IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals Nos. 36805-0-III & 36806-8-III 99699-7

DORIS MARIE GREEN a/k/a Lopez, Petitioner, Appellant

and

MERIDITH EUGENE TOWN, Petitioner/Appellant.

v.
STATE OF WASHINGTON, Respondent,

PETITION FOR REVIEW

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I. INTRODUCTION

Doris Green and Meredith Eugene Town were undisputedly wrongfully convicted in the State of Washington and were exonerated in 2000 and 1999, respectively. They have sought compensation under a 2013 statute, the Wrongly Convicted Person's Act (WCPA or Act), RCW 4.100. *et seq.* Despite no challenge to their innocence, Green and Town's requests for remedies under the Act were rejected. These consolidated cases present issues of tremendous importance and substantial public interest that demand this Court's review; namely, determining, as a matter of first impression, how provisions under WCPA should be interpreted.

The WCPA is a remedial statute that allows exonerated individuals to obtain limited relief for the injustice of being wrongfully stripped of their liberty. The WCPA sets forth a straightforward, sequential manner of proceeding from the pleading phase (governed by RCW 4.100.040), to the adjudication phase (under RCW 4.100.060), to any post-judgment issues (RCW 4.100.080). The rules at each phase are unlike typical tort litigation, creating uncertainty and dispute about how WCPA claims should proceed.

This Court has never interpreted the WCPA, and substantial uncertainty exists for wrongfully convicted Washingtonians attempting to pick up the pieces of their lives while trying to navigate an uncertain and unclear legal landscape of remedies for their harm. Litigation in these two

consolidated cases and others pending before trial courts and at the Courts of Appeal need clarification on basic matters under the WCPA, including whether actions under the Act are "special proceedings" under CR 81; whether claims under the Act can be prematurely dismissed for reasons not set forth in unambiguous statutory text in RCW 4.100.040; whether courts can import requirements not mentioned for adjudication into .060; and the reach, if any, of the "waiver and release" provisions included in RCW4.100.080, for claimants who have received a payment, no matter how small or when received, related to their wrongful conviction.

Here, Green and Town were exonerated long before the WCPA was enacted and filed timely compensation claims. Shockingly, the trial court dismissed the complaints *with prejudice* due to a purported pleading defect at the .040 stage, without allowing an opportunity to amend the filings.

For its part, the Court of Appeals affirmed on an entirely different basis, reasoning that the post-judgment requirements in RCW 4.100.080 could be read to preclude Petitioners from obtaining a judgment for reasons not mentioned at all in .060 (because they had reached small settlements with Wenatchee in tort suits a decade before the Act was passed). To the Court of Appeals, payment of any remedy *whatsoever*—even an amount far less than what a claimant is entitled to under the Act and paid well before the WCPA existed—precludes entry of a WCPA

judgment. But .060 does not include a "no-prior payment" rule; and .080 does render the post-judgment waiver of future claims ineffective at the time of execution based on of the existence of a prior payment.

The proper interpretation of a new, *sui generis* remedial statute in Washington serves a profound public interest, one the Legislature recognized when passing the statute in the first place. Litigation under the WCPA is in dire need of clarification and has impacted the cases of Green and Town; claims filed by Robert Larson, Tyler Gassman, and Paul Statler, *Larson v. State*, 9 Wn. App. 2d 730 (3d Div. 2019); the claim of Donovan Allen pending before the Court of Appeals, *Allen v. State*, Court of Appeals No. 54172-6-II; and other exonerees who have been freed but lack clarification for how the Act should be interpreted.

Additionally, this Court should review this matter because the decision of the Court of Appeals, electing to file prior decision *Larson v. State*, 9 Wn. App. 2d 730 (3d Div. 2019) (*Larson II*), contradicts this Court's binding precedent concerning statutory interpretation. This Court makes clear that: unambiguous statutory language controls; courts cannot rewrite statutes to impose judicially-invented requirements for relief; and remedial statutes must be construed in favor of those they are designed to serve—here, the wrongfully convicted. The decision below, like *Larson II*, contradicts these established rules, warranting review.

II. IDENTITY OF PETITIONERS

Claimant-Petitioners Doris Green and Meredith Eugene Town, ask the Court to accept review of the lower Court's decision terminating review.

III. CITATION TO COURT OF APPEALS DECISION

The unpublished Court of Appeals decision was filed on March 23, 2021, and is attached as Appendix A to this Petition.

