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NO. 99699-7

**THE SUPREME COURT
OF THE STATE OF WASHINGTON**

DORIS MARIE GREEN,

Petitioner,

and

MERIDITH EUGENE TOWN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Two years ago, in *State v. Larson*, 9 Wn. App. 2d 730, 447 P.3d 168 (2019), *review denied*, 194 Wn.2d 1019 (2020), the Court of Appeals concluded that a person who has already received compensation from the State for their wrongful conviction cannot obtain a second recovery under the Wrongly Convicted Persons Act (WCPA). The Court's decision is well reasoned and consistent with the WCPA, which is intended to be "exclusive to all other remedies at law and in equity" and requires waiver and release of all such remedies. RCW 4.100.080(1).

Here, the Court of Appeals applied *Larson* and concluded that Doris Green and Meridith Town are not entitled to a second recovery because they already received settlements associated with their convictions. The court's conclusion is correct, and even Green and Town acknowledged below that their claims are "barred … under … *Larson*." Pet'rs' Mot. to Stay Br'fing.

Green and Town fail to establish grounds warranting review of the Court of Appeals decision. They seek review of several subsidiary issues, including alternative grounds for dismissing their complaints and purportedly unclear points of law. But the Court of Appeals saw no need to reach those issues given that Green and Town's claims are separately barred under the WCPA as explained in *Larson.* This Court should deny review

for this same reason and because the issues are undeveloped or fail to present issues of substantial public interest.

This Court should also decline to revisit the issue presented in *Larson*. *Larson* provides clear guidance to litigants and trial courts alike. Contrary to Green and Town's contentions, *Larson* is consistent with the past precedent of this Court regarding statutory construction. For all of these reasons, this Court should deny the petition for review.

II. ISSUE PRESENTED FOR REVIEW

Where the plain language of the WCPA provides that the remedies under the Act "shall be exclusive to all other remedies" against the State, is a person who has already received tort relief from the State for their wrongful conviction precluded from obtaining a second recovery under the WCPA?

III. RESTATEMENT OF THE CASE

A. Green and Town's Convictions and Settlements

In 1995, a Chelan County jury convicted Green of three counts of Rape of a Child in the First Degree and one count of Child Molestation in the First Degree. DG CP[1] 162. Green was subsequently sentenced to serve 23.5 years in prison. *Id*. In 2000, the Superior Court vacated and dismissed

[1] "DG CP" refers to clerk's papers filed in the *Green* appeal, and "MET CP" refers to clerk's papers filed in the *Town* appeal.

Green's convictions based on alleged violations of her state and federal constitutional rights and she was released from custody. *Id*.

In 1994, Town pleaded guilty to four counts of felony sex offenses against children. MET CP 103. Town was subsequently sentenced to serve 20 years in prison. *Id*. In 2000, the Superior Court vacated and dismissed Town's convictions based upon alleged violations of his state and federal constitutional rights and he was released from custody. *Id*.

In 2001, Green and Town filed suit in federal district court against Chelan County, the City of Wenatchee, and numerous other defendants alleging civil rights violations under 42 U.S.C. Section 1983. DG CP 162; MET CP 103. These federal claims arose from the foregoing convictions. *Id*. In 2003, Green settled her civil rights tort claim for $162,500 and Town settled his claim for $200,000. *Id*. They collected the settlement from Chelan County that same year. DG CP 104; MET CP 58.

B. The Wrongly Convicted Persons Act

Ten years after the settlements, in 2013, the Legislature enacted the Wrongly Convict Person's Act (WCPA), chapter 4.100 RCW. The Act includes a statement of intent:

> A majority of those wrongly convicted in Washington have no remedy available under the law for the destruction of their personal lives resulting from errors in the 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.

RCW 4.100.010.

