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IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

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

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON,

Defendant/Respondent.

APPELLANTS' OPENING BRIEF

Attorneys for Plaintiffs/Appellants

Toby J. Marshall, WSBA #32726	Matthew J. Zuchetto, WSBA #33404
Email: tmarshall@terrellmarshall.com	Zuchetto Law
936 North 34th Street, Suite 300	Email: zuchettolaw@gmail.com
TERRELL MARSHALL	505 W Riverside Ave, Suite 500
LAW GROUP PLLC	Spokane, Washington 99201
Seattle, Washington 98103-8869	Telephone: (509) 723-9896
Telephone: (206) 816-6603	
Facsimile: (206) 350-3528	

David B. Owens*
Email: david@loevy.com
LOEVY & LOEVY
311 N. Aberdeen Street, 3FL
Chicago, IL 60647
**Motion for Admission Pro Hac
Vice Pending*

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I. INTRODUCTION

In 2009, Robert Larson, Tyler Gassman, and Paul Statler were wrongly convicted of a crime they did not commit. Their unspeakable nightmare lasted for more than four years before the criminal court vacated their convictions and ordered new trials based on new exculpatory evidence. The State subsequently dismissed all charges.

Larson, Gassman, and Statler brought claims under the Wrongly Convicted Persons Act (“WCPA” or “Act”), chapter 4.100 RCW. Enacted in 2013, the Act is a remedial statute that allows exonerated individuals to obtain limited relief for the injustice of being wrongfully stripped of their liberty.

This is Appellants’ second time before this Court for their claims under the Act. In the initial appeal, following the first-ever bench trial conducted under the Act, this Court held that the trial court had applied the wrong legal standard. On remand, the trial court properly recognized that the evidence showed Larson, Gassman, and Statler were actually innocent, found that they were Wrongfully Convicted Persons, and ordered relief.

While the appeal was pending, having initially failed on their compensation claim, Appellants filed a separate action under 42 U.S.C. § 1983. In their § 1983 action, Appellants alleged their constitutional rights were violated in the course of their criminal prosecutions. The State was not a party to that action, which settled short of trial.

When the trial court was apprised of the settlement, it properly recognized that neither the existence nor settlement of the § 1983 action,

were impediments to the entry of judgment under the Act, which was entered in Appellants favor.

When Larson, Gassman, and Statler sought to enforce the judgment to obtain the limited financial compensation that had been ordered, the trial court denied their request. The court also took the drastic step of vacating a portion of the judgment, on the basis that Appellants had received compensation on their § 1983 settlement. These decisions were erroneous.

This appeal is narrow, and centers upon statutory interpretation. The core issue is whether Section 8 of the Act, RCW 4.100.080(1), was improperly interpreted and effectively rewritten to preclude compensation to otherwise deserving wrongfully convicted men due to them having previously been paid in an independent and substantively different suit.

Interpretation of RCW 4.100.080(1) is an issue of first impression. Thus, while narrow, this appeal is extremely important, both for Appellants and other wrongfully convicted individuals in Washington. The Act is a remedial statute designed to redress an awful harm. Nonetheless, the court below adopted (at the State's suggestion) a view of the statute that limits recovery beyond the statutory text and therefore undermines the core goal of the Act—providing remedies to the wrongfully convicted.

Doing so was erroneous. The trial court erred by holding that the mere existence of compensation on a prior settlement meant Appellants could not obtain their compensation under the Act. The Act has provisions

concerning “waiver,” which are specific and entirely prospective: once a claimant obtains a favorable judgment, compensation is contingent upon a claimant executing a release to obtain payment. The Act also has language about what happens after a legal release has been signed. All of this text address a prospective payments *after* signing a release; there are no provisions requiring or addressing a waiver *before* such a release is signed. This operative, prospective language should control interpretation of Section 8, and the trial court erred by relying on general statements of “intent” while ignoring specific statutory text.

Moreover, should this Court find the statute is “ambiguous,” the trial court still erred. Basic canons of statutory interpretation indicate that it was error for the trial court to ignore the specific language of the statute and to supplement and rewrite the language of this remedial statute to deprive three wrongfully convicted men of compensation.

Accordingly, Larson, Gassman, and Statler respectfully ask this Court to reverse the decision of the trial court and remand with instructions to reenter its judgment of compensation in their favor.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in denying Larson, Gassman, and Statler’s motion to enforce their judgment of compensation.

2. The trial court erred in vacating the final judgment of compensation to Larson, Gassman, and Statler when it misinterpreted and misapplied the Wrongly Convicted Persons Act, RCW 4.100 *et seq.*

3. The trial court erred in vacating the final judgment under Civil Rule 60 because there were no unexpected events or “irregularities” that justified such extraordinary relief.

B. Issues Pertaining to Assignments of Error

1. Is the plain language of the RCW 4.100.080(1) unambiguous with respect to its language about waiver, which requires claimants execute a limited release as a condition of obtaining payment? Yes. (Assignment of Error 1, 2)

2. Does any waiver described in RCW 4.100.080(1), which is operational when relief of a payment has been requested and a “legal release” has been executed, extend to situations where claimants have never been presented with or executed a “legal release”? No. (Assignment of Error 1, 2.)

3. Does the waiver described in RCW 4.100.080(1), which is operational when relief of a payment has been requested and a “legal release” has been executed, extend retroactively to situations where claimants have never been presented with or signed a “legal release” instead of prospectively and solely to claimants who have already signed releases? No. (Assignments of Error 1, 2.)

4. If this Court determines that the language of RCW 4.100.080(1) is ambiguous, should the statute be interpreted to deny wrongfully convicted persons a remedy when doing so would contradict the remedial purpose of the statute, ignore the specific language of the statute, and raise constitutional concerns? No. (Assignments of Error 1, 2).

5. Can a trial court vacate a judgment under Civil Rule 60(b) where there were no unexpected or unforeseen changes or circumstances that would justify such extraordinary relief? No. (Assignment of Error 3.)

III. STATEMENT OF THE CASE

A. Statement of Facts & Procedural History

1. Prior Proceedings and Initial WCPA Appeal

In 2008, a series of robberies—often called “drug rip” robberies—of individuals known or suspected to be involved in illegal drug dealing took place in Spokane. CP at 10.¹ The robberies bore similar characteristics including the time of day, the use of force, the number of perpetrators, the use of a shotgun by one of the perpetrators, the clothing they wore, and the presence of a red pick-up truck as a getaway car. *Id.*

The details of the Spokane officers’ conduct in the investigation, and their decision to focus on Appellants, were previously described by this Court in *Larson v. State*, 194 Wn. App. 722, 375 P.3d 1096 (2016).

¹ CP refers to the Clerk’s Papers on appeal; RP refers to the Record of Proceedings, of which there is only one volume for this appeal.

These details were also addressed in the findings of fact by the trial court. CP at 3, 8.

Ultimately, the State prosecuted Robert Larson, Tyler Gassman, and Paul Statler for two of the “drug2 rip” robberies. *Id.* at 14. They were each acquitted of one of them. *Id.* at 20. However, they were each wrongfully convicted of the second. *Id.* at 14. Robert Larson was sentenced to 20 years in prison. *Id.* Tyler Gassman was sentence to 25.75 years in prison. *Id.* at 15. And Paul Statler was sentenced to 41.5 years in prison. *Id.*

In 2012, the Innocence Project Northwest and its cooperating counsel brought a Criminal Rule 7.8 motion for relief from the judgment, which was granted on the basis of significant new exculpatory information. *Id.* at 15-16. A new trial was ordered, but the State ultimately dismissed all charges without retrial. *Id.* at 23.

In the end, Larson, Gassman, and Statler had each spent over four years imprisoned for a crime they did not commit. *Id.* at 14-15.

Larson, Gassman, and Statler sought relief under Washington’s new Wrongly Convicted Persons Act, which requires claimants affirmatively prove their innocence by clear and convincing evidence. The State refused to concede that Appellants were entitled to relief, prolonging the quest for justice and vindication Larson, Gassman, and Statler had been fighting for since 2008.

Appellants' WCPA claims proceeded to trial in January of 2015. *Id.* at 8. On February 12, 2015, the trial court dismissed the claims, finding Appellants had not met their burden under the Act. *Id.* at 9.

After having lost before the trial court, Larson, Gassman, and Statler filed a civil-rights action pursuant to 42 U.S.C. § 1983 in the Eastern District of Washington in December of 2015. *Statler v. Spokane County*, No. 2:15-CV-0332 (E.D. Wash.) (Rice, J.); *see also* CP at 59 & n.1. Unlike their no-fault claim under the WCPA, which was against the State and required Plaintiffs to prove that they were wrongfully convicted and actually innocent, the claims in the federal suit involved Spokane County and investigating officers and alleged that Larson, Gassman, and Statler's constitutional rights had been violated during the course of their criminal prosecution. *Id.* at 46.

On June 28, 2016, this Court reversed, holding that Appellants had proven all but one element of their claims and remanding the case to the lower court to determine whether Appellants had proved they were "actually innocent" under the correct legal standard. *Larson v. State*, 194 Wn. App. 722, 743, 375 P.3d 1096, 1107 (2016); *cf.* CR at 1. In so doing, this Court rejected a narrow construction of the Act and interpreted it in light of its remedial nature, reading it broadly in a manner designed to assist, rather than burden, the wrongfully convicted. *Larson*, 194 Wn. App. at 735-36; *see also id.* at 725 ("We interpret the fourth WCPA element (significant new exculpatory information) liberally, to reflect the

remedial purpose of the legislation, so a wrongly convicted person may more readily receive statutory compensation.”).

