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STATE OF WASHINGTON
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No. 95319-8

IN THE SUPREME COURT OF WASHINGTON

(Thurston County Superior Court No. 16-2-02530-34)

IN THE MATTER OF THE WRONGFUL CONVICTION OF
TED LOUIS BRADFORD,

Appellant,

v.

STATE OF WASHINGTON

Respondent.

APPELLANT'S REPLY BRIEF

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REPLY

The State misapplies the plain language of the WCPA to the question presented in this appeal.¹ The State repeatedly complains that Mr. Bradford focuses on “a single sentence” in RCW 4.100.080(1). Resp.Br. 1, 8-9, 12. The reason for that focus is that the question presented in this appeal is whether Mr. Bradford’s proposed release (CP 367) complies with the release provision in the statute. That provision is a single sentence, and it *does not require* claimants to release their claims against agents and employees of the State’s political subdivisions. Instead, all it requires is a legal release, and Mr. Bradford submitted a legal release in the trial court and agreed that he would execute it. CP 236-37, 359, 367.

The State also claims that Mr. Bradford’s focus on the controlling portion of the statute “is contrary to well-settled law regarding the rules of statutory construction that require statutes to be read as a whole.” Resp.Br. 9. Mr. Bradford has always agreed that the statutory text should be interpreted as a whole and in context, but that interpretive analysis does not support the State’s argument. To the contrary, as the discussion below confirms, the State’s argument improperly adds words to the statute, ignores

¹ This reply uses the same abbreviations as Mr. Bradford’s previous brief. In addition, “Resp.Br.” refers to the State’s response brief and “Op.Br.” refers to Mr. Bradford’s opening brief.

critical differences between related provisions, contradicts the stated legislative intent of the statute, overlooks applicable canons of construction, and misapplies legislative history.

The State starts its interpretive analysis with the legislative intent portion of the statute. As the State notes, “RCW 4.100.080(1) begins with a clear and unambiguous statement of legislative intent: ‘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.’” Resp.Br. 6-7 (quoting RCW 4.100.080(1)) (emphasis in original). The State emphasizes the italicized text, but it ignores – or omits (Resp.Br. 19) – the text that follows, which limits this exclusivity statement to remedies “against the state or any political subdivision of the state.” RCW 4.100.080(1).

Mr. Bradford’s interpretation of the release provision in RCW 4.100.080(1) is consistent with this statement of legislative intent and the State’s is not. Mr. Bradford’s proposed release (CP 367) includes the state and its political subdivisions just as the statement of legislative intent indicates.² The State’s proposed release, in contrast, includes claims against

² The State wrongly asserts that including political subdivisions is somehow a tacit admission or “flaw” in Mr. Bradford’s argument. Resp.Br. 15. As discussed in the text above, this approach is prompted by the legislative intent portion of the statute, which likewise includes political subdivisions of the State.

the State and its political subdivisions and *also* their agents and employees. CP 372-73. For the State's proposed release to be consistent with the statement of legislative intent, the statute must be revised to read: "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 *and their officers, employees, agents, and volunteers.*" The Washington Legislature did not include the italicized text, and the Court should not add it. *See, e.g., State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003) ("We cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.").

Next, the State points to the reimbursement provision in RCW 4.100.080(1), which states that "[i]f 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." Resp.Br. 7-8 (quoting RCW 4.100.080(1)). Far from supporting the State's argument, the reimbursement provision requires claimants to reimburse the State if they successfully pursue a § 1983 claim

in federal court *in addition to* a compensation claim under the WCPA – as Mr. Bradford is attempting to do. Mr. Bradford has appropriately included a reimbursement requirement in his proposed release (CP 367), which benefits the State if he recovers damages in federal court and eliminates any concern that Mr. Bradford will recover the same damages twice.

The State’s reliance on the waiver provision in RCW 4.100.080(1) (Resp.Br. 9-10, 15-16) is equally misplaced. The waiver provision states:

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.

RCW 4.100.080(1) (emphasis added). This provision shows that the Washington Legislature knew how to reference “officers, employees, agents, and volunteers” of the State and its political subdivisions. But as noted previously, the legislature *did not include such language or anything like it* in the portion of the statute that addresses the required release. Thus, interpreting the release provision *in context* and considering the statute *as a*

whole, the legislature's omission of this same language in the release provision is fatal to the State's argument.