Not all overturned convictions result in actionable WCPA claims. A claimant seeking compensation under the Act must meet the requirements of RCW 4.100.040(1), which outlines facts that must be established with documentary evidence. A claimant must also establish the existence of significant new exculpatory information proving by clear and convincing evidence that the claimant is actually innocent. RCW 4.100.020(2)(a); RCW 4.100.040(1); RCW 4.100.060(c)(ii). If the Attorney General's Office concedes the claim as permitted by RCW 4.100.040(5), or if a claimant shows that all requirements of the Act are met, then the amount of compensation is based on a mathematical formula set forth in the Act. RCW 4.100.040(5); RCW 4.100.060. Claimants who choose to pursue a remedy under the WCPA must abide by its statutory mandate that "the remedies and compensation provided under this chapter shall be *exclusive* to all other remedies at law and in equity against the state[.]" RCW 4.100.080(1) (emphasis added).

C. WCPA Proceedings in the Trial Court

Three years after the WCPA's passage, Green and Town both filed their WCPA claim near the expiration of the statutory deadline. Town filed

his complaint on July 25, 2016, three days before the filing deadline. MET CP 104. He failed, however, to perfect service by serving the State within 90 days of filing. MET CP 104-105. Green filed her complaint on July 27, 2016, one day before the filing deadline. DG CP 163. She also failed to perfect service within 90 days of filing. DG CP 163-164.

On May 1, 2017, almost ten months after service, Green and Town finally served the Office of the Attorney General with a copy of their summonses and complaints. DG CP 163; MET CP 104. Under RCW 4.100.090, the deadline for filing their claims had expired on July 28, 2016. DG CP 164; MET CP 105. Upon expiration of that deadline, both Green and Town's claims were extinguished.

On October 16, 2017, the State filed a motion to dismiss Green and Town's WCPA claims. DG CP 16; MET CP 16. The State argued three separate grounds for dismissal. First, the WCPA bars double recovery and Green and Town had already received compensation in connection with their 42 U.S.C. Section 1983 claims. Second, their claims lacked the documentary evidence required by RCW 4.100.040(1). Third, their claims were time-barred. DG CP 16-23; MET CP 16-23.

A hearing on the State's motion to dismiss was held on March 23, 2018, before Chelan County Superior Court Judge Kristin Ferrera. DG CP 161; MET CP 102. After argument of the parties concluded,

Green and Town suggested that they should be afforded additional time to supplement the record with documents to support their claims if the court ruled against them. VRP 22. Notably, they had never attempted to supplement or amend their complaint at any time during the pendency of the case. DG CP 163 at 1.9; MET CP 104 at 1.10. At the conclusion of the hearing, the trial court took the matter under advisement. VRP 28.[2]

By written ruling dated July 9, 2018, the court granted the State's motion and dismissed Green and Town's claims. DG CP 110. Observing that it needed to address only one of the State's three independent grounds for dismissal, the court based its decision on Green and Town's failure to provide sufficient documentary evidence as required under RCW 4.100.040(1). DG CP 113. Green and Town appealed.

D. The Court of Appeals' Opinion

In a short, unpublished opinion, the Court of Appeals affirmed the trial court. Like the trial court before it, the Court of Appeals recognized that any one of the independent grounds for dismissal advanced by the State was sufficient to resolve the dispute. *Green v. State*, No. 36805-0, slip op., at 2 (Wash. Ct. App. Mar. 23, 2021). It held that its previous decision in *Larson* controlled because the WCPA conditions compensation on a

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[2] Verbatim Record of the Proceedings, May 13, 2018 hearing.

wrongly convicted person's ability to provide an effective waiver and legal release of claims. *Id*. at 3 (citing *Larson*, 9 Wn. App. 2d at 743). Because Green and Town could not waive their claim against the State as required by the Act due to their prior recovery, they were not entitled to relief under the WCPA. *Green*, No. 36805-0, slip op., at 3. The court did not reach any of Green and Town's other arguments. *Id*.