IV. ISSUES PRESENTED FOR REVIEW

1. Whether the WCPA created a "special proceeding" under CR 81 that requires actions to be interpreted in accordance with the statute, rather than the civil rules, where they conflict.

2. Whether courts are permitted to add requirements to the unambiguous statutory language in RCW 4.100.040 or .060 to find that claimants are not entitled to judgment under the WCPA based upon court-invented requirements not in the statute.

3. Whether the WCPA's post-judgment waiver-and-release provision in RCW 4.100.080 can be applied to preclude a judgment that is mandatory under .060 and to retroactively deprive wrongfully convicted individuals of statutory remedies in any and all circumstances where a prior recovery has been provided to a wrongfully convicted claimant.

V. STATEMENT OF THE CASE

A. Relevant Facts and Procedural History

In January 1994, Wenatchee Police Department Detective Robert R. Perez was appointed lead investigator for the Chelan and Douglas Counties' Interdisciplinary Sexual Abuse Team. DG CP at 4; MET CP at 3; Ombud. Rev. at 8.[1] Detective Perez's profoundly flawed investigative tactics—which included pressure, fabrication, and other misdeeds—led to 43 arrests for thousands of charges of alleged rape and child molestation in the area. DG CP at 5-6. Many of the accused were illiterate or mentally ill. DG CP at 6. Twenty-five defendants were convicted. Ombud. Rev. at i. Of those, 18 have since had their convictions set aside and most of the remaining accused received suspended sentences or were released in the wake of the exonerations on credit for time served. DG CP at 6. These charges have been called a "witch-hunt" seeking to drum up allegations of

[1] Citations to the record are: Doris Green's Clerk's Papers as "DG CP"; Meridith Eugene Town's Clerk's Papers as "MET CP"; the transcript from the joint motion to dismiss hearing, February 28, 2018, as "RP"; and the Office of the Family and Children Ombudsman's full-scale independent review of the Wenatchee investigations, as "Ombud. Rev." The Report was previously filed with the Superior Court. *See* Town Personal Restraint Petition, Case No. 94-1-00136-2, Ex. at 66. It is also available online, *see* https://www.digitalarchives.wa.gov/GovernorGregoire/ofco/reports/ofco_1998.pdf. The Ombudsman Review uses pseudonyms for Detective Perez (Detective Palmer); Ms. Green (Mrs. Grant); the Holt family (the Hulls); and the Town family (the Tobins). The Appendix is cited as "App'x."

sexual predation of children, even where none existed. *See, e.g.*, *Devereaux v. Abbey*, 263 F.3d 1070, 1083 and n.2 (9th Cir. 2001) (Kleinfeld, J., concurring in part, dissenting in part).

Two people caught up in this witch-hunt, but totally innocent, were Doris Green and Eugene Town. In January 1995, a jury convicted Green of three counts of rape and molestation, and she was sentenced to 23.5 years in prison. DG CP at 5; 1997 WL 266794, at *1. After Ms. Green had served five years, she filed a personal restraint petition demonstrating her innocence, Case No. 94-1-00434-5. The prosecuting attorney joined in asking that Green's convictions be vacated and she be released, based on, *inter alia*, police misconduct and evidence that the crime never occurred. DG CP at 1-2. With the State's agreement, the appeals court set aside the convictions, and the charges were dismissed in January 2000. DG CP at 8.

Eugene Town was also ensnared by Detective Perez's fraudulent investigation. In June 1994, Town falsely pleaded guilty to Perez's fictional sex offenses and was sentenced to twenty years in prison, avoiding potential lifelong imprisonment. *Id*. at 1. Town served six years before his convictions were vacated, after submitting medical evidence and psychological reports that undermined the prosecution theory and, separately, that pointed to the pervasive pattern of police misconduct. *Id.* at 1-2. The prosecutor joined Town's counsel in asking the court to vacate

Town's convictions and immediately release him on the grounds, among other things, that the crimes had never taken place. *Id.* at 1-2. In June 2000, Town's personal restraint petition was granted, his convictions were vacated, charges against him were dismissed, and he was released. *Id.* at 2.

B. WCPA Proceedings Below

In 2016, Petitioners filed timely Complaints for Compensation for Wrongful Conviction. DG CP at 1; MET CP at 1; RCW 4.100.090. The State filed motions to dismiss, alleging pleading and procedural defects. DG CP at 16-17; MET CP at 16-17. In its motions, the State asserted argued that RCW 4.100.040's "documentary evidence" requirement at the pleading phase had not been satisfied and that RCW 4.100.080 precluded the claims. As it relates to the .080 argument, the State pointed out that both Green and Town had settled tort suits against Wenatchee before the WCPA and for sums *less than* they would receive under the Act.

