of death pursuant to chapter 10.95 RCW;
 - (b) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the claim;
 - (c) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies that are grounds for the compensation claim. The funds must be paid on the claimant's behalf in a lump sum payment to the department of social and health services for disbursement under Title 26 RCW;
 - (d) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence; and
 - (e) Attorneys' fees for successfully bringing the wrongful conviction claim calculated at ten percent of the monetary damages awarded under subsection (5)(a) and (b) of this section, plus expenses. However, attorneys' fees and expenses may not exceed seventy-five thousand dollars. These fees may not be deducted from the compensation award due to the claimant and counsel is not entitled to receive additional fees from the client related to the claim. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

- (6) The compensation award may not include any punitive damages.

- (7) The court may not offset the compensation award by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court may not offset against the compensation award the value of any services or reduction in fees for services to be provided to the claimant as part of the award under this section.
- (8) The compensation award is not income for tax purposes, except attorneys' fees awarded under subsection (5)(e) of this section.
- (9)
 - (a) Upon finding that the claimant was wrongly convicted, the court must seal the claimant's record of conviction.
 - (b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 do not apply.
- (10) Upon request of the claimant, the court must refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to counseling on the ability to enter into a structured settlement agreement and where to obtain free or low-cost legal and financial advice if the claimant is not already represented, the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.
- (11) The claimant or the attorney general may initiate and agree to a claim with a structured settlement for the compensation awarded under subsection (5) of this section. During negotiation of the structured settlement agreement, the claimant must be given adequate time to consult with the legal and financial advisor of his or her choice. Any structured settlement agreement binds the parties with regard to all compensation awarded. A structured settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.
- (12) Before approving any structured settlement agreement, the court must ensure that the claimant has an adequate understanding of the agreement. The court may approve the agreement only if the judge finds that the agreement is in the best interest of the claimant and actuarially equivalent to the lump sum compensation award under subsection (5) of this section before taxation. When determining whether the agreement is in the best interest of the claimant, the court must consider the following factors:
 - (a) The age and life expectancy of the claimant;

- (b) The marital or domestic partnership status of the claimant; and
- (c) The number and age of the claimant's dependents.

Cite as RCW 4.100.060

History. Added by 2013 c 175, §6, eff. 7/28/2013.

§ 4.100.070. Provision of information-Statute of limitations.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.070. Provision of information-Statute of limitations

- (1) On or after July 28, 2013, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in RCW 4.100.040, the court must provide to the claimant a copy of RCW 4.100.020 through 4.100.090, 28B.15.395, and 72.09.750 at the time the relief is granted.
- (2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after July 28, 2013, must provide a copy of RCW 4.100.020 through 4.100.090, 28B.15.395, and 72.09.750 to the individual pardoned.
- (3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she has an additional twelve months, beyond the statute of limitations under RCW 4.100.090, to bring a claim under this chapter.

Cite as RCW 4.100.070

History. Added by 2013 c 175, §7, eff. 7/28/2013.

§ 4.100.080. Remedies and compensation exclusive-Admissibility of agreements.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.080. Remedies and compensation exclusive-Admissibility of agreements

- (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.
- (2) A release dismissal agreement, plea agreement, or any similar agreement whereby a prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the county, the state of Washington, or any political subdivision, is admissible and should be evaluated in light of all the evidence. However, any such agreement is not dispositive of the question of whether the claimant was wrongly convicted or entitled to compensation under this chapter.

Cite as RCW 4.100.080

History. Added by 2013 c 175, §8, eff. 7/28/2013.

§ 4.100.090. Actions for compensation.

Washington Statutes

Title 4. CIVIL PROCEDURE

Chapter 4.100. Wrongly convicted persons

Current through Chapter 20 of the 2019 Regular Session (with the exception of Chapter 5)

§ 4.100.090. Actions for compensation

Except as provided in RCW 4.100.070, an action for compensation under this chapter must be commenced within three years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in RCW 4.100.020, or release from custody, whichever is later. However, any action by the state challenging or appealing the grant of judicial relief or release from custody tolls the three-year period. Any persons meeting the criteria set forth in RCW 4.100.020 who was wrongly convicted before July 28, 2013, may commence an action under this chapter within three years after July 28, 2013.

Cite as RCW 4.100.090

History. Added by 2013 c 175, §9, eff. 7/28/2013.

LOEVY & LOEVY

September 16, 2019 - 4:25 PM

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