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**SUPREME COURT OF THE STATE OF WASHINGTON**

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ISAIAH W. NEWTON, JR.,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

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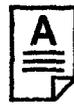
**PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO  
PETITION FOR DISCRETIONARY REVIEW**

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 ORIGINAL

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## **I. SUPPLEMENTAL STATEMENT OF THE CASE**

Isaiah W. Newton, Jr. was exonerated by the Court of Appeals on his appeal of his Burglary in the First Degree conviction. *State of Washington v. Isaiah W. Newton, Jr.*, No. 32154-1-III (2014). Mr. Newton's conviction for resisting arrest resulted in a sentence of 90 days in jail to be served concurrently with his felony conviction. He had served 134 days in custody awaiting trial and was given credit for time served.

The Court of Appeals found fault with two actions by the Trial Court. The Court of Appeals found the Trial Court erred by not granting a directed verdict of acquittal as a result of insufficient evidence of criminal intent on the part of Mr. Newton. The Trial Court also erred by giving the pattern inference of intent jury instruction, WPIC 60.05, 11A Washington Practice: Washington Pattern Jury Instructions, (Criminal).

The Court of Appeals also criticized the deputy prosecutor's conduct during the trial as "improper" because of prosecutorial misconduct during the trial.

## **II. SUMMARY OF ARGUMENT:**

### **WHY REVIEW SHOULD BE GRANTED**

- A. The Court of Appeals' Decision is Wrong and is in Conflict With a Very Recent Case Issued by Division III, Which Interprets the**

**Term “Significantly New Exculpatory Information” Broadly.**

The State in its brief, § IV (Reasons Why Review Should Be Denied), argues that: 1) there is no possible interpretation of the term “significantly new exculpatory information” as used in the Wrongly Convicted Persons Act (“WCPA”) other than that argued by the State; and 2) that Mr. Newton’s case does not involve an issue of substantial public interest.<sup>1</sup>

The State has adopted an improperly narrow definition of the “significant new exculpatory information,” as set forth in RCW 4.100.040(1)(c)(ii) and RCW 4.100.060(1)(c)(ii). The State essentially interprets the statutory language to require significant new exculpatory evidence. The word “evidence,” however, does not exist in the statute. Instead, the legislature used the much broader term “information,” which is not defined at all in the WCPA. Thus, the ordinary meaning of “information” is to be considered by a court when determining the legislature’s interest. The State’s argument requires this Court to ignore the plain meaning of “information,” which has a very broad meaning and clearly encompasses a Court of Appeals reversal of a conviction based upon insufficient evidence,

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<sup>1</sup> Mr. Newton’s Motion for Discretionary Review is referred to as “Petition” or “Petition for Discretionary Review” in this document as the Supreme Court Acting Clerk of the Supreme Court stated that the motion would be treated as a petition for review and references it as so in correspondence dated April 15, 2015.

as happened in Mr. Newton's criminal case.

Likewise, the State has strained to disqualify Mr. Newton from his rightful compensation by claiming Mr. Newton was not "actually innocent" as the term is defined in the WCPA. RCW 4.100.020(2)(a). The State's position is clearly wrong. Mr. Newton was neither charged nor convicted of the crime of criminal trespass (a misdemeanor or gross misdemeanor), which is apparently the crime argued by the State that supposedly disqualifies Mr. Newton. The State has failed to comprehend the very limited applicability of the statutory term "actual innocence" as a disqualification factor. The definition of "actually innocent" in RCW 4.100.020(2)(a), together with the use of the undefined term "any illegal conduct alleged in the charging documents" referenced to in both RCW 4.100.020(2)(a) and RCW 4.100.060(1)(d), can only be reconciled if the illegal conduct alleged is within the charging documents of the single felony upon which the claimant's WCPA claim is premised. In other words, separate felonies or misdemeanors do not disqualify a claimant from compensation under the WCPA unless the allegation of illegal conduct is alleged in the charging documents of the single felony upon which the WCPA is based upon. Convictions for misdemeanors or gross misdemeanors do not disqualify a claimant from

compensation for a wrongful felony or misdemeanor conviction. The WCPA does, however, set forth a method by which a sentence for a misdemeanor serves to reduce the compensation available under the WCPA for a wrongful felony conviction. Thus, the State's "actually innocent" argument fails as it cannot be reconciled with the compensation reduction scheme set forth in the WCPA, which deals with misdemeanor conviction concurrent with the claimed wrongful felony conviction.

**B. The Court of Appeals' Decision Affects Many People Throughout the State.**

The Court of Appeals' decision below has significantly narrowed the legislature's specified class of people eligible for compensation under the WCPA. This will affect many, perhaps hundreds, of potential claimants under the WCPA each year. Thus, the statewide significance of the present case.