The trial court only reached the "documentary evidence" argument and dismissed the claims without giving Green and Town the opportunity to amend to add additional evidence in support of their claims. DG CP at 163-64; MET CP at 104-05. Green and Town appealed, arguing that the Court's interpretation of .040 was faulty; that dismissal without an opportunity to amend was inappropriate; that the trial court failed to consider the remedial nature of the statute; and that the trial court failed to

recognize that litigation under the WCPA constitutes a "special proceeding" under CR 81. Petitioners emphasized that the sequential structure of the act, with .040 at the filing stage and .060 at adjudication, provides that judgement *shall* be entered in favor of a wrongfully convicted person who can prove their innocence within the meaning set forth in the .060 and that it would be erroneous for the Court to add a prerequisite to obtaining a judgment under .060 that is not in the statute.

The Court of Appeals affirmed the trial court, but it did so by only addressing the State's .080 argument, without discussing the trial court's rationale concerning .040. *See generally* Appendix. In so doing, the Court of Appeals did not address the threshold issues raised by Green and Town, namely, that: CR 81 should control; .040 should have been deemed satisfied; .060 sets forth the exclusive requirements needed to obtain a judgment under the Act; .080 has no effect until after a judgment is entered in a claimant's favor; and even if .080 could hypothetically apply, it should not be a bar here, where Green and Town were exonerated long before the WCPA was passed and both settled their tort suits for less than they would have been eligible to recover under the Act.

Nonetheless, and despite no contention Green or Town were anything but innocent and wrongfully convicted, the Court of Appeals affirmed by heavily relying on its prior decision in *Larson II*. In *Larson II*,

the Court of Appeals reasoned that "because both claimants received compensation from Chelan County and the city of Wenatchee in their federal district court action[,] . . . their receipt of such compensation prevents them from providing an effective wavier and legal release, a condition precedent for receiving compensation under the WCPA." App'x at A7-8. In reaching this conclusion, the Court of Appeals did not address the unambiguous text of .060; it did not address the fact that Green and Town were factually different than the claimants in *Larson*, whose exonerations and tort settlements took place after the Act was in effect; and it did not provide any rationale for why a release signed by Green or Town would somehow be "ineffective." *Id.*

It was *Larson II* where the Court of Appeals permitted courts to hop-scotch .060's mandatory language and where the court invented a statutory requirement of waivers being "effective," finding that a wavier is "ineffective" as a matter of law for a "claimant who has received a tort award or settlement" because such a claimant "will not be able to waive claims and execute a legal release." 9 Wash. App. 2d at 740. *Larson II* cited no authority for this proposition, and these words do not appear in the WCPA.

Without considering the different *legal* arguments presented in this appeal—specifically about CR 81 and about .060—and without

considering the fundamentally different factual circumstances—*e.g.*, Green and Town were exonerated and settled their cases before the WCPA was enacted and their tort settlements were *less* than compensation they would receive under the Act—the Court of Appeals applied its erroneous *Larson II* rationale again to Green and Town's claims.

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, recognize the gravity of wrongful conviction and incarceration of the innocent. According to the National Registry of Exonerations, which tracks and documents these issues, to date there have been 50 exonerees in Washington State. *See* Nat'l Registry of Exonerations, https://tinyurl.com/y644l9k5 (last visited April 21, 2021). 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 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 eight years since the WCPA was enacted, there has been substantial uncertainty and lack of clarity about how litigation under the Act works. For example, in a stark departure from

normal civil litigation under CR 8, RCW 4.100.040 requires that an actionable claim include "documentary evidence." But the WCPA does not indicate what happens if a court deems the quantum of evidence submitted is insufficient in the first go-around. Presumably, something at least as generous as CR 15 must apply, where leave to amend should be freely given (and particularly here because there is no law on this issue).

Likewise, .060, enumerates extremely specific statutory requirements that a claimant must show by clear and convincing evidence "in order to obtain a judgment in his or her favor" that relate to being actually innocent, and when those requirements are met "the court must order the state to pay the actually innocent claimant the following compensation award." RCW4.100.060(1), (5) (emphasis added). There is no room in this language for other judicially-created hurdles to relief, yet the Court of Appeals in two decisions has held that .080's post-judgment requirements of executing a waiver and release somehow retroactively create a "no prior payment" showing that must be met before judgment can be obtained, contradicting .060.

