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COURT OF APPEALS
DIVISION II

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No. 47066-7-II

STATE OF WASHINGTON

BY Cm
DEPUTY

**COURT OF APPEALS,
DIVISION TWO
OF THE STATE OF WASHINGTON**

ISAIAH W. NEWTON, JR.,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Appellant is Isaiah W. Newton, Jr., is a single person.

This appeal concerns whether the facts developed in the summary judgment proceeding below support an Order on Summary Judgment for either party. The standard of review on this matter is de novo. RCW 4.100.050 and standard of review.

II. ASSIGNMENTS OF ERROR

Assignments of Error:

1. Mr. Newton contends that the trial court erred by granting summary judgment in favor of the State of Washington by the Order Granting Summary Judgment entered on December 5, 2014.

2. Mr. Newton further contends that the trial court erred by denying his Motion for Summary Judgment in the same hearing.

Issues Pertaining to Assignments of Error:

1. Do the facts pertaining to Mr. Newton's felony conviction and ultimate acquittal as a result of a Court of Appeals' decision reversing and dismissing his criminal conviction satisfy the statutory requirements of the Wrongfully Convicted Persons Act, RCW 4.100 et seq.? (Assignments of Error 1 and 2.)

2. Did the Court of Appeals decision reversing Mr. Newton's conviction satisfy the requirement that his conviction was reversed and dismissed upon the basis of "significant new exculpatory information" as set forth in RCW 4.100.060(c)(ii)? (Assignments of Error 1 and 2.)

3. What is the effect upon Mr. Newton claim for compensation under RCW 4.100 et seq. as a result of his concurrent sentence for the misdemeanor of resisting arrest? The issue is whether the concurrent sentence for the misdemeanor of resisting arrest disqualifies Mr. Newton from compensation under the Wrongfully Convicted Persons Act. Or, alternatively, is the effect of the resisting arrest conviction's concurrent sentence not a disqualification, but rather a reduction in the compensation specified by the Act? (Assignments of Error 1 and 2.)

III. STATEMENT OF THE CASE

Mr. Newton's appeal arises from his claim for benefits pursuant to the Wrongfully Convicted Persons Act, RCW 4.100.010 et seq. Mr. Newton was convicted of the felony Burglary in the First Degree in the Pierce County Superior Court on September 28, 2012.¹ Mr. Newton's conviction was subsequently reversed and ordered dismissed by Division II of the Court of

¹ CP 9-20.

Appeals.² Mr. Newton's misdemeanor conviction for resisting arrest entered at the same time as his burglary conviction resulted in a sentence of 90 days in jail to be served concurrently with his felony conviction. He had served 131 days in custody awaiting trial and was given credit for time served. He served a total of 717 days in custody.

The Court of Appeals in *State of Washington v. Isaiah W. Newton, Jr.*, No. 32154-1-III, Court of Appeals, Division III, April 22, 2014, found fault with two actions by the trial court. The Court of Appeals found the trial court erred by not granting a directed verdict of acquittal as a result of insufficient evidence of criminal intent on the part of Mr. Newton.³ The trial court also erred by giving the pattern inference of intent jury instruction, WPIC 60.05, 11A Washington Practice: Washington Pattern Jury Instructions, (Criminal).⁴

The Court of Appeals also criticized the deputy prosecutor's conduct during the trial as "improper" because of prosecutorial misconduct during the trial. *State of Washington v. Isaiah W. Newton, Jr.*, No. 32154-1-III at page 6.⁵

The criminal charges resulted from an incident occurring on May 18,

² CP 23, 35 and 36.

³ CP 30, 2nd para., ln. 1-2.

⁴ CP 32, 3rd para., last sentence.

⁵ CP 28.