**C. *Larson v. State* issued June 28, 2016, Division III, Conflicts With the Court of Appeals' Decision in This Case.**

A very recent Division III decision, which interpreted the phrase "significant new exculpatory information" broadly while trying to distinguish Mr. Newton's case demonstrates the necessity of this court granting review.

*Larson, et al. v. State of Washington*, No. 33179-2-III (June 28, 2016)<sup>2</sup> at footnote 13 (Div. 3, June 28, 2016). The Court of Appeals' decision in *Larson, Id.*, conflicts with the decision of the Court of Appeals in this case because Division II has defined the term "significant new exculpatory information" narrowly while Division III takes a broader approach. Pursuant to RAP 13.4(b)(2), this is an additional ground for accepting discretionary review. In *Larson, supra*, the Court concluded the phrase "significant new exculpatory information" is ambiguous. *Larson, supra* at page 12. In reality, any ambiguity in the phrase "significant new exculpatory information" results only when the word "information" is defined narrowly, contrary to its ordinary meaning.

### **III. LEGAL ARGUMENT**

The State makes two primary arguments in the Respondent's Brief:

1) Mr. Newton's conviction was not overturned "on the basis of significant new exculpatory information;" and that Mr. Newton was not "actually innocent" of the felony of which he was convicted, an issue that was not reached by the Court of Appeals below.

**A. The "Significant New Exculpatory Information" in Mr. Newton's Case Is the Court of Appeals Decision Acquitting Mr. Newton.**

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<sup>2</sup> The Court of Appeals lists this case as a published opinion as of June 29, 2016. The citation of the published opinion has not yet been generated.

The State is essentially arguing that the “significant new exculpatory information” language of RCW 4.100.040(1)(c)(ii) and RCW 4.100.060(1)(c)(ii) really means “significant new evidence.” There is no basis in the WCPA for that conclusion. The broader meaning of “information” was chosen by the legislature in preference for the narrow meaning of “evidence.” It should be emphasized that Mr. Newton was adjudged innocent of the First Degree Burglary Charge by the Court of Appeals. By comparison, if a felon is “... pardoned on grounds consistent with innocence,” he is eligible for compensation pursuant to RCW 4.100.040(1)(c)(ii). Logically, the same result should occur when a conviction is reversed by the Court of Appeals on the ground the convicted felon was innocent because of insufficient evidence on a required element.

The State ignores the plain meaning of the term “significant new exculpatory information” in an attempt to create ambiguity where none exists. In *Larson v. State*, No. 33179-2-III (June 28, 2016)<sup>3</sup>, Division III of the Court of Appeals held that “significant new exculpatory information” as set forth in the WCPA is to be defined broadly. *Id.* at page 15. *Larson, Id.*, cites the Court of Appeals’ decision below and attempts to distinguish from Division

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<sup>3</sup> The Court of Appeals lists this case as a published opinion as of June 29, 2016. The citation of the published opinion has not yet been generated.

II of the Court of Appeals' decision in the present case. *Id.* at footnote 13, pages 12-13. The attempt to distinguish Mr. Newton's case from Mr. Larson's case is unconvincing and further muddles the issue of the legislature's intended meaning of "significant new exculpatory information" in the WCPA. For that reason, this Court should accept review of Mr. Newton's case.

A court when reviewing statutory language is ordinarily limited to resorting to the plain and ordinary meaning of the statutory definition.

We give words in a statute their plain and ordinary meaning unless a contrary intent is evidenced in the statute. *Erection Co. v. Department Labor & Indus.*, 121 Wash.2d 513, 518, a.852 P.2d 288 (1993). Where the statutory language is clear and unambiguous, the statute's meaning is determined from its language alone; we may not look beyond the language nor consider the legislative history. *Multicare Med. Ctr. v. Department of Soc. & Health Servs.*,

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

Had the Court of Appeals in the present case given the ordinary meaning to "information," Mr. Newton's eligibility for compensation under the WCPA is evident. Clearly, the action of the Court of Appeals in reversing Mr. Newton's First Degree Burglary conviction was the requisite "significant new exculpatory information." The statute does not require any

interpretation and its plain meaning clearly encompasses the information contained in the Court of Appeals' decision.

The wrongful conviction statutes are not drafted to limit wrongful conviction claims to those individuals that present exculpatory evidence not produced at trial in a subsequent proceeding, such as a habeas corpus proceeding. If that was the legislature's intention it could have specifically limited the Wrongful Compensation statutes to specific "new" evidence, such as exculpatory DNA evidence not produced at trial, and it could have specifically limited the class of people intended to be compensated to that specific class of convicted felons, as has been done in a state such as Missouri. That seems to be the inference of the State's argument. But that argument, if accepted, contradicts the plain meaning of the Wrongful Compensation statutes and the phrase "significant new exculpatory information" would not be given its plain and ordinary meaning as required.