This new requirement has already defeated the claims of Robert Larson, Tyler Gassman, and Paul Statler; Doris Green and Eugene Town; and Donovan Allen, whose claim is pending in the Court of Appeals.

And the State's aggressive litigation strategies under the Court of Appeals' interpretation of the Act has led to motions concerning the .080 waiver provisions in other cases, even sometimes arguing that .080 can bar a WCPA claim just because of the existence of other tort litigation, even

when no judgment or settlement has been reached. This Court's guidance is necessary to ensure that those exonerated in the future can proceed with clear guidance that will not put them in a "Catch 22" as it concerns assessing their remedies for wrongful conviction.

This Court should grant review to interpret the Act so that both those already exonerated and future exonerees have clear guidance about how an important remedial statute works—including the right time and manner to file a WCPA claim and clarity about whether a wrongfully convicted person's rights under the statute might be compromised by the sequencing of their potential filings. *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).[2]

In so doing, as explained below, this Court should clarify that: (1) claims under the WCPA are special proceedings pursuant to CR81; (2) claimants deemed not to have supplied enough "documentary evidence" at

[2] This Court's decisions concerning whether there is a substantial public interest to review a decision that has become moot are an illustrative analogy here. The Court considers three things: (1) whether the questions are public in nature, including involving constitutional questions and statutory interpretation; (2) 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 of these criterion are satisfied here: the interpretation of the WCPA is public; there is a need for authoritative determination for both public officials and the wrongfully convicted; and the issue is likely to recur (and, in fact, already has).

the pleading stage should be given the liberal opportunity to amend; (3) .060 sets forth the only mandatory criteria for obtaining a judgment under the Act; and (4) 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 Precedent

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

1. The Court of Appeals Ignored the Nature of These Proceedings

Enacted in 2013, the WCPA created an entirely new remedial scheme and cause of action against the State (for both financial and non-monetary compensation) for a certain class of people—the wrongfully convicted. RCW 4.100.020. The Act sets out substantive requirements to be met in order to file an "actionable claim for compensation," including that it be accompanied by "documentary evidence." RCW 4.100.040. At the pleading stage, the State can concede a claim or seek its dismissal, as can the trial court. *Id.* Ultimately, after the pleading stage, "in order to obtain a judgment in his or her favor" a claim of actual innocence must be proved by clear and convincing evidence. RCW 4.100.060(1). Where that threshold is met, "the court must order the state to pay the actually

innocent claimant" a compensation award based upon a mathematical formula. RCW 4.100.060(5) (emphasis added).

Before enacting the WCPA, Washington had no mechanism for compensating the wrongfully convicted; the WCPA was created to fill this gap. RCW 4.100.010. With the WCPA, the legislature recognized that "persons convicted and imprisoned for crimes they did not commit have been uniquely victimized," including the "tremendous injustice by being stripped of their lives and liberty," the pain of imprisonment and further trauma from being "later stigmatized as felons." *Id.*

Moreover, the Act specifically provides accrual rules for people exonerated before the WCPA existed, RCW 4.100.090, and requires the exonerated be provided with notice of the WCPA that might extend the accrual of a claim. RCW 4.100.070(3). No such rules apply to normal tort actions. The Legislature also requires that courts construe the requirements of the WCPA in light of the "difficulties of proof" such as passage of time, destruction of evidence, or impediments not "caused by the parties." RCW 4.100.060. No such statutory requirement exists for typical civil suits.

The Court of Appeals did not consider any of these issues in simply applying *Larson II* to bar Petitioners' appeal and their WCPA claims. This was error that warrants review. This Court should find that—consistent with its remedial purpose and own set of rules—the WCPA is a

"special proceeding" under CR 81. Civil Rule 81 provides that the Civil Rules do not apply where they would be "inconsistent with rules or statutes applicable to special proceedings." This Court has recognized that special proceedings include "those proceedings created or completely transformed by the legislature," as opposed to actions known to the common law." *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn. 2d 974, 982 (2009). Claims under the WCPA easily meet this criteria.

In addition, the WCPA, like all remedial legislation, is to be interpreted in light of its purposes, but there was absolutely no mention of this by the Court of Appeals below. *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870 (2012).