2. Post-Remand Proceedings

On remand, applying the correct legal standard, the trial court proceeded to find that Appellants were actually innocent; that they were wrongfully convicted; and that they were “entitled to judgment in their favor.” CR at 5. The trial court then entered an order requiring the State to pay compensation to each Appellant for his years of wrongful incarceration. *Id.* at 5, 22-25. The trial court also addressed the issue of child support, and ultimately ordered back payments on behalf of Mr. Larson. *Id.* at 24. The trial court also entered an order for attorney fees and costs as well as an order “sealing plaintiff’s records as they have been found to have been wrongly convicted.” *Id.* at 6; *see also id.* at 25.

The trial court’s order, which found that Appellants were entitled to entry of judgment in their favor, was entered on May 12, 2017. *Id.* at 28. The State did not appeal.

After the time for the State to appeal had lapsed, Larson, Gassman, and Statler filed a motion for entry of judgment. *Id.* at 29-30; *see also id.* at 40-44 (Plaintiffs’ proposed Order and judgment).

In the meantime, Appellants also settled their independent § 1983 suit, but did not immediately receive payment. *Id.* at 46.

The State responded to the motion for entry of judgment by seeking a stay, and filed a separate opposition to the motion. *Id.* at 45-48.² In its papers, while noting it was not a party to the § 1983 suit, the State argued that RCW 4.100.080 precluded the court from entering the judgment in Appellants' favor on the basis that the §1983 suit had settled and that Plaintiffs were bound by some sort of "election of remedies" concept. *Id.* at 45-48, 50.

In reply, Appellants argued that RCW 4.100.060 entitles successful litigants to entry of judgment in their favor. *Id.* at 66. They also pointed out that RCW 4.100.080 could not apply to prevent entry of a judgment because, among other things, that provision does not reference "judgments," *id.*, and they had never executed a legal release related to any compensation under the WCPA. *Id.* Plaintiffs also pointed out that the State's argument about election of remedies was inapplicable; the narrow doctrine cannot apply to the WCPA because the WCPA and § 1983 actions are harmonious—they cover different wrongs; the State is not (and cannot be) a party to the § 1983 actions; and they operate differently. *Id.* at 68-73. On the one hand, under the WCPA, claimants seek limited payments by proving their innocence, without regard to the fault of any actor. Instead, the Act reflects the State's moral obligation to provide

² The State's motion to stay is referenced in the record, CR 55, 66 n.2, but is not actually a part of the record before this Court. Appellants can supplement the record if doing so would assist the Court.

some redress (though limited) for the fact that, as the sovereign with the ability to prosecute in the first place, for erroneously convicting the wrong person. *Id.* at 68-72. By contrast, in a § 1983 suit, civil litigants must prove that their constitutional rights are violated, a substantial and weighty form of “fault,” that is “not attributable to the State”. *Id.* at 72.

On July 10, 2017, the trial court—fully aware of the settlement of the § 1983 suit—entered judgment in Appellants’ favor. *Id.* at 72. Indeed, the trial court required Plaintiffs to notify the State fourteen days in advance of seeking any payment from the State for their compensation. *Id.* at 105. The State did not appeal.

On August 18, 2017, after the time for the State to appeal had expired, Appellants filed a motion to direct the clerk to furnish the judgment to the office of risk management (which processes the judgment before the legislature pays the compensation). *Id.* at 106-08. The State opposed the motion, *id.* at 110-12, and further responded with its own motion to vacate the judgment. *Id.* at 137-40. Aside from arguments previously raised, the State argued that because Appellants had received payment for the settlement of the 1983 suit. *Id.*

In response, Appellants explained the circumstances were the same as they were before judgment was entered. Appellants further pointed to the trial court’s ruling at the time it entered judgment. At that juncture, the trial court specifically anticipated release requirement might raise an objection from Larson, Gassman, and Statler about the language in the

release. *Id.* at 161. Specifically, Appellants pointed out that the trial court had already stated:

I assume you will all be back here if the plaintiffs try and enforce that judgment because the statute indicates that the claimant must execute a legal release prior to any payment—prior to the payment of any compensation under this chapter. I assume when it comes time for that, the State is going to ask that a release be signed and the plaintiffs will have some objections to that release.

Id. (emphasis added).

Appellants were not before the trial court objecting to a legal release that the State had asked them to execute. None had ever been provided.

The present appeal concerns the resolution of two motions entered on September 26, 2017. First, the trial court denied Plaintiffs’ motion to direct the clerk of court to furnish the risk management office with the judgment. *Id.* at 204-05. Second, the Court granted the State’s Rule 60 motion, with a written order and an oral ruling. In the order, the court vacated the judgment, on the basis that:

payment of compensation under the Wrongly Convicted Persons Act, RCW 4.100 et Seq., would be contrary to law because RCW 4.100.080(1) provides for an exclusive remedy and plaintiffs have been compensated in federal court by settlement of their tort claims related to their wrongful convictions under 42 U.S.C. 1983.

Id. at 207.

In the ruling, *id.*, the trial court reasoned that there was a difference between “obtaining a judgment versus enforcing a judgment,” and

explained: “the language consistently used in RCW 4.100 relates to being compensated rather than just making other claims.” RP, at 32. The trial court also noted that RCW 4.100 “does not contain [a] provision about plaintiffs proceeding on two fronts simultaneously.” *Id.*

The core of the court’s ruling, which (unlike its prior ruling entering judgment) does not mention signing a legal release when payment is requested, focused solely on the hortatory language at the beginning of RCW 4.100.080(1):

The language of RCW 4.100 specifically indicates the intent of the legislature is that the remedies and compensation provided under the chapter be exclusive. RCW 4.100 allows remedies for wrongs that have occurred by way of, among other things, compensation for losses suffered. These remedies are exclusive to all other remedies against the State or any political subdivision. Exclusive means the remedies under RCW 4.100 are incompatible with other remedies. RCW 4.100 cannot function at the same time as another remedy because they’re not compatible with one another.

Id. at 35.

Appellants timely appealed. CR at 212.

A copy of the trial court’s September 26, 2017, written Order vacating the judgment is attached to this brief as Appendix A. A copy of the trial court’s oral ruling is attached to this brief as Appendix B. A copy of the Act is attached as Appendix C.

IV. ARGUMENT

A. Summary of the Argument

The Wrongly Convicted Persons Act, chapter 4.100 RCW, allows a person who has been wrongly convicted of a felony and imprisoned as a result to bring a claim against the State for certain benefits and limited financial compensation. The Act was designed to provide some measure of no-fault compensation from the State, because the legislature recognized that Washington had fallen far behind other states and the federal government by providing no redress for people who had been wrongfully convicted and imprisoned for crimes they did not commit.

The unambiguous language of the Act requires a claimant who has proven they are actually innocent and were incarcerated for a crime they did not commit must sign a release when they seek payment from the State for their compensation under the Act. Such a release is a condition for obtaining payment, not filing a claim. Recognizing such a release might be declared invalid, the legislature set up a mechanism for dealing with scenarios where a release required under the Act is declared invalid, which further illustrates the narrow and prospective nature of RCW 4.100.080(1).

The trial court, however, completely ignored this specific, operational language. Instead, it relied on a single sentence—one of general intent, not substance—to disregard the process outlined by the statute requiring an executed release to obtain payment of claims going forward. The trial court erred when it ignore the Act's plain, specific

statutory language and resorted to a general statement of intent to drastically expand the statute.

Even assuming the statutory language were ambiguous, the trial court erred in concluding as a matter of law that Larson, Gassman, and Statler are excluded from the Act's coverage because they previously settled a different independent action without ever having signed any sort of legal release, required by RCW 4.100.080(1). Exemptions from remedial legislation are narrowly construed, and the court's conclusion is the exact opposite. The trial court's interpretation of the Act also departs from accepted canons of statutory construction and raises, rather than avoids, constitutional problems.

The trial court appears to have accepted into the State's erroneous and troubling argument that the Act creates an "election of remedies" designed to present "double recovery." The notion of double recovery has no place in consideration of the Act—Mr. Larson, Mr. Gassman, and Mr. Statler have not been made whole, and would not be made whole by settling their § 1983 suit and by getting compensation from the State. This sort of conclusion is at direct odds with the language of statute, the remedial purposes of the Act, and the entire basis for the legislature's creation of statutory benefits for the wrongfully convicted.

And, § 1983 and the WCPA are complementary, not contrary. The primary focus of the Act is on the innocence of wrongly convicted persons rather than the culpability of the individuals or entities whose conduct may or may not have resulted in those wrongful convictions. By contrast,

§ 1983 claims concern violations of the U.S. Constitution, and require proving misconduct of a constitutional magnitude. The fact of underlying constitutional misconduct does nothing to relieve the State of its obligation to compensate the wrongfully convicted, and the regimes work can function well together, as is done in many other states and in federal prosecutions.

Respectfully, because the trial court erred by misinterpreting the WCPA and related state law, its decision should be respectfully reversed.

B. Standards of Review

Statutory interpretations are reviewed de novo. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010).

Conclusions of law are also reviewed de novo. *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010).