2012.⁶ Isaiah W. Newton, Jr., was arrested by Tacoma Police Officers in Tacoma. Mr. Newton was subsequently charged on May 21, 2012, in Pierce County Superior Court with Burglary in the First Degree, a felony pursuant to RCW 9A.76.040(1).⁷ This is referenced as Exhibit “A” to the Complaint and verified by Mr. Newton.⁸

On September 28, 2012, Mr. Newton was sentenced as a result of a jury verdict finding him guilty of First Degree Burglary.⁹ Mr. Newton was sentenced to serve a commitment in the State of Washington’s Department of Corrections. He was sentenced to 87 months total confinement, together with assessments for costs, restitution, and court appointed attorney fees, as set forth in Section IV of the Judgment and Sentence.¹⁰

Mr. Newton appealed his conviction on the felony charges to the Washington State Court of Appeals. On April 22, 2014, Division III of the Washington State Court of Appeals reversed Mr. Newton’s felony conviction for Burglary in the First Degree and ordered the charges be dismissed under No. 32154-1-III, Court of Appeals, Division III.¹¹

⁶ CP 6, ln. 15-16.

⁷ CP 6-7.

⁸ CP 1, 2 and 4.

⁹ CP 9-20.

¹⁰ CP 12-16.

¹¹ CP 23-33; See, specifically, RP 23, 1st para., last 2 lines.

The Court of Appeals held that the State had failed to prove with sufficient evidence the element of intent required to prove the Burglary I charge.¹² Thus, the Court reversed Mr. Newton's conviction with orders to dismiss the charge.¹³ The Court of Appeals determined that the State had not proved at trial that Mr. Newton intended to commit a crime, an essential element of the crime of First Degree Burglary.¹⁴ *State of Washington v. Isaiah W. Newton, Jr.*, No. 32154-1-III.

The Pierce County Superior Court dismissed the charges on May 2, 2014, upon remand. The Order Granting Defendant's Motion to Dismiss with Prejudice was entered on May 2, 2014.¹⁵ The Order Releasing Defendant Forthwith From the Washington State Penitentiary was entered in the Pierce County Superior Court on May 2, 2014.¹⁶

Mr. Newton was released from the custody of the Department of Corrections on May 5, 2014. Mr. Newton served 717 days in custody on the ultimately dismissed charges. Mr. Newton is not currently incarcerated.

IV. ARGUMENT

The State made two primary arguments in their Cross Motion for

¹² CP 30, 2nd para., ln. 1-2.

¹³ CP 23-33; See, specifically, RP 23, 1st para., last 2 lines, and RP 33, 1st line.

¹⁴ CP 30, 2nd para., ln. 1-2.

¹⁵ CP 35-36.

¹⁶ CP 38-39.

Summary Judgment and their Response to Plaintiff's Motion for Summary Judgment: 1) That Mr. Newton was not "actually innocent" of the felony of which he was convicted;¹⁷ and 2) that Mr. Newton's conviction was not overturned "on the basis of significant new exculpatory information."¹⁸

The trial court granted the State's Motion for Summary Judgment concluding that a Court of Appeals reversal did not amount to the requisite "significant new exculpatory information," which is required by RCW 4.100.060.¹⁹

Another sub-argument related to the argument that Mr. Newton was not "absolutely innocent" is the State's claim in their response that Mr. Newton's resisting arrest conviction disqualifies him from compensation under the act.²⁰ That argument contradicts the plain meaning of RCW 4.100.040(1)(a)(ii), which provides that the 90 day concurrent misdemeanor sentence only disqualifies Mr. Newton from compensation for the 90 day period during which the felony and misdemeanor sentences were concurrently served. The argument also contradicts RCW 4.100.060(4).

¹⁷ CP 98, ln. 17, to CP 99, ln. 24; CP, 148, ln. 9 to CP 149, ln. 11.

¹⁸ CP 100, ln. 1-22; and CP 147, ln. 10 to CP 148, ln. 8.

¹⁹ CP 203-205.

²⁰ CP 149, ln. 12-19.