2. The Court of Appeals' Decision Contradicts Basic Rules of Statutory Construction By Simply Inventing Added Requirements to .040 and .060

It is hornbook law that where "'the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.'" *State v. Hirschfelder*, 170 Wn.2d 536, 543 (2010) (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10 (2002)); *see also State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) ("When interpreting a statute, we first look to its plain language."). A court "is 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). Because "[t]he drafting of a statute is a legislative, not a judicial function," *State v. Cromwell*, 157 Wn.2d529, 598, 140 P. 593 (2006) (internal quotes and citations omitted), a court must "resist the temptation to rewrite an unambiguous statute to suit its notions of what is good public policy." *State v. Cromwell*, 157 Wn.2d529, 598, 140 P. 593 (2006) (internal quotes and citations omitted); *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.").

Here, the WCPA sets forth what must be alleged at pleading under .040, requiring claimants to address the timeliness of the claim and their actual innocence. There is no basis in .040 for dismissing a claim if some prior payment has been made, regardless of the amount, to a claimant in another tort suit. *See* RCW 4.100.040.

Likewise, .060 provides that in "order to obtain a judgment in his or her favor," the claimant must show by clear and convincing evidence, essentially, that they are actually innocent, are not seeking compensation for another offense, and did not bring about the prosecution themselves or suborn perjury. RCW 4.100.060(1). That being the case:

> 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 . . .

RCW 4.100.060(5) (emphasis added).

As the plain text of .040 and .060 makes clear, there is no "condition precedent" in the WCPA requiring "no prior payment" or anything to that effect. Instead, by the plain language of .060, a claimant need only show they are innocent within the meaning of the statue in order to prevail and create a mandatory duty of the Court to order the State to pay compensation. As with *Larson II*, the Court of Appeals' decision here contradicts this Court's established, binding precedent and rewrites the statute in contravention of the separation of powers. Review is warranted to correct these serious errors.

3. The Court of Appeals Interpretation of the Post-Judgment Provision, .080, Contradicts This Court's Decisions

The WCPA works in a straightforward, sequential manner. Section .040 governs pleadings, .060 governs adjudication and judgment, and .080 only comes into play after a judgment has been entered and after a court has ordered compensation (as it is required to do under RCW 4.100.060(5) when the conditions are met). The Court of Appeals, however, reasoned that any payment from to Green and Town, no matter the timing and amount, would somehow "violate" .080. This interpretation of the statute contradicts this Court's precedent, demanding review.

The Court of Appeals has focused on 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).

As noted, courts are "required to assume the Legislature meant exactly what it said and apply the statute as written." *Duke*, 133 Wn.2d at 87. In considering that language, there is an established "rule of statutory interpretation that the specific controls over the general." *Young v. Remy*, 149 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 that "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)).

Here, the Court of Appeals reasoned that Green and Town could not make an "effective" legal release required by .080 because they had previously settled another tort suit, a decade before the WCPA was passed. But, there is nothing in .080 that defines an "effective" legal waiver in this manner; the Court invented it in *Larson II*, which was error.

Application of the court-created rule here—to bar Petitioners whose received *less* than they would receive under the WCPA and to find they had "waived" their ability to seek redress (financial and non-financial), based on decisions made a decade before the statute existed, turns this statute on its head.

Indeed, Petitioner's contend that *Larson II* is itself erroneous, the application of *Larson II* here was particularly unfair and contrary to the underlying remedial purpose of the WCPA itself. Green and Town are innocent. They were wrongfully convicted and then exonerated. Had they been exonerated when the WCPA was in effect they would have undoubtedly been able to avail themselves of its non-economic and financial remedies—remedies far greater than the small settlements they received in

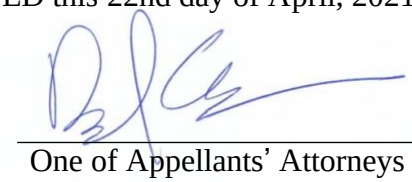
2003. Application of the statute in this manner constitutes an absurd (and profoundly unfair) result, warranting review.

In short, the Court of Appeals decision, applying *Larson II*, erred by adding new requirements for Petitioners under the WCPA to meet that simply are not in the operative language of the statute either at the pleading stage (under .040) or at the adjudication phase (under .060). This Petition presents serious issues of substantial public interest concerning compensation for the wrongfully convicted in light of a recently-enacted remedial statute that has been interpreted in a manner that undermines its remedial purpose, contrary to established law. To do so for Green and Town—who did not even have the opportunity to seek remedies under the WCPA when they were exonerated—is anathema to the statute, and sends the wrong message to other wrongfully convicted individuals in Washington, contrary to the Legislature's finding of their great need. Review is warranted.