The decision to vacate a judgment under Civil Rule 60(b) is reviewed for an abuse of discretion. *Jones v. City of Seattle*, 179 Wn.2d 322, 360, 314 P.3d 380 (2013). “Discretion is abused if it is exercised without tenable grounds or reasons.” *Tamosaitis v. Bechtel Nat., Inc.*, 182 Wn. App. 241, 254, 327 P.3d 1309, 1315 (2014) (citing *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971))

C. The Unambiguous Statutory Language Controls This Appeal

This appeal concerns primarily an issue of statutory construction. It is axiomatic that, to the extent a statute is unambiguous, the language of the statute controls its interpretation and application in particular cases.

This Court looks to the plain language of the statute as “[t]he surest indication of legislative intent.” *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). Accordingly, 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.”).

“Where statutory language is plain and unambiguous, a statute’s meaning must be derived from the wording of the statute itself.” *Wash. State Human Rights Comm’n v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 121, 641 P.2d 163 (1982). Indeed, 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). As the Washington Supreme Court recently explained, “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, 351 P.3d 127 (2015)). Thus, if “the legislature disagrees with [a court’s] plain language interpretation, then it may amend the statute.” *Id.* (citing *Cornelius v. Dep’t of Ecology*, 182 Wn.2d 574, 589-90, 344 P.3d 199 (2015)).

Because “[p]lain language does not require construction,” this Court need not—and should not—consider abstract notions of legislative

intent or other outside sources when interpreting unambiguous statutory language. *State v. Delgado*, 148 Wn.2d 723, 727 (2003) (quoting *State v. Wilson*, 125 Wn.2d 212, 217 (1994)); accord *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003, 1006 (2014). Rather, the Court looks solely to the “text of the statutory provision in question, as well as ‘the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.’” *Ervin*, 169 Wn.2d at 820, 239 P.3d 354 (quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)). Absent ambiguity or a statutory definition, [a court] give[s] the words in a statute their common and ordinary meaning.” *HomeStreet, Inc. v. State, Dep’t of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297, 300 (2009).

Washington Courts define statutory language as “ambiguous if it can be reasonably interpreted in more than one way.” *Vashon Island Comm. for Self-Gov’t v. Washington State Boundary Review Bd.*, 127 Wn.2d 759, 771, 903 P.2d 953 (1995). Though a statute is ambiguous if it is susceptible to two or more reasonable interpretations, courts do not search out for, and are not obliged to discern, “an ambiguity by imagining a variety of alternative interpretations.” *W. Telepage, Inc. v. City of Tacoma Dep’t of Fin.*, 140 Wn.2d 599, 608, 998 P.2d 884, 890 (2000) (quoting *State v. Tili*, 139 Wn.2d 107, 115, 985 P.2d 365 (1999)).

D. The Act Unambiguously Creates a Prospective Waiver via a Legal Release, and the Trial Court Erred by Applying the Act Retrospectively

The WCPA creates a narrow, prospective waiver of remedies by conditioning the payment of compensation on a release of future claims, actions, or proceedings. The trial court erred by ignoring this unambiguous language, vacating the compensation due to Appellants, and applying the statute retrospectively even though the State never presented a release to Larson, Gassman, and Statler.

1. The Language and Structure of the WCPA

With the WCPA, the legislature declared “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.” RCW 4.100.010.

This Court has recognized that the Act “is remedial in nature, and ‘remedial statutes are liberally construed to suppress the evil and advance the remedy.’” *Larson v. State*, 194 Wn. App. 722, 725 (2016) (quoting *Go2net, Inc. v. FreeYellow.com, Inc.*, 158 Wn.2d 247, 253, 143 P.3d 590 (2006), in turn quoting *Kittilson v. Ford*, 23 Wn. App. 402, 407, 944 (1979)). Exemptions to a remedial statute—like that found in RCW 4.100.080—should be narrowly construed. *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870 (2012) (en banc) (explaining that remedial legislation “is given a liberal construction” and that “exemptions from its coverage are narrowly construed and applied only to situations

which are plainly and unmistakably consistent with the terms and spirit of the legislation” (citing *Int’l Ass’n of Fire Fighters, Local 46 v. City of Everett*, 146 Wash.2d 29, 45, 42 P.3d 1265 (2002), and quoting *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 301, 996 P.2d 582 (2000)).

Under the Act, a wrongfully convicted person can file a claim for compensation against the State, RCW 4.100.020, in the superior court where the criminal action arose, RCW 4.100.030. A claim for compensation must be filed within three years after the grant of a pardon, judicial relief, and satisfaction of other conditions necessary to state a claim. RCW 4.100.090.

The Act sets out substantive requirements to be met in order to file an “actionable claim for compensation.” RCW 4.100.040. The claimant must show (1) he was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and he has served all or any part of the sentence; (2) he is not currently incarcerated for any offense; (3) during the period of confinement for which the claimant is seeking compensation, he was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim; (4) the 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; (5) he did not engage in any

illegal conduct alleged in the charging documents; and (6) he did not commit or suborn perjury or fabricate evidence to cause or bring about his convictions. RCW 4.100.040, .060; *Larson*, 194 Wn. App. at 733-34.

The State may concede or oppose a claim. If the State concedes, “the court must award compensation.” RCW 4.100.040(5). However, 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.” RCW 4.100.040(6)(a).

The statute provides various remedies for wrongfully convicted individuals, including compensation for child support payments owed by the claimant that became due while the claimant was wrongfully convicted and are in arrears; and further provides for reimbursement for restitution, assessments, fees, court costs, and other monies paid by the claimant as required as part of the wrongful conviction and sentence. RCW 4.100.060(5)(c)-(d). Successful claimants are entitled to have their record of conviction sealed; and to have a referral to the department of social services for re-entry services including but not limited to counseling, mentoring, life skills training, job skills development, mental health and substance abuse treatment. RCW 4.100.060(9)-(1).

The Act also provides for monetary compensation for the wrongfully convicted. By statute, the funds paid are limited to \$50,000 a year “of actual confinement,” adjusted upward for those spent on death

row, and \$25,000 a year for each year “served on parole, community custody, or as a registered sex offender.” RCW 4.100.060(a)-(b). The monetary compensation provided by the Act may not include any punitive damages. RCW 4.100.060(6).

This appeal centers on interpretation of the waiver language in the statute, RCW 4.100.080(1), which—broken into 5 subparts—provides:

1. It is the intent of the legislature that the remedies and compensation provided under this chapter shall be exclusive to all other remedies at law and in equity against the state or any political subdivision of the state.
2. 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.
3. 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.
4. The claimant must execute a legal release prior to the payment of any compensation under this chapter.
5. 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).

Interpretation of RCW 4.100.080 is a matter of first impression.³

2. The Operative Language of RCW 4.100.080 Provides for a Release of Future Litigation Only

The waiver required by 4.100.080 is prospective and occurs at the time a legal release is executed. In holding otherwise, the trial court erred.

a. The Operative Language in the Act Requires a Waiver Through a Legal Release Obtained at the Time Payment Is Made

As just described, RCW 4.100.080(1) can be divided into five parts. The trial court's ruling centered on the first part, which announces a general legislative intent, and failed to consider the operative language that follows in parts two through five. This operative language provides both that a claimant waives other available monetary remedies by seeking compensation and that such a waiver becomes effective only when the

³ The only other courts to address 4.100.080 are the superior court below in this matter and the federal district court in Appellants' § 1983 suit. *See Larson v. Spokane County*, 2016 WL 5219594 (E.D. Wash. Sept. 20, 2016). Appellants are aware of one other State trial court considering issues related to 4.100.080, *Town v. State*, No. 16-2-00655-2 (Chelan County). That court has heard oral argument, but has yet to issue a ruling.

claimant signs a legal release before payment is received. Put differently, the Act both defines the type of waiver at issue and how it actually works.

Beginning with the second part, the Act states that “[a]s a requirement to making a *request for relief* under this chapter, the claimant waives any and all other remedies.” RCW 4.100.080(1) (emphasis added). The phrase “request for relief” does not appear in the other provisions of the statute, which refer more generally to wrongfully convicted individuals being able to “file a claim for compensation.” RCW 4.100.020(1); *see also id.* 4.100.020 (3) (using the term “claim”); *id.* 4.100.030 (setting out the “procedure for filing of claims”); *id.* 4.100.040 (setting out the requirements necessary to have an “actionable claim” and discussing the requirements a “claimant” must meet).

This fact is significant; merely filing a claim for compensation does not automatically entail some waiver of other rights or claims, which is consistent with the fact that—as Appellants’ experience shows—obtaining relief under the Act is not automatic and claims can be dismissed. *Cf.* RCW 4.100.040(6) (discussing dismissal of WCPA claims). Thus, the legislature did not condition a waiver upon the filing of a *claim*.⁴

⁴ This interpretation is reinforced by the fact that the State can oppose a claim and a claim might be dismissed. It would make little sense, in terms of the goals of the statute and its structure to provide additional remedies

Also in the second part, the Act defines the other remedies that will be waived on execution of a release as inclusive of state, common law, and federal claims for relief, including those under 42 U.S.C. § 1983. *Id.*

The crucial, operative sentence of RCW 4.100.080(1) is found in the fourth part, which provides: “The claimant must *execute a legal release* prior to the *payment* of any compensation under this chapter.” *Id.* (emphasis added). As the trial court recognized when entering judgment initially, this provision makes clear that a waiver is *not* triggered by even the entry of judgment under the Act. Instead, the legislature established that a waiver only becomes effective with the execution of a legal release before payment is made.