A. Mr. Newton Was “Actually Innocent” of the Felony of Which He Was Convicted.

The State’s position improperly narrows the plain meaning of “Actually Innocent,” as defined by RCW 4.100.020, which reads, in pertinent part:

(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; . . .

The statute does not reference misdemeanors. The State’s argument below that a conviction for a misdemeanor disqualifies Mr. Newton from compensation would render the statutory definition absurd as it would require the court to ignore the reference to a person’s status of guilt or innocence as it pertains to “a felony.” RCW 4.100.020(2) and RCW 4.100.060(4).

The State’s definition contradicts the plain meaning of the statute. The State is essentially saying “actually innocent” requires an additional element besides acquittal on the felony, it also requires an acquittal on the resisting arrest charge.

The statutory definition cannot be ignored, as the State seems to suggest. Mr. Newton did not engage in “any illegal conduct,” i.e., the felony crime of Burglary in the First Degree. A separate count is simply an entirely different crime which could have been charged separately. To follow the State’s logic would undermine the stated intent of the act as set forth in RCW 4.100.010 and would negate the reduction in compensation remedy of RCW 4.100.040(1)(a)(ii) which directly applies to this situation.

The State argued below that Mr. Newton is not “actually innocent” because he may have committed some of the elements of an uncharged crime, criminal trespass.²¹ The wrongful conviction statutes are limited to felonies and intended to address wrongful felony convictions. The State’s argument that Mr. Newton is disqualified from compensation because he is somehow guilty of a crime of which he has not been charged cannot be harmonized with the act as a whole.

In any event, the circumstances of a misdemeanor conviction that does not result in concurrent incarceration is irrelevant to the question of a convicted felon’s eligibility for compensation for a wrongful felony conviction. However, a concurrent sentence for a finding of guilty on a misdemeanor is relevant to the calculation of damages through a reduction

²¹ CP 148, ln. 4.

in compensation commiserate with the time served concurrently and, thus, demonstrates how the legislature harmonized the act. This issue is further addressed in Section C herein.

The State also cited to the trial court the Ninth Circuit appeal from a habeas corpus petition that had been granted by a District Court, *Jones v. Taylor*, No. 13-36202, WL 4067217, in support of their position that Mr. Newton was not “actually innocent.”²² *Jones, supra*, concerned a federal habeas corpus petition collaterally attacking Mr. Jones’s conviction in Oregon State Court for molesting his then 9 year old sister. The District Court had granted the Petition on the basis primarily of the victim’s recantation of her trial testimony. The Court of Appeals for the Ninth Circuit reversed the grant of the Petition for habeas corpus by the District Court. The Ninth Circuit admitted it was unsure as to whether it was even proper to consider the petition as it was a non-capital (death penalty) case. The case concerned the level of proof required by a Petitioner collaterally attacking his state court conviction to establish his probable “actual innocence” as the term is applied by the federal courts when evaluating habeas corpus petitions. Ultimately, the Court of Appeals denied the Petition because it found the victim’s recantation not persuasive.

²² CP 95, ln. 4-17.

The federal case law use of the term “actually innocent” in a federal habeas corpus proceeding provides no illumination as to the Washington State Legislature’s intention in enacting RCW 4.100 et seq. They are entirely different proceedings. The definition of “actually innocent” is set forth in RCW 4.100.020 and that is the only definition that matters. The federal habeas corpus procedure is designed to determine probable guilt or innocence after a conviction in state court preparatory to granting the Petition and releasing the prisoner from his sentence. The petitioner in *Jones v. Taylor, supra*, Mr. Jones, filed his habeas corpus petition to gain his freedom from incarceration pursuant to the federal habeas corpus statutes. That situation is entirely distinct from Mr. Newton’s action in seeking the state statutory compensation to which he is entitled. The only relevant definition of “actually innocent” is found in RCW 4.100.020.

In the present case, Mr. Newton’s innocence is established pursuant to that statutory definition. By citing to the Federal definition of “actually innocent” as it pertains to the grant or denial of a federal habeas corpus petition, the State is attempting to interject ambiguity where none exists.