IV. REASONS TO DENY REVIEW

A. *State v. Larson* Resolves the Instant Case and Provides Clear Guidance to Litigants and Trial Courts

In *Larson*, the Court of Appeals held that "the WCPA conditions compensation on a wrongly convicted person's ability to provide an effective waiver and legal release of claims." 9 Wn. App. 2d at 743. Those who have already recovered for their wrongful conviction through another legal avenue cannot—by definition—"waive" or "release" their claims. *Id.* at 740-41. Accordingly, they are ineligible for compensation under the Act. *Id*. at 743.

This conclusion is rooted in two aspects of the plain text of the statute. First, the text of RCW 4.100.080(1) states that "[a]s 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 … related to the claimant's wrongful … imprisonment." It also requires the claimant to execute a "legal release" before any payment

under the chapter and requires the State to be refunded if that waiver is held invalid for any reason. *Id*.

Second, the "operative" text is informed by the immediately preceding statement of the Legislature's intent. *Larson*, 9 Wn. App. 2d at 742. It clarifies "that the remedies and compensation provided [under the WCPA] shall be exclusive to all other remedies at law and in equity against the state or a political subdivision of the state." RCW 4.100.080(1). Thus, both the operative text and statement of legislative intent support the *Larson* court's plain reading of the WCPA.

The Court of Appeals properly applied *Larson*'s holding in this case. As in *Larson*, Green and Town recovered for their wrongful convictions from a political subdivision of Washington. DG CP 104; MET CP 58. As a prerequisite to requesting relief under the WCPA, they must waive those claims. RCW 4.100.080(1). Indeed, the WCPA's waiver requirement explicitly references the specific type of claim under which the plaintiffs in *Larson* and Green and Town recovered: 42 U.S.C. Section 1983. *Id*. But they cannot "waive" a claim for which they have already recovered and therefore cannot recover under the WCPA. *Larson*, 9 Wn. App. 2d at 743.

Green and Town briefly attempt to distinguish *Larson*'s facts on two grounds. First, they argue that its holding should not apply to persons who settled their claims before the passage of the WCPA. Pet. 14. This fact,

however, does not influence or inform any identifiable part of the text of the statute; its plain text requires waiver and release of "any and all" claims against the State related to the person's wrongful conviction and imprisonment. RCW 4.100.080(1). The statute does not distinguish between past, present, or future claims. In fact, the *Larson* court rejected a similar argument when it determined that the waiver provisions were not only "prospective." *Larson*, 9 Wn. App. at 739. There, as here, such a reading conflicts with the plain text and improperly seeks to insert additional words not used by the Legislature. *Id*.; *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003) ("a court must not add words where the legislature has chosen not to include them"). There is no textual basis to Green and Town's argument and therefore no grounds for departing from the plain reading of the statute in *Larson*. *Larson*, 9 Wn. App. at 739. And the argument conflicts with the stated intent of WCPA: to provide a legal remedy for the majority of the wrongfully convicted who do not otherwise have one. RCW 4.100.010.

Second, Green and Town repeatedly argue that applying *Larson* unfairly limits them to "small settlements" that are "far less" than they would recover under the WCPA. Pet. 2, 7, 8, 9-10. They provide no citation or calculation supporting this conclusion, and adjusting for inflation brings the settlements into alignment with a contemporary recovery under the

WCPA.[3] In any case, the argument is again unmoored from the text and irrelevant to any factor identified by the Legislature in the statute. Further, the Legislature's stated intent is not that any one person's recovery should be maximized or supplemented, but that no wrongly convicted person should be entirely *without* a remedy. RCW 4.100.010. The *Larson* court made the same observation respecting the WCPA's limited remedial purpose in its decision. *Larson*, 9 Wn. App. 2d at 743. For these reasons, Green and Town's arguments fail to distinguish *Larson*.