The State's reliance on the waiver provision also reveals another flaw in its analysis. The State repeatedly argues that claimants must "tender a legal release acknowledging and documenting his acceptance of this waiver," "tender a release acknowledging waiver," and release claims against "the entities and individuals identified in the waiver portion of the statute." Resp.Br. 1, 2, 16. The State has this issue backwards. If claimants are deemed to waive their claims against agents and employees of the State's political subdivisions by making a request for relief under the WCPA as the State argues, then there is no reason to release those same claims prior to payment of compensation. The State's argument not only improperly adds words to the release provision in the statute, those words are duplicative and unnecessary.

Having exhausted the language of the statute, the State turns to its legislative history. The State recognizes, as it must, that legislative history is relevant only if the Court finds "ambiguity in the statute's language." Resp.Br. 10. In urging the Court to consider legislative history, the State skips a step. If the Court concludes that the WCPA is ambiguous or unclear, then "it is appropriate to resort to *canons of construction* and legislative history." *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 170, 385 P.3d

769 (2016) (emphasis added). The State ignores these canons of construction, which further undermine its interpretative analysis.

One such canon of construction is that the WCPA – because it is a remedial statute – must be “liberally construed to suppress the evil and advance the remedy.” *Larson v. State*, 194 Wn. App. 722, 735, 375 P.3d 1096 (2016) (citing RCW 4.100.010) (internal quotation marks and citation omitted). Here, the remedy to be advanced is compensating wrongly convicted individuals – as RCW 4.100.010 mandates – and the evil to be suppressed is the wrongful conviction of those individuals. The State’s interpretation of the release provision in the statute advances the evil and suppresses the remedy by requiring Mr. Bradford to waive his claims against the culpable tortfeasor – thus immunizing unlawful conduct – in order to receive compensation under the WCPA. This canon of construction is fatal to the State’s argument.

Moreover, because Mr. Bradford’s claim against Detective Scherschligt is asserted under *federal* law (including the Due Process Clause of the United States Constitution), another canon of construction that is relevant here is the “duty to construe statutes so as to avoid constitutional infirmities.” *State v. Robinson*, 153 Wn.2d 689, 703, 107 P.3d 90 (2005). Addressing this issue, the State claims that its interpretation of the release provision in RCW 4.100.080(1) “does not present any federalism issues”

because the WCPA does not *require* claimants to seek compensation under the Act. Resp.Br. 16. This argument misses the mark: the federalism issue exists because the State is attempting to force Mr. Bradford to release his federal claims against Detective Scherschligt as a precondition to payment of compensation under the WCPA even though the release provision (as discussed above) includes no such requirement. Given the gravity of Detective Scherschligt’s conduct and the compensatory and deterrent purposes of § 1983 (*see* Op.Br. 17), the Court should avoid any interpretation that could potentially immunize unconstitutional conduct. For that additional reason, the State’s proposed interpretation of the release provision in RCW 4.100.080(1) should be rejected.

If the Court nevertheless considers legislative history – despite contrary case law³ – the legislative history referenced in the State’s brief does not alter the above analysis. According to the State, the Final Bill Report indicates that in order to receive a compensation award a claimant “must execute a legal release waiving any other existing remedies.” Resp.Br. 11. But as explained on pages 1 and 4-5 above, *no such language* can be found in the release provision of the statute. The other portion of the

³ *See, e.g., O.S.T. ex rel. G.T. v. BlueShield*, 181 Wn.2d 691, 699, 335 P.3d 416 (2014) (“Because the statutory language is unambiguous, we find it unnecessary to inquire into legislative history.”); *Leisnoi, Inc. v. Stratman*, 154 F.3d 1062, 1070 (9th Cir. 1998) (“use of legislative history as a tool for statutory interpretation suffers from a host of infirmities” because it is not written or scrutinized “with the same care ... as statutory language.”).

legislative history cited by the State is the Senate Bill Report’s reference to “exclusive remedy,” which the State indicates “is contained in RCW 4.100.080(1).” Resp.Br. 11. As explained on pages 2-3 above, that exclusivity statement is expressly limited to remedies against “the state or any political subdivision of the state.” RCW 4.100.080(1). It therefore does not support the State’s argument that the release provision in RCW 4.100.080(1) should be interpreted to require claimants to release their claims against agents and employees of the State’s political subdivisions.⁴