**B. Mr. Newton Was "Actually Innocent" of the Felony of Which He Was Convicted.**

The State completely ignores the plain meaning of "Actually Innocent," as defined by RCW 4.100.020 which reads, in pertinent part, as follows:

- (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; . . .

RCW 4.100.020 does not reference misdemeanors; it speaks only of “felonies.” The State argues that, because the Appellate Court which reversed Newton’s conviction stated that the Trial Court could have found that “. . . Mr. Newton entered or remained unlawfully in the [alleged victim’s] bedroom beyond a reasonable doubt,” that somehow Mr. Newton is disqualified from seeking compensation pursuant to the wrongful incarceration state. The Appellate Court’s language cited by the State is dicta. Moreover, Mr. Newton was neither charged or convicted of criminal trespass charges. Therefore, he did not engage in any illegal conduct as alleged in the charging documents. Of course, whether or not Mr. Newton engaged in “any illegal conduct alleged in the charging documents” is an issue of material fact that has yet to be addressed by a fact finder at trial. The State’s argument is premised on a “what if” or “might have been” argument because the fact is that Mr. Newton was not adjudged by the jury to have

been guilty of an uncharged misdemeanor or gross misdemeanor crime, criminal trespass<sup>4</sup>, that is the basis of the State's contention that Mr. Newton was not "actually innocent". To deny Mr. Newton from compensation pursuant to the Wrongful Conviction Act as a result of an uncharged crime that was not referenced in the charging documents would render the statutory definition of "actually innocent" absurd, as it would require the court to ignore the reference to a person's status of guilt or innocence as it pertains to "a felony," which is written in the singular. Other felonies or misdemeanor convictions are not disqualification factors under the WCPA because of its reference to a singular felony. How can someone not be "actually innocent" of a reversed felony conviction solely as a result of a purported, uncharged, misdemeanor criminal trespass when no such crime was ever charged? The State's definition contradicts the plain meaning of the statute.

The result argued by the State would seem to undermine the stated intent of the act as set forth in RCW 4.100.010 and would negate the reduction in compensation remedy of RCW 4.100.040(1)(b)(ii)<sup>5</sup> which

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<sup>4</sup> See RCW 9A.52.070 - Criminal Trespass in the First Degree, a gross misdemeanor, and RCW 9A.52.080 - Criminal Trespass in the Second Degree, a misdemeanor.

<sup>5</sup> **RCW 4.100.040**

**Claims—Evidence, determinations required—Dismissal of claim.**

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

(a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence.

directly applies to this situation as it pertains to Mr. Newton's conviction for resisting arrest. Had Mr. Newton been convicted of criminal trespass, a misdemeanor or even another felony, the effect would be limited to the application of the statutory reduction of compensation as set forth in RCW 4.100.040(1)(b)(ii), if applicable because of a concurrent sentence.

In any event, the circumstances of a misdemeanor conviction is irrelevant to the question of a wrongfully convicted felon's eligibility for compensation for a wrongful felony conviction. However, it is apparently relevant to the calculation of damages and thus demonstrates how the legislature harmonized the act.

Pursuant to RCW 4.100.040(1)(b)(ii), the remedy for time served concurrently (either misdemeanor or felony) with a felony sentence that amounts to a "wrongful conviction" is to limit the compensation award to time served only upon the sentence which was imposed as a result of the wrongful conviction after the concurrent time had been served. A reading of RCW 4.100.040(1)(b)(ii)<sup>6</sup> and RCW 4.100.060(1)(b)(ii) demonstrates why

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(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.

...  
<sup>6</sup> 1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:

...

this is the only possible result. Any other result would render the words “During the period of confinement for which the claimant is seeking compensation” in RCW 4.100.040(1)(b)(ii) and RCW 4.100.060(1)(b)(ii) superfluous.

Pursuant to those statutes, the effect of any misdemeanor conviction is to reduce the amount of compensation awarded. How could the result be the more drastic total disqualification from compensation that the State argues result from an uncharged misdemeanor or gross misdemeanor which may or may not have resulted in a conviction?

The State has tried to mislead this Court by citing to two cases, *Piccarreto v. State*, 144 A.D.2d 920, 534 N.Y.S.2d 31 (1988) and *State v. Dohlman*, 725 N.W.2d 428 (Iowa 2006), which interpret statutes that are entirely different than the WCPA.