VII. CONCLUSION

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

RESPECTFULLY SUBMITTED this 22nd day of April, 2021.



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

DORIS MARIE GREEN, Appellant, v. STATE OF WASHINGTON, Respondent.	)	No. 36805-0-III (consolidated with No. 36806-8-III) UNPUBLISHED OPINION
MERIDITH EUGENE TOWN, Appellant, v. STATE OF WASHINGTON, Respondent.	)	

LAWRENCE-BERREY, J. — In this consolidated appeal, Meredith Town and Doris Green argue the trial court erred by summarily dismissing their claims under the "Wrongly Convicted Persons Act" (WCPA), chapter 4.100 RCW. The trial court dismissed their claims because their complaints failed to attach documentary evidence required under RCW 4.100.040. We affirm on an alternate ground argued below and on

appeal: Because both Town and Green had previously received compensation from Chelan County for their wrongful convictions and imprisonments, RCW 4.100.080 bars them from obtaining compensation under the WCPA.

FACTS

In 1994, Meredith Town pleaded guilty in Chelan County to four counts of felony sex offenses against children. He was sentenced to 20 years of imprisonment. In 2000, the trial court vacated and dismissed Town's convictions based on violations of his state and federal constitutional rights and released him from custody.

In 1995, Doris Green was convicted in Chelan County of three counts of rape of a child in the first degree and one count of molestation of a child in the first degree. She was sentenced to 23.5 years of imprisonment. In 2000, the trial court vacated and dismissed Green's convictions based on violations of her state and federal constitutional rights and released her from custody.

Around 2001, Town and Green filed suit in federal district court against Chelan County, the City of Wenatchee, and numerous other defendants alleging civil rights violations under 42 U.S.C. § 1983. The claims were related to the wrongful convictions detailed above. The claimants settled with the defendants in the federal lawsuit—Town settled for $325,000, and Green settled for $162,500.

In 2013, the Washington Legislature passed the WCPA, with an effective date of July 28, 2013. The WCPA allows persons wrongly convicted before its enactment to commence an action under the statute within three years after its effective date. RCW 4.100.090.

Town filed his WCPA action on July 25, 2016, three days before the filing deadline. Green filed her WCPA action on July 27, 2016, one day before the filing deadline. Neither claimant attached documents to their complaint. Neither claimant served the State within 90 days of filing their complaint. Rather, each served their complaints on May 1, 2017.

In October 2017, The State moved to dismiss both complaints, presumably under CR 56. The motions relied on three separate arguments: (1) the WCPA bars double recovery and each claimant had already been compensated for their wrongful convictions and imprisonment, (2) each complaint lacked the documentary evidence required by RCW 4.100.040(1), and (3) each complaint was time-barred. The State did not note its motion for hearing and so it languished for some time.

In February 2018, the claimants responded with the following arguments: (1) the WCPA applies prospectively so it does not bar recovery where a claimant had, before its enactment, received compensation for a wrongful conviction, (2) the complaint, verified

by the claimant, is itself documentary evidence that complies with RCW 4.100.040(1), and (3) responsive declarations raised a question of fact whether Town was disabled beginning in December 2008 and whether Green was disabled beginning in June 2013—thus tolling the period to commence their actions.

The State ultimately noted its dismissal motion for hearing for March 13, 2019. During argument, the claimants asked the court to take judicial notice of documents contained in their Chelan County criminal cases but failing that, they requested a 90-day continuance to supplement the record with those documents.

The trial court took the matter under advisement and later issued a written ruling. In its ruling, the court granted the State's motion to dismiss and determined it needed to address only one of the State's three bases for dismissal. The court determined that the complaints must be dismissed because they failed to attach documentary evidence as required by RCW 4.100.040(1). In its formal dismissal orders, the court additionally concluded the defective complaints were not actionable, and the time to file an actionable complaint had expired on July 28, 2016.

The claimants appealed.

ANALYSIS

The claimants argue the trial court erred by dismissing their complaints because they sufficiently complied with RCW 4.100.040(1) or, alternatively, the court erred by not allowing them to amend their complaints. The trouble with their alternative argument is neither claimant requested an opportunity to amend their complaint.