This specific and operative language controls here. *See State v. Monroe*, 126 Wn. App. 435 (2005) (explaining that “directory language of a statute governing a specific procedure or circumstance controls over the provisions of statutes of more general application” (citation omitted), *overruled on other grounds by State v. Clarke*, 156 Wn.2d 880, 134 P.3d 188 (2006)); *Johnson v. Cent. Valley Sch. Dist. No. 356*, 97 Wn.2d 419, 428-29, 645 P.2d 1088, 1094 (1982) (noting the rule that “the specific

for the wrongfully convicted, to provide that they give up other possible remedies upon merely filing a claim under the Act that they might eventually lose which would then leave them with nothing.

must control the general”) (citation omitted). The trial court erred by ignoring this language.

The fifth applicable part of RCW 4.100.080(1)—“the reimbursement provisions”—only reinforces that the Act proscribes a limited and exclusively prospective waiver through a legal release executed before payment is made.

The legislature plainly realized that making payment contingent on the execution of a legal release would likely be the subject of contention, and therefore required reimbursement where: (1) the claimant has executed a legal release; (2) the release is held invalid for any reason; (3) the claimant is given compensation under the WCPA; *and* (4) the claimant receives a tort payment related to his or her wrongful conviction and incarceration. *Id.*

These narrow and specific reimbursement provisions reinforce the particular way in which the legislature codified a waiver and any idea of “exclusive remedies” within the Act: there must be a legal release; it must then be held invalid; and there must be a subsequent tort payment “related to his or her wrongful conviction and incarceration.”⁵

⁵ The statute does not define the phrase “related to his or her wrongful conviction and incarceration.”

The legislature could have written 4.100.080 differently, but did not. The expression of these specific procedures and omission of any alternative or broader form of release requires interpreting the plain language to preclude alternative possible forms of waiver or release. *See Schnitzer W., LLC v. City of Puyallup*, No. 94005-3, 2018 WL 2144379, at *7 (Wash. May 10, 2018) (“Under *expressio unius est exclusio alterius*, a canon of statutory construction, to express one thing in a statute implies the exclusion of the other. Omissions are deemed to be exclusions.” (internal citation and quotation marks omitted)); *State v. Beacon*, 415 P.2d 207, 212 (Wn. 2018) (noting that, under “the statutory interpretation rule *expression unis est exclusion alterius*, the legislatures to omit” specific procedures from a statute “must be considered intentional” (citation omitted)); *see, e.g., Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wash. 2d 669, 680, 389 P.3d 476, 481 (2017) (refusing to find that a statute created a cause of action due to its exclusion in the statutory language and the fact that “[w]here a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions.” (internal citations and quotation marks omitted)). The trial court erred by inventing a retrospective and automatic waiver not included in the statute and broader than the operational text.

The language and structure of the operative provisions of RCW 4.100.080(1) provide that any waiver contemplated by the Act happens via a legal release the claimant must sign before the “payment of any compensation.” The statute presumes that such a release could be deemed invalid, which necessitates that any disputes about the scope of any release take place in the future. Put differently, the sole relinquishment of any rights to other claims under the WCPA comes through signing a release upon demanding payment, not some sort of retroactive forfeiture. The Act creates an entirely forward-looking regime centered upon a payment for compensation: before that payment is made, a release must be signed. There is nothing in the statute about settling another suit before a release is signed and then forfeiting the remedy to which a claimant is due.

The trial court did not follow, much less discuss, these provisions. Had it done so, the court would have recognized that RCW 4.100.080(1) was inapplicable under the circumstances because there was no legal release and no legal release had been held invalid. The trial court departed from the specific statutory language to deprive Appellants of payment on the judgment that had been previously entered. This was error.

b. The Broad Statement of Intent In RCW 4.100.080(1) Does Not Control Interpretation of the Act

The trial court reached its decision by focusing on the first part of RCW 4.100.080(1). This was also error.

The initial sentence in RCW 4.100.080(1) is a general, non-operative statement of legislative intent. That statement of intent does not describe, in any detail whatsoever, how the provision works. For at least two reasons, the specific operational language that comes thereafter in RCW 4.100.080(1) should have controlled the analysis.

First, it is well established that broad, hortatory statements of legislative intent do not control when there is unambiguous specific statutory language on point. *See, e.g., Lowe v. Rowe*, 173 Wn. App. 253, 261 (Div. 3 2012) (citing *Bailey v. State*, 147 Wn. App. 251, 262-3 (2008)) (“[I]ntent statements do not control over the express language of an otherwise unambiguous statute.”). Indeed, the “legislature’s codified declaration of intent cannot ‘trump the plain language of the statute.’” *State v. Granath*, 415 P.3d 1179, 1183 (Wn. 2018) (citing *State v. Reis*, 183 Wn.2d 197, 212 (2015)). That fact remains “true even when the codified intent speaks directly to the enacted statute.” *Reis*, 183 Wn.2d at 212. Accordingly, “statements of legislative intent are irrelevant to a court’s analysis when the statutory language is unambiguous.” *Little*

Mountain Estates Tenants Ass’n v. Little Mountain Estates MHC LLC, 169 Wn.2d 265, 270 (2010) (*en banc*); *State v. Granath*, 415 P.3d 1179, 1183 (Wash. 2018) (rejecting State’s public policy argument because “the legislature’s codified declaration of intent cannot ‘trump the plain language of the statute.’” (quoting *Reis*, 183 Wn.2d at 212)).⁶

Here, the trial court erred by relying solely on the first sentence of RCW 4.100.080(1), which sets out a general intent but contains no operational content. The trial court did not mention the written release, the reimbursement provisions, or other specific language of the Act. For the trial court, the notion of a general intent that remedies be “exclusive” meant that regardless of the specific language that followed, the abstract statement of intent must control and control in such a way that a final judgment should be vacated. Indeed, and contrary to its own prior order that contemplated a dispute about the release mentioned in the statute, the trial court interpreted the general statement of intent as having a talismanic effect that trumped the subsequent, specific sentences of RCW 4.100.080(1). But because the first sentence of this section lacks any operative effect, the trial court erred.

⁶ At most, this statement of intent can be used as a “guide in determining the intended effect of the operative sections.” *Reis*, 183 Wn.2d at 212 (quoting *Kilian v. Atkinson*, 147 Wn.2d 16, 23, 50 P.3d 638 (2002)).

Second, an independent line of cases that supports the same result, 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, 831 P.2d 1133 (1992)). Put differently, a “general statutory provision normally yields to a more specific statutory provision.” *W. Plaza, LLC v. Tison*, 184 Wn.2d 702, 712, 364 P.3d 76, 80 (2015) (quoting *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm’n*, 123 Wn.2d 621, 629-30, 869 P.2d 1034 (1994)).

Here, even assuming the general statement of “intent” and “exclusive” remedies were to have *some* effect (which ought not be the case), the general statement lacks any operational impact. The specific language of the Act implements *how* the general intent was implemented. In fact, Section 8 of the Act includes specific language, not found elsewhere in the chapter, including the phrase “request for relief” (as opposed to “claim for compensation.”) Even more specific, the Act provides one—and only one—method for requiring claimants to relinquish other claims: executing a release before obtaining any compensation payment.

In short, the plain and operative language of the Act creates a prospective waiver that becomes effective at the time a claimant signs a

release. That release, as is evident by its timing (after having prevailed on the merits) and by the reimbursement provisions (which are only triggered where an extant release is later deemed invalid), is the sole manner in which the legislature determined to create “exclusive” remedies under the Act. It was error for the trial court to (a) ignore this specific language and (b) go beyond the plain and operative language here.

E. To the Extent the Statutory Language Is Ambiguous, the Trial Court Erred by Interpreting RCW 4.100.080(1)’s Limited Release Broadly

As described above, the operative language of RCW 4.100.080(1) is unambiguous. The statute creates a waiver through a legal release at the time payment is sought. The only possible “ambiguity” in the statute, given its language and structure, comes from trying to give meaning to the general statement of intent, which should not be permitted to control the interpretation of the statute’s clear language.

But even if this Court were to find that RCW 4.100.080 is ambiguous, the trial court still erred by broadly interpreting the Act *against* the specific text; *against* three wrongfully convicted men; and *against* the remedial purpose of the statute.

1. The Trial Court’s Interpretation of RCW 4.100.080(1) Departed From Established Canons of Statutory Interpretation

To the extent the Act is deemed ambiguous, there are a number of established rules that should have caused the trial court to read RCW

4.100.080(1) *narrowly*, rather than so broadly that the statement of intent trumped the specific provisions elsewhere enumerated in the Act.

First, as this Court already found, the statute is remedial in nature, and “remedial statutes are liberally construed to . . . *advance* the remedy.” *Larson*, 194 Wn. App. at 735 (citation omitted, emphasis added); *see also State v. Superior Court of Pierce County*, 104 Wash. 268, 272 (1918). (“It is a rule of construction that statutes providing remedies against either public or private wrongs are to be liberally construed.”). And the “remedy” the WCPA seeks to advance is “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.” *Larson*, 194 Wn. App. at 735 (quoting RCW 4.100.010); *see also id.* at 725 (announcing that this Court interprets the Act “so a wrongly convicted person may more readily receive statutory compensation”).