Finally, Green and Town argue that *Larson* leaves substantial unanswered questions that this Court should answer immediately. Pet. 10-13. This argument fails because *Larson* provides clear guidance to potential plaintiffs and trial courts alike that the WCPA's remedy is exclusive to all others. As discussed above, that holding is sufficient to dispose of this case. To the extent that other questions remain about the application of the WCPA in different circumstances, the best course of action is for those cases to work their way through the appellate courts. Granting review in this case will not provide clarity or guidance about other issues not raised by this appeal.

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[3] After adjusting for inflation based on the consumer price index, Green's settlement was worth about $212,000 at the time of filing in 2016 and Town's about $270,000. U.S. BUREAU OF LABOR STATISTICS, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm. Under the WCPA, Green would be entitled to roughly $250,000 and Town about $300,000.

B. This Decision and *State v. Larson* are Consistent with Precedent

1. The Court of Appeals correctly understood the "nature" of the WCPA

Green and Town argue that, in applying *Larson* to the instant case, the Court of Appeals failed to consider that remedial purpose of the WCPA. Pet. 13-15. This argument lacks merit for two reasons.

First, *Larson* expressly recognized the WCPA's remedial purpose in addressing this same argument. The court acknowledged that it had previously held that the WCPA is a remedial statute, but nonetheless explained that the Act has a narrower remedial purpose: to address "the 'majority of those wrongly convicted in Washington state *[who] have no remedy available* under the law.'" *Larson*, 9 Wn. App. 2d at 743 (quoting RCW 4.100.010). That purpose does not support Green and Town's reading of the statute to "add one more remedy to others that might be available." *Id*. Thus, *Larson*'s plain reading of the WCPA does not conflict with the remedial nature of the statute.

Second, Green and Town never identify any authority supporting their claim that this decision or *Larson* conflicts with precedent. They claim that the WCPA's status is a "special proceeding" exempt from the civil rules under Civil Rule 81, but cite only *Putman v. Wenatchee Valley Medical Center*, *P.S.*, 166 Wn.2d 974, 216 P.3d 374 in support. Pet. 15. *Putman* describes the requirements for a "special proceeding," but holds only that

medical malpractice suits are not such proceedings. *Id*. at 982. This decision is not in conflict with *Larson* and Green and Town provide no other authority. In any case, as discussed more completely below, *see infra* pp. 17-18, establishing that the WCPA may be a special proceeding without establishing a conflict with the civil rules is insufficient to demonstrate an error. Consequently, there are no grounds for review and this Court should decline to review this issue. RAP 13.4(b).

2. Green and Town's reading of the WCPA—not *Larson's*—conflicts with fundamental rules of statutory interpretation

Green and Town argue that this decision and *Larson* conflict with basic tenants of statutory interpretation. Pet. 15-17. They raise three arguments, urging that the Court of Appeals in *Larson* erroneously: (1) read the word "effective" into RCW 4.100.080; (2) added "new requirements" to RCW 4.100.040; and (3) allowed the Legislature's stated intent to "trump" the statutory text. Each is without merit.

Green and Town first argue that, although they must "execute a legal release," RCW 4.100.080, there is no textual requirement that the waiver or release actually be "effective." Pet. 19. This argument was explicitly rejected in *Larson*. Anticipating "the specious argument that 'execute a legal release' means nothing more than to sign a document entitled 'Release,'" the court explained that the requirement "is an act having legal

substance that cannot be done by a claimant who has already obtained a tort award or settlement from state actors." *Larson*, 9 Wn. App. 2d, 742 n.3. To argue otherwise is to insist that the Legislature included inert, surplus words into the statute despite all presumptions to the contrary. *State v. Lundquist*, 60 Wn.2d. 397, 403, 374 P.2d 246 (1962) ("A legislative body is presumed not to have used superfluous words.").