The State responds that the trial court correctly interpreted RCW 4.100.040(1) and, alternatively, this court can affirm on either of the two additional bases raised below. In their reply briefs, the claimants respond to the State's alternative arguments.

We can affirm a trial court's summary judgment ruling on any basis properly presented and developed below and briefed by the parties on appeal. *Braaten v. Saberhagen Holdings*, 137 Wn. App. 32, 40, 151 P.3d 1010 (2007), *overruled on other grounds by* 165 Wn.2d 373, 198 P.3d 493 (2008); RAP 12.1. The clearest basis for affirming is discussed in *Larson v. State*, 9 Wn. App. 2d 730, 743, 447 P.3d 168 (2019), *review denied*, 194 Wn.2d 1019, 455 P.3d 125 (2020), and is premised on RCW 4.100.080(1). That subsection prevents a person who has been compensated for a claim of wrongful conviction and imprisonment from later receiving compensation under the WCPA.

Larson v. State

In 2014, Larson and two other men filed an action against the State under the WCPA. *Id.* at 732-34. At the conclusion of the 2015 bench trial, the court determined that the plaintiffs had not met their burden of proof and entered judgment in favor of the State. *Id.* at 734. The plaintiffs appealed. *Id.*

While the appeal was pending, the plaintiffs filed an action in federal district court against Spokane County and two of its law enforcement officers. *Id.* In that action, the plaintiffs sought compensation under 42 U.S.C. § 1983 for their wrongful convictions and imprisonments. *Id.*

In 2016, we reversed and remanded with directions for the trial court to reconsider the required element of actual innocence. *Id.* In 2017, the trial court concluded that the plaintiffs were entitled to recover and determined the recoverable amounts. *Id.* at 734-35. A few months later, the plaintiffs asked the court to enter judgment. *Id.* at 735. The State opposed the motion, having recently learned that the claimants had settled their federal claims for $2.5 million. *Id.* The trial court entered judgment but noted that the State could move to vacate the judgment if it provided evidence the plaintiffs had received compensation for their federal claims. *Id.* at 735-36.

The plaintiffs later received compensation for their federal claims and the State filed a motion to vacate the state court judgment. *Id.* at 736. The trial court granted the State's motion, vacated the judgment, and the plaintiffs appealed. *Id.*

In affirming, we quoted RCW 4.100.080(1). The most pertinent part of the subsection reads:

> 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, and political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment. . . . *The claimant must execute a legal release prior to the payment of any compensation under this chapter*. . . .

RCW 4.100.080(1) (emphasis added).

After analyzing the various provisions of the section, we concluded: "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." *Larson*, 9 Wn. App. 2d at 743. We concluded the trial court acted properly in vacating the plaintiffs' judgments. *Id.* at 745.

Here, both claimants received compensation from Chelan County and the city of Wenatchee in their federal district court action. As in *Larson*, their receipt of such

compensation prevents them from providing an effective waiver and legal release of their claims, a condition precedent for receiving compensation under the WCPA. Under this basis, we affirm the trial court's summary dismissal.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, J.

WE CONCUR:

Pennell, C.J.

Siddoway, J.

Chapter Listing

Chapter 4.100 RCW

WRONGLY CONVICTED PERSONS

Sections

RCW 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.

[2013 c 175 § 1.]

RCW 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.

[2013 c 175 § 2.]

RCW 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.

[2013 c 175 § 3.]

RCW 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 or suborn perjury, 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.

[**2013 c 175 § 4**.]

RCW 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.

[**2013 c 175 § 5**.]

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;

(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.

[**2013 c 175 § 6**.]

RCW 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.

[**2013 c 175 § 7**.]

RCW 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.

[**2013 c 175 § 8**.]

RCW 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.

[**2013 c 175 § 9**.]

CERTIFICATE OF SERVICE

I certify that, on April 22, 2021, I caused a true and correct copy of the foregoing to be served on the following via electronic delivery.

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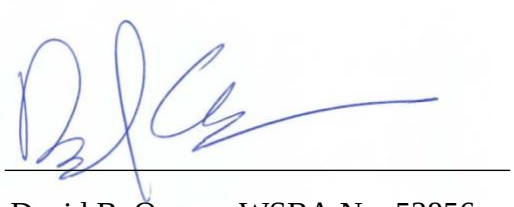
DATED this 22nd day of April, 2021.



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