In *Piccarreto, supra*, the Court, in a two paragraph memorandum opinion, denied a claim under a dissimilar New York statute on technical grounds inapplicable to the WCPA and the present case. The claimant in *Piccarreto, Id.*, under the New York statute, had failed to attach required

(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;

...

documentation to his claim and had failed to allege facts sufficient for the trial court to find he was likely to prevail at trial, which was required under the New York statute as a threshold question in order for the claim to proceed. At trial, he would have had to prove that he did not commit the acts he was charged with.

The Iowa statute discussed in *Dolman, supra*, required a claimant to prove by “clear and convincing” evidence that he did not commit the offenses for which he was imprisoned. No such requirement exists in the WCPA.

Thus, the State’s citations to *Piccarreto, supra*, and *Dohlman, supra*, are irrelevant as they interpret acts that are very dissimilar to the WCPA, which is unique.

In the present case, Mr. Newton’s innocence is absolutely established pursuant to the statutory definition.

The definition of “actually innocent” in the statute is not ambiguous. The definition requires no statutory construction or judicial interpretation. This court is to rely solely upon the statutory language. The Washington Supreme Court summarized the application and process of statutory construction in the case of *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005), as follows:

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

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

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

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

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

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

...

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

...

Identical language is found in RCW 4.100.060(1)(b)(ii).

Mr. Newton was incarcerated for 134 days before he was sentenced to prison. Although admittedly, the statutes in RCW 4.100 et seq. are confusing. The only way they can be harmonized and give effect to the Legislature's intentions in enacting the act is to construe it as a whole while interpreting related provisions in relation to each other.

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

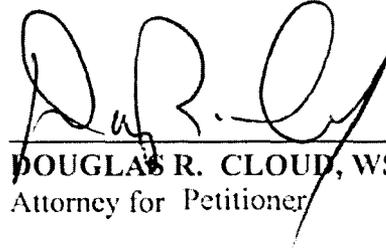
*C.J.C. v. Corporation of the Catholic Bishop*, 138 Wn.2d 699, 708, 985 P. 2d 262 (1999).

#### **IV. CONCLUSION**

Isaiah W. Newton, Jr., urges this court to grant discretionary review. The Court of Appeals' decision has affected numerous potential beneficiaries of the Wrongful Conviction Act. This remedial statute was enacted to right the injustice of wrongful convictions. The "significant new exculpatory information" pertinent to Mr. Newton's claim under the Act is the information provided by the Court of Appeals in their decision reversing Mr. Newton's felony conviction. The Supreme Court should address the issues raised by Mr. Newton in his appeal to the Court of Appeals.

**RESPECTFULLY SUBMITTED** this 5th day of July, 2016.

**LAW OFFICE OF DOUGLAS R. CLOUD**

A handwritten signature in black ink, appearing to read 'D.R. Cloud', is written over a horizontal line.

**DOUGLAS R. CLOUD**, WSBA #13456  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

The undersigned declares as follows:

1. I am over the age of 21 and not a party to this action.
2. I am an employee of Douglas R. Cloud, Attorney at Law,

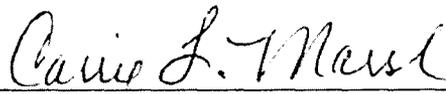
Attorney for Petitioner.

3. On this day, I certify that I forwarded a true and correct copy of this document to be served on counsel of record for the Respondent in the following manner:

|  |   |
|--|---|
| <p><b><u>Counsel for Respondent State of Washington:</u></b></p> <p>Joshua L. Choate, WSBA #30867<br/>Assistant Attorney General<br/>Attorneys for State of Washington<br/>Criminal Justice Division<br/>800 Fifth Ave, Ste 2000<br/>Seattle, WA 98104-3188<br/>Phone: 206-464-6430<br/>Email: JoshuaC1@ATG.WA.GOV</p> | <p><input checked="" type="checkbox"/> Messenger<br/><input type="checkbox"/> US Mail<br/><input type="checkbox"/> Facsimile<br/><input type="checkbox"/> ECF<br/><input checked="" type="checkbox"/> Email<br/><input type="checkbox"/> E-Service<br/><input type="checkbox"/> E-Filed</p> |
|--|---|

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Tacoma, Washington this 5<sup>th</sup> day of July, 2016.

  
\_\_\_\_\_  
CARRIE L. MARSH

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**Subject:** Newton v. State of Washington, Case #93008-2  
**Importance:** High

Please find attached the Petitioner's Reply to Respondent's Answer to Petition for Discretionary Review.

Thank you,

Carrie L. Marsh  
Paralegal to Douglas R. Cloud  
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