The definition of “actually innocent” in the statute is not ambiguous. The definition requires no statutory construction or judicial interpretation.

This court is to rely solely upon the statutory language. There is no statutory construction necessary. The Washington Supreme Court summarized the application and process of statutory construction in the case of *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005), as follows:

Statutory construction begins by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language. *State v. Avery*, 1103 Wash.App. 527, 532, 13 P.3d 226 (2000). Where statutory language is amenable to more than one reasonable interpretation, it is deemed to be ambiguous. *State v. Keller*, 143 Wash.2d 267, 276, 19 P.3d 1030 (2001). Legislative history, principles of statutory construction, and relevant case law may provide guidance in construing the meaning of an ambiguous statute. *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wash.2d 224, 243, 59 P.3d 655 (2002).

Care must be taken to not find an ambiguity where none exists. The principals of statutory construction cannot even be considered by a court until it determines an ambiguity exists in the statute. Resorting to statutory construction without first finding the statute ambiguous is error. *Tesoro Mkt'g and Ref'g v. State Dept. of Revenue*, 164 Wn.2d 310 at 328, footnote 3, 190 P.3d 28 (2008). The definition of “actually innocent” is not ambiguous, as set forth in RCW 4.100.020(2)(a).

RCW 4.100.020 permits “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.” The statutory terms “actually innocent” and “wrongfully convicted” have been further defined in RCW 4.100.020. A person is “actually innocent” of a felony if he or she did not engage in any illegal conduct alleged in the charging documents. A person is “wrongfully convicted” if he or she was charged, convicted, and imprisoned for one or more felonies of which she is actually innocent. Since Mr. Newton did not engage in any felonious illegal conduct, he is, per RCW 4.100.020 “actually innocent.”

Mr. Newton clearly meets the definitions of “wrongfully convicted” and “actually innocent.” Thus, he is clearly within the category of people to whom the legislature intended to provide a statutory remedy.

B. The “Significant New Exculpatory Information” in Mr. Newton’s Case Is the Court of Appeals Decision Acquitting Mr. Newton.

The trial court ignored the plain meaning of the term “significant new exculpatory information,” apparently finding an ambiguity where none exists. The trial court erred. A trial court is limited to resorting to the plain and ordinary meaning of the statutory definition.

We give words in a statute their plain and ordinary meaning unless a contrary intent is evidenced in the statute. *Erection Co. v. Department Labor & Indus.*, 121 Wash.2d 513, 518, 1.852 P.2d 288 (1993). Where the statutory language is clear

and unambiguous, the statute's meaning is determined from its language alone; we may not look beyond the language nor consider the legislative history. *Multicare Med. Ctr. v. Department of Soc. & Health Servs.*,

C.J.C. v. Corporation of the Catholic Bishop, 138 Wn.2d 699, 708, 985 P.2d 262 (1999).

Clearly, the action of the Court of Appeals in reversing Mr. Newton's conviction was the requisite "significant new exculpatory information." The statute does not require any interpretation and its plain meaning clearly encompasses the information contained in the Court of Appeals decision.

Both the prosecutor and the trial court in Mr. Newton's criminal case were absolutely convinced that Mr. Newton was properly convicted of the crime of Burglary in the First Degree, but both the trial court and the prosecutor were subsequently informed by the Court of Appeals that they were wrong. It took the Court of Appeals' decision to restore justice to Mr. Newton's case.²³ That decision is clearly "significant new exculpatory information" as it required a dismissal upon remand.