For similar reasons, the State’s attempt to distinguish *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 406 P.3d 1149 (2017), easily fails. The Court held in *Wright*, as many other courts have similarly held, that when the Washington legislature knows how to address an issue, does so in a related section of a statute, and does not do so in the pertinent section of a statute, such “[o]missions are deemed to be exclusions.” *Id.* at 727. The State argues that *Wright* does not apply here because “the State is not suggesting that any

⁴ Moreover, to the extent that the WCPA provides an exclusive remedy, it does not do so here. If the waiver provision in the statute is valid (an issue that this Court need not decide), then claimants like Mr. Bradford are deemed to waive their federal claims against agents and employees of the State’s political subdivisions merely by *making a request for relief* under the WCPA (regardless of whether that request is successful). Here, that would include Mr. Bradford’s federal claims against Detective Scherschligt. But as Mr. Bradford explained (Op.Br. 11 n.2), Detective Scherschligt made a strategic choice to waive that protection so that he could obtain a needed continuance in the federal lawsuit, as evidenced by the parties’ stipulated motion in federal court (CP 328-30, 336-37). Thus, while the WCPA may provide an exclusive remedy for other claimants, it is not an exclusive remedy for Mr. Bradford because of Detective Scherschligt’s binding stipulation in federal court.

language be added to RCW 4.100.080(1).” Resp.Br. 14. That purported distinction says nothing about the Court’s holding in *Wright* – relevant here – that omissions are deemed to be exclusions. Moreover, as explained on pages 1 and 3 above, the State is effectively asking the Court to add language to the release and legislative intent provisions of RCW 4.100.080(1) that the Washington Legislature omitted. Under *Wright*, that omission is dispositive.

Division Two’s recent opinion in *Matter of Martinez*, ___ Wn. App. ___, 413 P.3d 1043 (2018), is similarly on point. A central issue in *Martinez* was whether the Indeterminate Sentence Review Board (“ISRB”) was statutorily authorized to require an offender to remain outside a geographic area as a condition of community custody. The Court of Appeals recognized that the legislature had expressly authorized such orders in former RCW 9.94A.704(3)(a), which governs the authority of *trial courts*, but had not included comparable language in former RCW 9.94A.704(3)(b), which governs the authority of the ISRB. *Id.* at 1047. After considering these “related statutory provisions,” the Court of Appeals rejected the ISRB’s argument that it had such authority because its proposed interpretation of RCW 9.94A.704(3)(b) would require the Court to “add words to that statute.” *Id.*

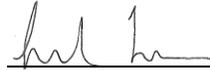
Here, similar to the State's erroneous argument in *Martinez*, the State is asking the Court to ignore a fundamental *difference* between the waiver and release provisions of RCW 4.100.080(1) – the waiver provision includes agents and employees of the State's political subdivisions and the release provision does not – and add language to the release provision that the Washington Legislature *did not* include. Such an approach is inconsistent with *Wright, Martinez*, and dozens of similar cases interpreting the plain language of a statute. When the relevant provisions of the WCPA are interpreted as a whole and in context, the release provision *does not* require claimants to release their claims against agents and employees of the State's political subdivisions as a precondition to payment. Instead, it merely requires a legal release, and Mr. Bradford has agreed to tender such a release. CP 236-37, 359, 367. Neither the plain language of the statute nor applicable case law permits the State to require anything further.

In sum, the release provision in the WCPA is clear: it states that “[t]he claimant must execute a legal release prior to the payment of any compensation under this chapter.” RCW 4.100.080(1). Mr. Bradford tendered such a release and agreed that he would sign it. Because that is all that the WCPA requires, the Court should direct the trial court to enter judgment in Mr. Bradford's favor on remand so that he can promptly obtain

compensation in accordance with the plain language and stated intent of the statute.

DATED: May 2, 2018

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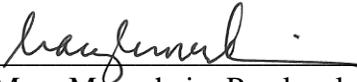
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SIGNED in Seattle, Washington this 2nd day of May, 2018.

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