Rather than interpreting the Act to *advance* the remedy—by, for example, holding that the waiver contemplated in RCW 4.100.080 is confined to the legal release specifically enumerated in the Act—the trial court broadened the waiver provision to *undermine* and to ultimately vacate the remedy.

Second, and related, “[e]xemptions from remedial legislation . . . are narrowly construed and applied only to situations which are plainly and unmistakably consistent with the terms and spirit of the legislation.” *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 301, 996 P.2d 582

(2000); *see also Anfinson*, 174 Wn.2d at 870. The provision relied on by the trial court—RCW 4.100.080(1)—is an exemption from the remedial legislation. The Court should have therefore narrowly construed the language.

Third, as noted above, under the rule of *expression unis est alterius* applies here. *See supra* 26. Under that rule, the trial court should have found that the legislature’s specific, forward looking legal release requirement and the omission of a procedure for retrospectively depriving claimants of compensation due to the existence of a prior, independent settlement precluded it from creating some sort of broader “waiver” or “exclusion” principle like the it generated here.

Fourth, and related to general statutory interpretation principles that apply to unambiguous language, *see supra* 25, to the extent there is a tension within the statute, the more specific language within 4.100.080(1) still controls.⁷ *See Gossage v. State*, 112 Wn. App. 412, 420, 49 P.3d 927, 931 (2002) (“[A] basic rule of statutory construction that when there is a conflict between a statutory provision that treats a subject in a general way and another that treats the same subject in a specific way, the specific

⁷ This is an assumption; there need not be a tension within the statute, even if it were deemed ambiguous. Instead, Reading RCW 4.100.080 to create a one-way release and be limited to its text is consistent with the legislature’s broad statement of intent; by setting forth a specific regime, the legislature described *how* it wanted that general intent specifically implemented.

statute will prevail.” citing *Pannell v. Thompson*, 91 Wn.2d 591, 597, 589 P.2d 1235 (1979)).

In light of these principles, the trial court should have confined the reach of RCW 4.100.080(1) to its specific terms. There is no statutory justification for finding that the legislature intended the general statement that remedies be “exclusive” to forbid—regardless of circumstance and without a claimant having ever signed a release—compensation to the wrongfully convicted. The interpretation adopted by the trial court essentially eliminates the requirement of a release as a contingency of getting payment and as the moment in which a claimant makes whatever sort of waiver is required by the Act. The interpretation adopted by the trial court thus essential reads into the statute a broad, undefined, and absolute exclusivity between WCPA claims and any prior § 1983 claim. This two part rewrite—removing the release requirement, and reading into the statute an absolute exclusivity provision—was erroneous.

2. The Trial Court’s Broad Interpretation of the Waiver Provision Enlarges, Rather than Avoids, Constitutional Problems

Courts employ the canon of constitutional avoidance to limit the application of a statute, where possible, so that “ambiguous statutory language [is] construed to avoid serious constitutional doubts.” *State v. Strong*, 167 Wn. App. 206, 212, 272 P.3d 281, 285 (2012) (citing *Fed. Commc’s Comm’n v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009)); see also *Utter v. Bldg. Indus. Ass’n of Washington*, 182 Wn.2d 398, 434,

341 P.3d 953, 971 (2015) (“We construe statutes to avoid constitutional doubt.” (citing *State v. Robinson*, 153 Wn.2d 689, 693–94, 107 P.3d 90 (2005)). “This interpretive principle of constitutional avoidance mandates that” courts “choose the interpretation” of the statute that resolves constitutional problems. *Utter*, 182 Wn. 2d at 434.

There are at least four constitutional problems with the trial court’s actions here.⁸

First, the trial court essentially rewrote the statute by requiring that a WCPA claimant automatically loses their compensation by the fact of receiving compensation in an independent § 1983 lawsuit. There was no mechanism for this drastic action in the Act, which substantially increases the scope of RCW 4.100.080(1). This is a constitutional problem—“[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). The court below was required to “resist the temptation to rewrite an unambiguous statute to suit its notions of what is good public policy,” but has failed to do so. *Id.*

⁸ In addition, the requirement that a claimant must execute a release of future claims enforcing the federal constitution to seek payment under RCW 4.100.080(1) raises enforceability problems and might be deemed contrary to federal law and the public interest. *See Town of Newton v. Rumery*, 480 U.S. 386 (1987). Under *Rumery*, courts must consider the “unique facts and policy considerations” applicable to each release, but no such release was presented to Appellants. *Lynch v. City of Alhambra*, 880 F.2d 1122, 1127-28 (9th Cir. 1989).

Second, the State of Washington cannot displace enforcement of federal constitutional rights by conditioning waiver of a those rights on obtaining a state benefit. “The doctrine of unconstitutional conditions provides that the government cannot condition the receipt of a government benefit on waiver of a constitutionally protected right.” *In re Dyer*, 175 Wn.2d 186, 203, 283 P.3d 1103, 1111 (2012) (citing *Perry v. Sindermann*, 408 U.S. 593, 597 (1972), and *United States v. Scott*, 450 F.3d 863, 866–67 (9th Cir. 2006)). Indeed, the “unconstitutional conditions’ doctrine limits the government’s ability to exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary.” *Wright v. Washington State Dep’t of Health*, 185 Wn. App. 1049 (2015).⁹

Larson, Statler, and Gassman contend their constitutional rights were violated, including but not limited to their due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, as well as their right to be free from seizure in the absence of probable cause under the Fourth Amendment, *see, e.g., Manuel v. City of Joliet*, 137 S. Ct. 911 (2017). Larson, Statler, and Gassman are entitled to enforce those constitutional rights, *United States v. Grubbs*, 547 U.S. 90, 99 (2006), and

⁹ Appellants do not intend to suggest that providing remedies to the wrongfully convicted is discretionary. Instead, Appellants’ position is that the state has a moral obligation and fundamental duty to provide some measure of relief to the wrongfully convicted. The point, however, is that even if providing limited compensation under the WCPA was deemed “discretionary,” the waiver provision could still create unconstitutional conditions.

the WCPA, on its face, creates an obstacle to doing so. Indeed, it is telling the legislature seems to have anticipated such a release could be extremely problematic and thus created reimbursement provisions that contemplate what follows if and when the executed release is held to be invalid.

These sorts of constitutional issues are avoided by interpreting Larson, Gassman, and Statler to proceed, after having settled their *Brady* and other claims in their § 1983 suit, rather than requiring those claims to have been completely given up.

Third, the unconstitutional conditions doctrine presumes something like an actual waiver (*e.g.*, pursuant to a legal release). What the trial court here did was far broader, and far more troubling from a constitutional perspective because the court eliminated Appellants' compensation without them having ever agreed to release anything. The trial court found that the mere fact of payment elsewhere forfeited the remedy, without participating in a release at all. Put differently, the constitutional problems that might happen in a case with an actual waiver were magnified and worsened by the fact that the trial court below did not give three wrongfully convicted men the compensation to which they were entitled because of the mere fact of compensation in an independent §1983 suit that sought to vindicate and enforce their constitutional rights.

Fourth, and accordingly, the trial court's broad interpretation of RCW 4.100.080, actually magnified the unconstitutional conditions problem that exists on the face of the statute into a due process problem as well. The WCPA creates a procedure for how any waiver of rights might

be worked out: through a legal release executed before payment. The trial court went outside of that procedure and, violating due process, completely denied Larson, Gassman, and Statler their compensation without complying with the provisions in the Act. The Act lacks any specific provision that mandates a prior settlement (particularly one in a separate case against separate defendants) extinguishes or eliminates a claimant's entitlement to compensation.

3. To the Extent the Trial Court Relied on the Election of Remedies Doctrine, Doing So Was Erroneous

It is unclear from the trial court's ruling whether it relied on some sort of "election of remedies" concept in vacating the judgment below. To the extent the trial court did so, it erred.

Election of remedies is "a rule of narrow scope, having the sole purpose of preventing double redress for a single wrong." *Bremerton Central Lions Club, Inc. v. Manke Lumber Co.*, 25 Wn. App. 1, 604 10 P.2d 1325 (Div. 2 1979) (citing *Barber v. Rochester*, 52 Wn.2d 691, 695, 328 P.2d 711 (1958)). The rationale of this doctrine is to prevent a party "from asserting inconsistent positions in order to recover more than the value of the harm suffered." *Bremerton 22 Cent. Lions Club*, 25 Wn. App. at 5; *see also Batcheller, Inc. v. Welden Constr. Co.*, 9 Wn.2d 392, 115 P.2d 696 (1941). ("The rationale for the election of remedies concept is prevention of double recovery for the same wrong. It seeks to prevent a party from asserting inconsistent positions in order to recover more than the value of the harm suffered."). Accordingly, to apply the election of

remedies concepts, the remedies must be repugnant, not merely cumulative. *Labor Hall Assoc. v. Danielsen*, 24 Wn.2d 75, 163 P.2d 167 (1945).

The notion of an “election of remedies” between the WCPA constitutional litigation under 42 U.S.C. § 1983 is anathema to both. For one, the entire purpose of the WCPA was to address the fact that the State of Washington, having fallen behind 27 states (at the time) and the federal government, had absolutely no statute concerning the compensation of the wrongfully convicted. *See* Washington Committee Report, 2013 WA H.B. 1341 (“Along with the federal government, the District of Columbia and 27 states have statutes offering some form of compensation to the wrongly convicted. Washington law does not provide for a civil cause of action specific to compensation for persons wrongly convicted and incarcerated.”); RCW 4.100.010.