The wrongful conviction statutes are not drafted to limit wrongful conviction claims to those individuals that present exculpatory evidence not produced at trial in a subsequent proceeding such as a habeas corpus proceeding. If that was the legislature's intention it could have specifically

²³ CP 23-34.

limited the Wrongful Compensation statutes to specific “new” exculpatory evidence, such as exculpatory DNA evidence not produced at trial, and it could have specifically limited the class of people intended to be compensated to that specific class of convicted felons, as has been done in states such as Montana. MCA 53-1-214. That seems to be the inference of the State’s argument. But that argument, if accepted, contradicts the plain meaning of the Wrongful Compensation statutes and the phrase “significant new exculpatory information” would not be given its plain and ordinary meaning as required.

In determining the intent of the legislature, it is important to read the act as a whole. Washington’s legislature enacted RCW 4.100, et seq., in 2013, thus authorizing a new statutory based cause of action to compensate those wrongly convicted and incarcerated. The intent of the legislation was set forth in RCW 4.100.010. It reads, in pertinent part, as follows:

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.

An enacted statutory statement of legislative intent is particularly relevant to statutory interpretation. Washington's Supreme Court has emphasized this important rule of statutory construction by holding that:

[A] “. . . statute's plain meaning should be " discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question."

Campbell, 146 Wash.2d at 11, 43 P.3d 4. Moreover, an enacted statement of legislative purpose is included in a plain reading of a statute. *C.J.C. v. Corp. of Catholic Bishop*, 138 Wash.2d 699, 712-14, 985 P.2d 262 (1999) (plurality opinion) (relying upon legislature's adopted finding and intent provision in construing definitional statute).^[1]

G.P. Gypsum Corporation, 169 Wn.2d 304 at 309-310, 237 P.3d 256 (2010).

The required proof to establish a valid claim is set forth in RCW 4.100.040 and RCW 4.100.060. RCW 4.100.060 reads, in pertinent part, as follows:

RCW 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 (emphasis added);

(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.

Mr. Newton meets all the requirements as so specified. RCW

4.100.060 sets forth substantially similar language to that of RCW 4.100.040

in its body.

The new “exculpatory information” in Mr. Newton’s case was provided by the Court of Appeals when it determined that there was insufficient evidence introduced at trial to uphold the felony conviction.²⁴

It should be noted that “exculpatory information” does not have the same meaning as “exculpatory evidence.” The State of Washington, in the trial court, took the position that Mr. Newton must produce what amounts to new “exculpatory evidence.” That argument was accepted by the trial court.²⁵ The trial court’s rationale is erroneous as it narrows the broad definition of the statutory term “exculpatory information.”

The words “exculpatory” and “information” are not defined in RCW 4.100 et seq. Thus, the ordinary meaning for the words was obviously intended by the legislature. The definition of “INFORMATION” is, in pertinent part, as follows:

- 1 : the communication or reception of knowledge or intelligence
- 2 a (1): knowledge obtained from investigation, study, or instruction (2) : INTELLIGENCE, NEWS (3) : FACTS, DATA

²⁴ CP 23-33.

²⁵ VRP, pg. 13, ln. 5-12.

c (1) : a signal or character (as in a communication system or computer) representing data (2) : something (as a message, experimental data, or a picture) which justifies change in a construct (as a plan or theory) that represents physical or mental experience or another construct.

...Source: <http://www.merriam-webster.com/dictionary/information>.

Mr. Newton's situation fits within the dictionary definition of "Information" as set forth above in Sections (1), (2)(a), and (2)(c)(2). Washington's Supreme Court has stated how a court should interpret a question of statutory construction as follows:

In any question of statutory construction, we strive to ascertain the intention of the legislature by first examining a statute's plain meaning. *Id.* at 9-10, 43 P.3d 4. " ' " Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." ' ' "

State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996))). *G.P. Gypsum Corporation v. Dept. of Revenue*, 169 Wn.2d 309, 237 P.3d 256 (2010).

Thus, the new exculpatory information is the fact that the Court of Appeals has determined no felony crime was committed by Mr. Newton, despite the finding of guilt entered by the Trial Court.

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C. The Effect of the Resisting Arrest Conviction Is to Reduce the Compensable Time by 90 Days.