Second, reading sections 040, 060, and 080 of the WCPA in isolation from one another, Green and Town argue that the trial court was barred from deciding that they were ineligible for compensation under the WCPA prior to trial. Pet. 17, 20. But this "divide-and-conquer" approach to statutory interpretation is counter to established precedent; statutes "must be read as a whole." *Pub. Sch. Emps. of Sunnyside Teaching Assistants v. Sunnyside Sch. Dist.*, 69 Wn. App. 630, 634, 849 P.2d 1287 (1993). In fact, Section 080 requires that Green and Town waive their other remedies as a "requirement to making a request for relief under this *chapter*." RCW 4.100.080 (emphasis added). Thus, Section 080's waiver requirement applies at the onset of proceedings under the WCPA. *Id*. Green and Town cannot satisfy this requirement and thus cannot recover. *Larson*, 9 Wn. App. 2d 743. To require a court to summon a jury and hold a trial to establish an award that cannot be recovered would be a waste of judicial resources and an absurd result—not sound statutory interpretation.

See State v. Ervin, 169 Wn.2d 815, 823, 239 P.3d 354 (2010) (courts presume that the Legislature does not intend absurd results).

Third and finally, Green and Town argue that "the legislature's codified declaration of intent cannot 'trump the plain language of the statute.'" Pet. 18-19 (citing *State v. Granath*, 190 Wn.2d 548, 556, 415 P.3d 1179 (2018)). Their citation, however, omits critical context. The cited precedent states only that a statement of legislative intent cannot *contradict* the plain language of the statute. *Granath*, 190 Wn. 2d 548, 556 (rejecting a public policy argument that is "inconsistent" with the plain language of the statute). Indeed, this Court considers "an enacted statement of legislative purpose [to be] included in a plain reading." *G-P Gypsum Corp. v. Dep't. of Revenue*, 169 Wn.2d 304, 310, 237 P.3d 256 (2010). Here, where the Legislature's statement corroborates the *Larson* court's reading of the statute, Green and Town's objection lacks force.

C. Green and Town's Other Issues do Not Warrant Review on this Record and do Not Present Issues of Substantial Public Interest

1. There is no dispute over the "quantum" of documentary evidence required; Green and Town included no documentation whatsoever

Green and Town argue that the WCPA's requirement of documentary evidence at the time of pleading is shrouded in uncertainty as to the "quantum" of evidence required. Pet. 10-11. Examination of this issue is unwarranted here because there is no dispute as to the *amount* of evidence

required. Despite the plain language of the WCPA requiring documentary evidence at the pleading stage, RCW 4.100.040(1), Green and Town did not attach any such evidence whatsoever.

The statute explicitly requires the claimant to establish his or her claims "by documentary evidence" and provides dismissal as a remedy for the failure to meet statutory conditions. *Id*. (1), (6). The trial court had no difficulty determining that Green and Town fell short of this statutory commandment without any determination of exactly how much evidence was required. DG CP 113. Accordingly, this record does not provide a basis to provide further guidance to litigants about the amount of documentary evidence required.

2. Green and Town's last-second attempt to amend was untimely

Green and Town briefly argues that this Court should grant review to clarify that WCPA plaintiffs "should be given the liberal opportunity to amend [the complaint]." Pet. 13. Review of that issue is unnecessary. Green and Town did not raise the issue until almost two years into the pendency of their suit and five months after the State filed its motion to dismiss. It is therefore untimely.

At the hearing on the motion to dismiss and during a colloquy with the trial court at the conclusion of argument, Green and Town suggested

that they should be allowed to supply the missing documentary evidence if the trial court was unwilling to take judicial notice of the records. VRP 22. The Court of Appeals appears to have considered this conditional reference to possibly amending the complaint as insufficient to raise the issue to the trial court. *Green*, No. 36805-0, slip op., 2 (dismissing the amendment issue after observing that "neither claimant requested an opportunity to amend their complaint").