The Act creates a no-fault regime for claims, and those claims turn on some showing of innocence, and that the exoneree did not contribute to their own wrongful conviction. *See, e.g.*, 28 U.S.C. § 2513 (federal certificate of innocence statute); CAL. PENAL CODE §§ 4900-4906 (California); 735 ILCS 5/2–702 (Illinois); NY CT. OF CLAIMS ACT § 8-B; WIS. STAT. § 775.05. Like similar statutes around the country, the notion of being compensated due to the fact of being wrongfully convicted is completely separate from, and consistent with, § 1983 litigation against specific police officers and other state-actors.

In this regard, these sorts of statutes are

not designed to compensate a claimant for a tort actually committed by the state, but rather views the state as the most appropriate party to assume liability for an unjust conviction. A criminal prosecution is, after all, brought in the name of the “People of the State,” a conviction is for an act made criminal by state law usually with the imprimatur of a state court, and a convicted person generally is confined in a state correctional facility.

Deborah F. Buckman, *Construction and Application of State Statutes Providing Compensation for Wrongful Conviction and Incarceration*, 53 A.L.R.6th 305 § 2 (2010) (emphasis added).

Indeed, in addition to the fact that the substantive requirements under the act do not say anything about fault, the language of intent makes it clear that the purpose of creating a remedy was to focus on the State of Washington’s recognition of the harm of wrongful conviction and not about any sort of constitutional violation. *See* RCW 4.100.010 (“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.”).

In short, compensation under the WCPA provides a limited remedy for the harm of being wrongfully convicted because the State—the People of Washington—have an obligation to make up in a small measure for the

denial of liberty caused by a criminal prosecution, regardless of the fault of anyone involved.

By contrast, a claim brought under § 1983 is distinct from a claim brought under the Act because § 1983 seeks vindication of *constitutional* rights violations. *See Grubbs*, 547 U.S. at 99 (2006). There is no § 1983 action or federal claim merely for being “actually innocent.” *Cf. Herrera v. Collins*, 506 U.S. 390, 40 (1993) (specifically rejecting the notion of a freestanding federal right or claim based upon actual innocence). Instead, a § 1983 action focuses on the wrong of being wrongfully convicted *on account of* a violation of one’s constitutional rights. *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 306 (1986); *Carey v. Piphus*, 435 U.S. 247, 253, (1978).

There is nothing inconsistent or in tension, at all, with obtaining compensation from the state for being “actually innocent” and seeking relief under §1983 for having one’s constitutional rights violated, especially when the latter claim is brought against defendants other than the State. This is why individuals who have received compensation in other jurisdictions are still eligible to, and frequently do, bring their §1983 claims. *See, e.g., Fields v. Wharrie*, 740 F.3d 1107, 1109 (7th Cir. 2014) (discussing § 1983 suit filed after wrongfully convicted individual had received a certificate of innocence in Illinois); *Restivo v. Hessemann*, 846

F.3d 547 (2d Cir. 2017) (rejecting argument that relief under New York’s wrongful conviction compensation statute precluded limitation of the § 1983 suit); *Jimenez v. City of Chicago*, 732 F.3d 710, 713 (7th Cir. 2013) (affirming \$25mm judgment on basis of a *Brady* violation for wrongfully convicted man who had received state compensation in Illinois); *Rivera v. Guevara*, No. 12-CV-04428, 2018 WL 2183998, at *1 (N.D. Ill. May 11, 2018) (same as *Fields*); *Jones v. Slay*, 61 F. Supp. 3d 806 (E.D. Mo. 2014) (denying summary judgment in a § 1983 suit after a federal prisoner obtained a certificate of innocence under federal law and subsequently filed a § 1983 action); *Gates v. D.C.*, 66 F. Supp. 3d 1, 18 (D.D.C. 2014) (considering § 1983 claims of wrongfully convicted man who had obtained a certificate of innocence under the law of the District of Columbia); *compare Ott v. City of Milwaukee*, 682 F.3d 552, 553 (7th Cir. 2012) (addressing § 1983 claim of Chaunte Ott), *with Dee Hall, State Will Pay \$25,000 to Man Wrongfully Imprisoned for 13 Years*, Wis. State J. (May 18, 2010); *compare Alcox v. The City of Lompox*, et al, No. 17-507 (E.D. Cal.) (§ 1983 suit on behalf of Joel Alcox), *with In re Alcox*, Claim No. 16-ECO-03 (Cal. Victim Compensation Bd., Aug 23. 2017) (granting Joel Alcox \$1.3 m in compensation for being wrongfully convicted), *available at* <https://victims.ca.gov/docs/pc4900/PC-4900-Approved-Alcox.pdf>

Indeed, there is no problem with creating a statute that works to permit the wrongfully convicted to obtain payment before but not after obtaining state compensation, which is precisely the Texas compensation statute has been interpreted. *See State v. Oakley*, 227 S.W.3d 58 (Tex. 2007). In *Oakley*, the Texas Supreme Court, interpreted this provision Texas's statute prohibited a person "who receives compensation" from bringing "any action involving the same subject matter" against any government or governmental unit. TEX. CIV. PRAC. & REM. CODE § 103.153(b). The *Oakley* court found that "this provision explicitly makes sequence important," because by limiting the litigation prohibition "to a person who 'receives' compensation from the State, the Legislature barred other suits only by those who have . . . funds in hand, not those who may be entitled to them in the future." 227 S.W.3d at 63. In reaching this conclusion, based upon the plain language of the statute, *Oakley* rejected the argument that "claimants can obtain duplicative recoveries." *Id.* This Court should do the same.

Providing a no-fault remedy for being "actually innocent" is not repugnant to a § 1983 action, as they address different wrongs; the actions are entirely harmonious, even if cumulative. *See, e.g., Hinman v. Yakima Sch. Dist. No. 7*, 69 Wn. App. 445, 451, 850 P.2d 536, 540 (1993); *Hinman v. Yakima Sch. Dist. No. 7*, 69 Wn. App. 445, 451, 850 P.2d 536, 540 (1993). Mr. Larson, Mr. Gassman, and Mr. Statler have not been adequately compensated for their loss, which even the trial court

recognized. PR 30. The “election of remedies” concept has no application here.¹⁰

4. The Trial Court’s Assumption That Prior Payment In a § 1983 Suit Automatically Forfeited Compensation Under the Act Was Error

There is a further problem, not substantively addressed by the trial court: the Act does not define what sort of claims fall within the ambit of the release or “election” it seems to have presumed falls within the reach of the Act. The statute itself uses the phrase “related to his or her wrongful conviction and incarceration,” but these terms are undefined. RCW 4.100.080(1).

The trial court did not discuss (1) what this language meant, or (2) why it thought that Appellants’ particular civil suit fell within the meaning of the statute. It certainly cannot be the case that the legislature intended any and every possible lawsuit “related to” a wrongful conviction to be

¹⁰ That the State would advance the idea that wrongfully convicted individuals are seeking a “double recovery” between a § 1983 suit and a claim under the Act is extremely troubling. Such an argument implies that there is *no* value to having been wrongfully convicted on the basis of the violation of one’s constitutional rights, or that the malfeasance of local police officers can somehow relieve the State of its duty to do something to redress a serious wrong. For the wrongfully convicted, both matter and they are distinct. The State should concede that the Act does not (and cannot) provide any remedy for the constitutional harms, and should stop seeking to undermine an important mechanism for ensuring that the constitutional rights of innocent citizens, like Appellants, are enforced when violated.

automatically be used to preclude compensation under the Act. Those subject to criminal prosecution and imprisonment might bring a variety of claims “related to” their wrongful conviction. For example, in addition to a *Brady* claim (which focuses on a trial right) or an unreasonable seizure claim under Fourth Amendment claim (*e.g. Manuel*, 137 S. Ct. 911), an individual might bring excessive force claim during the course of the arrest, an excessive force claim during that incarceration, a due process claim concerning deprivations of liberty within the prison, or a claim alleging that the conditions of their confinement violate the Eighth Amendment.

In different ways, any of these claims might be “related to” a wrongful conviction. Presumably, these are the sorts of questions addressed in drafting a legal release, and another reason that the legal release sensibly extends solely to *future* claims not to preclude payment based upon those that have been resolved before payment is sought and a release is signed. The trial court did not address this issue or ambiguity, which was error.

F. The Trial Court Abused Its Discretion by Vacating a Final Judgment Under Rule 60(b) Where No Unexpected Circumstances or other Extraordinary Events Occurred

One of the major procedural problems with the trial court’s disposition of the issues below is that the court vacated part of a final judgment under Rule 60(b).

The trial court did not cite the subpart of Rule 60 it relied upon, but it appears to have been relying upon 60(b)(11).¹¹ Civil Rule 60(b)(11) is “a catch-all provision, intended to serve the ends of justice in extreme, *unexpected* situations.” *In re Det. of Ward*, 125 Wn.App. 374, 379, 104 P.3d 751 (2005) (emphasis added). Relief under Civil Rule 60(b)(11) is limited to “extraordinary circumstances” relating to “irregularities extraneous to the action of the court or questions concerning the regularity of the court’s proceedings.” *In re Marriage of Yearout*, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985).