Mr. Newton was sentenced to 90 days for his misdemeanor resisting arrest conviction. He served that time while awaiting trial prior to being sentenced upon the Felony.

RCW 4.100.040(1)(a)(ii) allows compensation for a wrongfully convicted person, but reduces the compensation for any time served concurrently. The statute reads in pertinent part as follows:

(1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:

...
(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;

...

Mr. Newton was incarcerated for 131 days before he was sentenced to prison. His concurrent sentence for the misdemeanor conviction of resisting arrest was 90 days.²⁶ So although, admittedly, the statutes in RCW 4.100 et seq. are confusing, the only way they can be harmonized and give effect to the Legislature's intentions in enacting the act is to construe it as a

²⁶ CP 14, Section 4.5.

whole while interpreting related provisions in relation to each other.

Legislative acts are to be construed as a whole, giving effect to all the language used. *State v. S.P.*, 110 Wash.2d 886, 890, 756 P.2d 1315 (1988). Related statutory provisions are interpreted in relation to each other and all provisions harmonized. *S.P.*, 110 Wash.2d at 890, 756 P.2d 1315.

C.J.C. v. Corporation of the Catholic Bishop, 138 Wn.2d 699, 708, 985 P. 2d 262 (1999).

That, pursuant to RCW 4.100.040(1)(a)(ii) the remedy for time served on a misdemeanor concurrently with a felony sentence that amounts to a “wrongful conviction” is to limit the compensation award to time served only upon the sentence which was imposed as a result of the felony after the concurrent time for a misdemeanor has been served. A reading of RCW 4.100.040(1)(a)(ii) demonstrates why this is the only possible result. Any other result would render the words “During the period of confinement for which the claimant is seeking compensation” as set forth below in the statute superfluous.

(1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:

...

(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;

...

Pursuant to the statute, the effect of the misdemeanor conviction resulting in a concurrent sentence is to reduce the amount of compensation awarded.

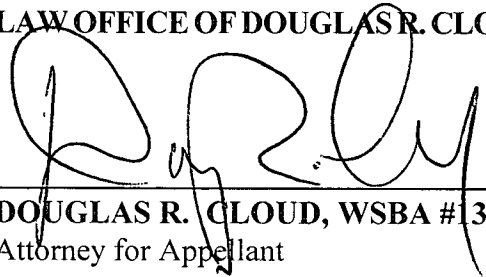
V. CONCLUSION

Mr. Newton has demonstrated that he is entitled to a judgment imposing liability upon the state as alleged in the Complaint.

The issue of damages remains to be determined by trial or further proceedings in the trial court. Mr. Newton requests reversal of the Court's Order Granting Summary Judgment to the State. He further requests that this Court remand the case to the trial court for entry of judgment on behalf of Mr. Newton on the issue of the State's liability and an order to determine Mr. Newton's damages as set forth in RCW 4.100.060(5) and related statutes.

RESPECTFULLY SUBMITTED this 30th day of June, 2015.

LAW OFFICE OF DOUGLAS R. CLOUD



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Attorney for Appellant

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**CERTIFICATE OF SERVICE OF
APPELLANT'S OPENING BRIEF**

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CERTIFICATE OF SERVICE

The undersigned declares as follows:

I am over the age of 18 years, not a party to this action, and competent to be a witness herein.

I am an employee of Douglas R. Cloud, Attorney at Law.

On the 30th day of June, 2015, I mailed via United States regular mail, postage prepaid, the documents titled (1) Appellant's Opening Brief and (2) Certificate of Service to the following:

Washington State Court of Appeals (the original and one copy)
Division II
950 Broadway, Ste 300
Tacoma, WA 98402-4454


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Attorney for Respondent

The Appellant's Opening Brief and this Certificate of Service were emailed to Mr. Choate on this date and a copy mailed to him via United States regular mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of

Washington that the foregoing is true and correct.

DATED this 30th day of June, 2015.


CARRIE L. MARSH