Even assuming that amendment was requested and judging it by the leniency typically afforded to such requests, Green and Town's request was untimely and fairly denied. *See Wallace v. Lewis County*, 134 Wn. App. 1, 25-26, 137 P.3d 101 (2006) (affirming denial of motion to amend where party delayed filing amended complaint for longer than one year until shortly before summary judgment hearing); *Trust Fund Services v. Glasscar*, *Inc.*, 19 Wn. App. 736, 745, 577 P.2d 980 (1978) (characterizing motion to amend pleading during summary judgment consideration as "untimely attempt to insert a new circumstance into the proceedings too late in the game"). Reversal on this record would promote neglect, not leniency. Accordingly, review of this issue would not yield helpful guidance to lower courts or future litigants and is not a matter of substantial public interest. *See* RAP 13.4(b).

3. Green and Town waived their CR 81 argument and it does not implicate manifest error affecting a constitutional right

Green and Town argue that "the trial court failed to recognize that litigation under the WCPA constitutes a 'special proceeding' under CR 81" and that this Court should answer the question squarely to provide guidance to lower courts. Pet. 7-8, 12. This Court should decline to review this issue for two reasons: it is unpreserved and undeveloped.

First, the argument is unpreserved. Despite allegations of the trial court's "failure," Green Town did not mention Civil Rule 81 in their response to the State's motion to dismiss or during argument at the hearing thereon. "The general rule is that appellate courts will not consider issues raised for the first time on appeal." *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007) (citing RAP 2.5). In response to this argument before the Court of Appeals, Green and Town did not dispute that the issue was neither preserved nor manifest constitutional error. Pet'rs' Reply Br. 3. They do not argue differently now. Accordingly, this Court should decline to review this unpreserved issue. *Kirkman*, 159 Wn.2d at 926.

Second, the argument is undeveloped. Even assuming that the WCPA is a "special proceeding" for the purposes of CR 81, Green and Town fail to explain which civil rule, if any, was wrongly permitted to prevail over an "inconsistent" provision in the WCPA. *See* CR 81. Appellate

courts "do not address an issue that has not been fully argued." *Singleton v. Naegeli Reporting Corp.*, 142 Wn. App. 598, 602 n.2, 175 P.3d 594.

Review is not justified even if this Court were to entertain the argument and hypothetically consider rules that might conflict with Green and Town's theory of the WCPA. If they intend to argue that the WCPA's specific "phases" of proceeding[4] preclude a motion for summary judgment under Civil Rule 56, for example, they are still unlikely to prevail on the merits. *See Mathers v. State*, 100 Wn. App. 336, 340, 998 P.2d 336 (2000) (despite being a "special proceeding" under CR 81 where the offender is afforded heightened protections, the Sexually Violent Predator statute is consistent with motions for summary judgment under CR 56). This Court should decline to review an issue that will not provide guidance to lower courts.

4. *Larson* already holds that concurrent actions under the WCPA and other tort litigation are permissible

Green and Town urge that the State's "aggressive litigation strategies" have sown doubt about whether a WCPA claim can proceed simultaneously with other tort litigation based on the same wrongful conviction. Pet. 11. Here too, however, *Larson* provides clear and published guidance. Addressing an argument made by Spokane County in federal

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[4] *See* Pet. 14-15.

court, the Court of Appeals held that the WCPA "allows for concurrent actions" as long as the claimant ultimately does not receive compensation under the WCPA and recover from other tort litigation for the same cause. *Larson*, 9 Wn. App. 2d at 734, 738. No further guidance is necessary.

V. CONCLUSION

For the foregoing reasons, this Court should deny Green and Town's request for review.

RESPECTFULLY SUBMITTED this 30th day of June, 2021.

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<tr><td>DORIS MARIE GREEN and
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I, Nancy Lee, declare as follows:

On June 30, 2021, I sent via the Washington State Appellate Courts' Secure Portal, a true and correct copy of Respondent's Answer to Petition for Review and Declaration of Service, addressed as follows:

David B. Owens
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Debra Loevy
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Michael Martin
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 30th day of June, 2021.

Nancy Lee

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

June 30, 2021 - 10:12 AM

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