¹¹ In its motion, the State mentioned CR 60(b)(6) in passing—which allows relief only where it is “no longer equitable that the judgment should have prospective application.” Civil Rule 60(b)(6). It would be untenable to find any inequity here. For one, even the trial court recognized that the compensation provided to Appellants was inadequate. RP at 30. In addition, given the differences between compensation under the Act and constitutional violations, explained above, there is no basis to find a problem with recovery under both the WACPA and § 1983. Finally, to the extent the procedural posture wound up with Appellants settling a § 1983 case that could have hypothetically been part of a legal release under RCW 4.100.080, that is a consequence of the statutory language and the State’s temporarily-successful opposition to Appellants’ claims for compensation.

Here, the trial court abused its discretion by granting the State relief under Rule 60(b) because there were no unexpected situations that occurred after the Court entered the final judgment. Indeed, the trial court had properly found that Larson, Gassman, and Statler were wrongfully convicted and actually innocent. The State did not appeal. Then, Appellants asked the court to enter a final judgment. The State initially moved to stay the motion on the basis that the § 1983 suit had been settled, which was brought to the trial court's attention. The trial court entered judgment, and the State did not appeal. When judgment was entered, the trial court was entirely aware of the settlement in the other suit as well as the State's position about RCW 4.100.080 vis-à-vis the settlement.

Nonetheless, the trial court granted the State an extraordinary remedy by vacating its prior judgment. And the basis for doing so was completely untenable because there was nothing unexpected or irregular that took place in the interim. Appellants' § 1983 settlement was the significant subject of contentious and extensive litigation about whether the judgment should have been entered in the first place. Because CR 60(b)(11) is confined to "extreme, *unexpected* situations," and no such circumstances were present here, the trial court abused its discretion in vacating the final judgment. *Ward*, 125 Wn.App. at 379.

This matter should be remanded to the trial court for the reentry of judgment, which the state should be required to pay after Larson, Gassman, and Statler execute the required releases.

V. CONCLUSION

Chapter 4.100 RCW exists to provide a limited measure of compensation for the horrific tragedy of a wrongful conviction, and the statute must be liberally construed in favor of the persons it was designed to benefit. Robert Larson, Tyler Gassman, and Paul Statler are those very individuals. They spent a combined total of nearly thirteen years in prison for a crime they did not commit. They were exonerated on the basis of significant new exculpatory information, and the State dismissed the charges against them without retrial. Now, they seek the entirety of the redress available from the State, which they fought long and hard to obtain. Because RCW 4.100.080 is entirely prospective, there was no legitimate basis for the trial court's rulings. Accordingly, Larson, Gassman, and Statler respectfully ask this Court to reverse the decision of the trial court and remand for entry of judgment in their favor.

RESPECTFULLY SUBMITTED AND DATED this 29th day of
May, 2018.

TERRELL MARSHALL LAW GROUP
PLLC



By: _____
Toby J. Marshall, WSBA #32726
Email:
tmarshall@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 350-3528

Matthew J. Zuchetto, WSBA #33404
Email: zuchettolaw@gmail.com
505 W Riverside Ave, Suite 500
Spokane, Washington 99201
Telephone: (509) 723-9896
Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I certify that, on May 29, 2018, I caused a true and correct copy of the foregoing to be served on the following via the means indicated:

Richard L. Weber	U.S. Mail, postage prepaid
Email: rickw2@atg.wa.gov	
Melanie Tratnik	Hand Delivered via
Email: melaniet@atg.wa.gov	Messenger Service
ATTORNEY GENERAL OF	Overnight Courier
WASHINGTON OFFICE	Facsimile
Criminal Justice Division	
800 Fifth Avenue, Suite 200	x Electronic Service
Seattle, Washington 98104-3188	

Attorneys for Defendant/Respondent State of Washington

DATED this 29th day of May, 2018.

TERRELL MARSHALL LAW GROUP
PLLC

By: _____



Toby J. Marshall, WSBA #32726
Email: tmarshall@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 350-3528

Attorneys for Plaintiffs/Appellants

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APPENDIX A

FILED

SEP 26 2017

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

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STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

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

Plaintiff,

v.

STATE OF WASHINGTON,

Defendant.

NO. 14-2-00090-6

17905545-04

[PROPOSED] ORDER VACATING
JUDGMENT

[Clerk's Action Required]

THIS MATTER came before the court on September 26, 2017 on an Order to Show Cause issued on September 1, 2017 pursuant to the state's Motion to Vacate Judgment and the Court having reviewed the state's motion to vacate judgment, the Affidavit of Richard L. Weber, Plaintiffs' response, the oral arguments of the parties, and the records and files herein, NOW THEREFORE,

THE COURT FINDS that payment of compensation under the Wrongly Convicted Persons Act, RCW 4.100 et. Seq., would be contrary to law because RCW 4.100.080(1) provides for an exclusive remedy and plaintiffs have been compensated in federal court by settlement of their tort claims related to their wrongful convictions under 42 U.S.C. 1983;

/// THE COURT'S ORAL RULING IS INCORPORATED HEREIN.

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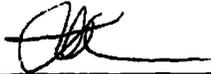
[PROPOSED] ORDER VACATING
JUDGMENT

ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-6430

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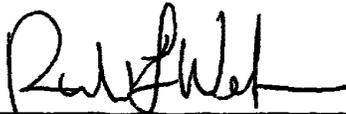
IT IS THEREFORE ORDERED that the Judgment entered July 10, 2017 is hereby vacated.

SO ORDERED this 26 day of September, 2017.



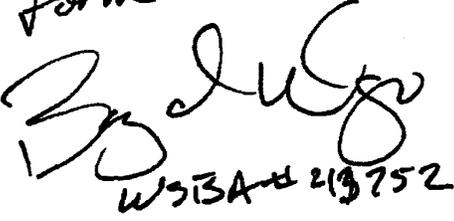
THE HONORABLE JOHN O. COONEY
Superior Court Judge

Presented by:



RICHARD L. WEBER, WSBA #16583
Assistant Attorney General

Approved as to
form


WSBA # 213752

APPENDIX B

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

ROBERT E. LARSON, TYLER W.)
GASSMAN, and PAUL E. STATLER,)
)
Plaintiffs,) SPOKANE COUNTY
) SUPERIOR COURT
vs.) NO. 14-2-00090-6
)
STATE OF WASHINGTON,) COURT OF APPEALS
) NO. 35649-3-III
Defendant.)
)
)

VERBATIM REPORT OF PROCEEDINGS
HONORABLE JOHN O. COONEY
September 26, 2017

APPEARANCES:

FOR THE PLAINTIFFS:

THE LAW OFFICE OF BOYD M. MAYO
By: Boyd M. Mayo
Attorney at Law
601 S. Division Street, Suite B
Spokane, WASHINGTON 99201

FOR THE DEFENDANT:

ATTORNEY GENERAL'S OFFICE
By: Richard Weber and Melanie Tratnik
Assistant Attorney Generals
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104-3188

Korina C. Kerbs, CCR No. 3288
Official Court Reporter
1116 W. Broadway Avenue, Department 9
Spokane, Washington 99260
(509) 477-4411

1 just wanted to respond to those two things, Your Honor,
2 and we would ask you to grant the motion to vacate.

3 Thank you.

4 THE COURT: Thank you.

5 Mr. Mayo, anything else?

6 MR. MAYO: No, Your Honor.

7 THE COURT: There's a lot of history with this case
8 that I could talk about but don't necessarily need to.
9 First, I see Mr. Larson, Mr. Gassman, and Mr. Statler are
10 present. The Court isn't tasked with making a
11 determination as to the adequacy of the plaintiffs'
12 compensation. Frankly, all three of you probably haven't
13 been adequately compensated. Each of you lost years of
14 your life to prison, and you obtained a settlement in your
15 1983 claim.

16 Our State legislature put a cap on compensation when
17 wrongly convicted and, in my opinion, the cap is way too
18 low. Each of you had another remedy through the federal
19 court, which helps in compensating your loss. But, as
20 stated, I'm not in a position to make a determination as
21 to whether or not that settlement was adequate, because
22 that's not contemplated in the statute.

23 The second concern I have, and if this does end up on
24 appeal I think it needs to be clear, the procedural
25 nightmare that has taken place here. I think it's

1 important to outline how we arrived here today because
2 procedurally this case is unique.

3 This case was filed in 2014. It was resolved at trial
4 in 2015. In deciding this case, the Court did the best it
5 could given that there was no case law interpreting RCW
6 4.100 as it was a relatively new statute. Ultimately, the
7 Court of Appeals concluded this court made some errors in
8 deciding this case.

9 The Court of Appeals reversed this court. This court
10 then went back and made findings consistent with the Court
11 of Appeals' decision. In doing so, on remand the
12 plaintiffs prevailed and were entitled to judgment as
13 outlined in the statute.

14 The problem arose following the plaintiffs not
15 originally prevailing and while the appeal was pending.
16 During the appeal, the plaintiffs filed an independent
17 action, a 1983 claim, in federal court. Following this
18 matter being remanded and this court deciding in favor of
19 the plaintiffs, the plaintiffs settled their 1983 claims.
20 After settling their 1983 claims, but before receiving
21 compensation under that settlement, the plaintiffs sought
22 judgments on the claims before this court.

23 Last time we were here, I attempted to emphasize the
24 distinction between obtaining a judgment versus enforcing
25 a judgment. The last time everyone was here, the

1 plaintiffs hadn't been compensated on their 1983 claim or
2 there was no evidence that they'd been compensated under
3 their 1983 claim. Rather, they had just settled the
4 claim. The language consistently used in RCW 4.100
5 relates to being compensated rather than just making other
6 claims.

7 Last time we were here, I found that the plaintiffs
8 were entitled to a judgment because they had met all the
9 requirements of the statute and there was no evidence that
10 they'd been compensated on another claim. I then
11 predicted everyone would be back when the plaintiffs try
12 to enforce the judgment if they get compensated on their
13 1983 claims.

14 Since that time, the plaintiffs have been compensated
15 on their 1983 claims. Now the State is back arguing the
16 compensation renders this judgment void because this is an
17 exclusive remedy. The problem, as was the case here, is
18 the statute can't direct the federal court to honor our
19 law.

20 The issue of RCW 4.100 being an exclusive remedy came
21 before Judge Rice in federal court and Judge Rice, as it
22 sounds, he denied the motion to dismiss. He, therefore,
23 allowed a concurrent claim to proceed.

24 The statute, RCW 4.100, does not contain provision about
25 plaintiffs proceeding on two fronts simultaneously.

1 Rather, it provides that as a requirement of making a
2 request under the statute, the claimant waives any and all
3 other remedies. Presumably, concurrent actions would have
4 to go through to conclusion and then either the RCW 4.100
5 or the other claims would be waived. The statute is most
6 likely written this way because our State cannot
7 necessarily tell the federal court what to do.

8 The language of RCW 4.100 specifically indicates the
9 intent of the legislature is that the remedies and
10 compensation provided under the chapter be exclusive. RCW
11 4.100 allows remedies for wrongs that have occurred by way
12 of, among other things, compensation for losses suffered.
13 These remedies are exclusive to all other remedies against
14 the State or any political subdivision.

15 Exclusive means the remedies under RCW 4.100 are
16 incompatible with other remedies. RCW 4.100 cannot
17 function at the same time as another remedy because
18 they're not compatible with one another. Since we are
19 unable to instruct the federal court on what to do, if a
20 claimant brings a cause of action under another legal
21 theory, they would have to waive any compensation on a
22 non-RCW 4.100 claim, sign a release, and waive
23 compensation under this act.

24 Here, the Court can only act when it's statutorily
25 authorized to do so under RCW 4.100. Under this statute,

1 the Court is entitled to enter judgment in favor of the
2 plaintiffs provided it's their exclusive remedy.

3 The plaintiffs argue that this is an election of
4 remedies argument that should have been brought up
5 pretrial. It was brought up pretrial in the 1983 claim
6 and was denied by Judge Rice. Here, the State did not
7 have an opportunity to raise election of remedies pretrial
8 since the case had been adjudicated before the 1983 claim
9 was filed. It was subsequently reversed by the Court of
10 Appeals, remanded, and the plaintiff then prevailed. In
11 short, the plaintiff didn't have an opportunity to raise
12 elections of remedies pretrial.

13 Additionally, absent from RCW 4.100 is a legislative
14 intent that those wrongly convicted be fully compensated
15 for the damages suffered. Rather, the legislature put a
16 cap on damages. RCW 4.100 was enacted to provide an
17 easier means for those that are wrongly convicted to
18 receive compensation for their losses. The statute
19 clearly provides that the intent of the legislature is
20 that the remedies and compensation under the chapter be
21 exclusive. That means they're not compatible with any
22 other remedies. By making a claim under this statute, all
23 other causes of action are waived.

24 The Court doesn't have the authority to rule that other
25 causes of action be waived, especially these out of

1 federal court. They are outside the jurisdiction of this
2 court. But because RCW 4.100 is exclusive and the
3 plaintiffs have taken two tracks to get two recoveries,
4 those two recoveries are incompatible. It would be
5 inequitable to allow the judgment in this case to be
6 enforced as it wouldn't be exclusive.

7 The Court's going to grant the State's motion to vacate
8 the judgment, finding that it no longer is the exclusive
9 remedy, that another remedy has been sought. And,
10 obviously, the plaintiffs don't want to forego that remedy
11 as it was substantially more than what was awarded here.

12 The Court is granting the motion to vacate under CR
13 60(b) due to irregularities that have occurred here with
14 two different actions proceeding at the same time, one of
15 those occurring after this case had been finalized and on
16 appeal. The Court possesses the authority under CR 60(c)
17 and (b) to make that finding. The Court will grant the
18 motion to vacate and deny the motion to forward a
19 certified copy of the judgment to risk management.

20 The second issue, Mr. Mayo, is it sounds like you may
21 be entitled to compensation for attorney fees and child
22 support. Frankly, I didn't look at that close enough for
23 today's hearing. I focused on the motions that were
24 before the Court today. If you think that the statute
25 provides for compensation for attorney fees and child

1 support even though another remedy was sought, you're
2 welcome to bring a motion for judgment.

3 MR. MAYO: Thank you, Your Honor.

4 THE COURT: Mr. Mayo, did you have any questions?

5 MR. MAYO: I was just curious if the Court had any
6 findings related to the failure of the State to bring an
7 appeal and the finality of the judgment.

8 THE COURT: The only comment I have is when this matter
9 was brought before the Court, and I don't know that I'm
10 accepting responsibility for it, but I could, I tried to
11 make it clear that the Court saw a distinction between a
12 judgment being entered and a judgment being enforced.
13 Entering a judgment is something that the plaintiffs were
14 entitled to. They could choose not to enforce that
15 judgment and just maintain their settlement through the
16 1983 claim.

17 My thought was if it came time for enforcement of the
18 judgment, the State would be back here asking that
19 something occur, whether it be a waiver or release being
20 executed, because the plaintiffs are not entitled to
21 recover under this statute as well as a 1983 claim. I
22 don't necessarily fault the State for not bringing an
23 appeal based upon what I told them.

24 The second part, and more substantial finding, is that
25 the State noted an objection at that time. The

1 circumstances changed since the judgment was entered in
2 that there's evidence that the plaintiffs have been
3 compensated through the 1983 claim. Under CR 60, the
4 plaintiffs have shown that there are reasons that the
5 judgment should be vacated, that being the change in
6 circumstances, as they have been compensated under the
7 1983 claim. There is also a valid defense in that had the
8 plaintiffs been previously compensated, the State would
9 have had the defense of this being the exclusive remedy.

10 Perhaps the Court of Appeals will disagree and think
11 that the State should have filed an appeal after judgment
12 was entered. But the reason I'm vacating the judgment is
13 under CR 60.

14 MR. MAYO: Thank you, Your Honor.

15 THE COURT: Mr. Weber, did you have any questions?

16 MR. WEBER: No. Thank you, Your Honor.

17 And I -- I submitted a proposed order just in case the
18 Court found this way. I don't know if you would prefer
19 that we include some of your findings or if this is
20 sufficient. I made sure the Court got a copy and counsel
21 got a copy.

22 THE COURT: Do you have any objection to their proposed
23 order?

24 MR. MAYO: I don't think so.

25 MR. WEBER: Did you see it?

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MR. MAYO: I think it's pretty general.

MR. WEBER: It's pretty simple, yeah.

THE COURT: You can just indicate in there that the Court's oral ruling is incorporated.

MR. WEBER: I'd be glad to do that.

THE COURT: Do you have a proposed order on Mr. Mayo's motion?

MR. WEBER: I don't, Your Honor. We could -- we could prepare a simple one if the Court would prefer to get that done today, possibly using a form.

THE COURT: If you wouldn't mind just drafting one.

MR. WEBER: Yeah. I'd be glad to do that. Let's see.

THE COURT: Is there anything further?

MR. WEBER: Nothing for the State, Your Honor. We'll put together an order for you.

THE COURT: Thank you.

MR. MAYO: Thank you, Your Honor.

THE CLERK: Please rise.

(COURT IN RECESS.)

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C E R T I F I C A T E

I, Korina C. Kerbs, do hereby certify:

That I am an Official Court Reporter for the Spokane County Superior Court, sitting in Department No. 9, at Spokane, Washington;

That the foregoing proceedings were taken on the date and place stated therein;

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribe by me or under my direction, including any changes made by the trial judge reviewing the transcript;

I do further certify that I am not a relative of, employee of, or counsel for any parties, or otherwise interested in the event of said proceedings.

WITNESS MY HAND AND DIGITAL SIGNATURE this 2nd day of October, 2017.



Korina C. Kerbs, CCR No. 3288
Official Court Reporter
Spokane County, Washington

APPENDIX C

Chapter 4.100 RCW**WRONGLY CONVICTED PERSONS****Chapter Listing****Sections**

4.100.010	Intent.
4.100.020	Claim for compensation—Definitions.
4.100.030	Procedure for filing of claims.
4.100.040	Claims—Evidence, determinations required—Dismissal of claim.
4.100.050	Appeals.
4.100.060	Compensation awards—Amounts—Proof required—Reentry services.
4.100.070	Provision of information—Statute of limitations.
4.100.080	Remedies and compensation exclusive—Admissibility of agreements.
4.100.090	Actions for compensation.

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.]

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.]

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.**]

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.**]

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.]

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.]

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.**]

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 wrongfully convicted or entitled to compensation under this chapter.

[**2013 c 175 § 8.**]

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.**]

TERRELL MARSHALL LAW GROUP PLLC

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Filing on Behalf of: Toby James Marshall - Email: tmarshall@terrellmarshall.com (Alternate Email:)

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Suite 300
Seattle, WA, 98103
Phone: (206) 518-6238

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