No. 130595

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Respondent-Appellee,

-vs-

JAMES REED,

Petitioner-Appellant.

On Leave to Appeal from the Illinois
Appellate Court, First District, No. 1-23-0669

There Heard on Appeal from the Circuit Court of Cook County,
No. 03 CR 23217—*Erica Reddick, Judge Presiding*

REPLY BRIEF OF PETITIONER-APPELLANT

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Oral Argument Requested

TABLE OF CONTENTS

ARGUMENT IN REPLY

Petitioner showed in his opening brief that the legislature meant what it said when it drafted 735 ILCS 5/2-702, which is titled: "Petition for a certificate of innocence that the petitioner was innocent of all offenses for which he or she was incarcerated."

The plain meaning of these words is that to receive a certificate of innocence, a petitioner must show innocence of all offenses of incarceration. Charges for which a petitioner was neither convicted nor incarcerated are not relevant to whether the court should grant a certificate of innocence.

The State does not dispute that the legislature applied the limitation to offenses of incarceration when it drafted the provisions defining the relief a petitioner may request and the relief the circuit court may grant. 735 ILCS 5/2-702(b) and (h). Nor does the State dispute that a reading of the statute that requires a showing of innocence on dismissed charges would have unjust results, as shown in the amicus brief filed by four exonerees. As Justice Martin observed in a concurring opinion, requiring a showing of innocence on dismissed charges may "be unduly cumbersome upon the petitioner, contrary to the legislature's intent, and unjust." *People v. Warner*, 2022 IL App (1st) 210260, ¶ 49 (Martin, J, specially concurring.) The State does not acknowledge these unjust results.

The State instead offers a tortured reading of the statute that is inconsistent with the decision of this Court in *People v. Palmer*, 2021 IL 125621. The Court should reject the State's reading and hold that petitioner is entitled to a certificate of innocence because he is innocent of the only offense for which he was convicted and incarcerated.

I. The State's Proposed Reading of the Statute Is Inconsistent with *People v. Palmer*

The key issue in this appeal is the meaning of the requirement for issuance of a certificate of innocence that "the petitioner is innocent of the offenses charged in the indictment or information." 735 ILCS 5/2-702(g)(3). Petitioner showed in his opening brief (Appellant's Br. 8-9) that subsection (g)(3) must be read as limited by subsection (b), which states that a petitioner "shall request a certificate of innocence finding that the petitioner was innocent of *all offenses for which he or she was incarcerated.*" 735 ILCS 5/2-702(b) (emphasis added).

The limitation to offenses of incarceration is repeated in subsection (h), which states that a court "shall enter a certificate of innocence finding that the petitioner was innocent of *all offenses for which he or she was incarcerated.*" 735 ILCS 5/2-702(h) (emphasis added). Moreover, the limitation to offenses of incarceration is repeated in the title of the statute: "Petition

for a certificate of innocence that the petitioner was innocent of all offenses for which he or she was incarcerated." 735 ILCS 5/2-702.

These provisions limit subsection (g)(3), meaning that the reference in subsection (g)(3) to "offenses charged in the indictment or information" is limited to the offenses for which the petitioner was incarcerated.

The Court recognized this limitation to offenses of incarceration in *People v. Palmer*, 2021 IL 125621, when it held that "subsection (g)(3) requires a petitioner to prove by a preponderance of the evidence his or her innocence of the offense as it was charged in the indictment or information that resulted in the wrongful criminal conviction." *Id.* ¶ 72. The State ignores this Court's reference in *Palmer* to "wrongful criminal conviction." Instead, the State mistakenly argues that *Palmer* supports its request to read into the statute a requirement to prove innocence of charges that did not result in a conviction or incarceration. (State's Br. 15.)

The State's reading of *Palmer* cannot be squared with the facts of that case. The petitioner in *Palmer* had been charged with five counts of first-degree murder and one count of residential burglary. *Palmer*, 2021 IL 125621, ¶ 5. The jury found the petitioner not guilty of residential burglary and guilty of first-degree murder. *Id.* ¶ 28. Years later, when the petitioner

was exonerated by DNA evidence, the circuit court vacated the murder conviction and ordered the petitioner's immediate release. *Id.* ¶ 36.

The reading of the certificate of innocence statute now urged by the State would have required the petitioner in *Palmer* to prove his innocence of the residential burglary charge on which he had been acquitted. "[A]n acquittal doesn't mean that the defendant did not commit the crime for which he was tried; all it means is that the government was not able to prove beyond a reasonable double that he committed it." *Pulungan v. United States*, 7223 F.3d 983, 985 (7th Cir. 2013); *see also People v. Fields*, 2011 IL App (1st) 100169, ¶ 19 (distinguishing between not guilty finding at retrial and actual innocence required for entry of a certificate of innocence).

The Court did not adopt any such requirement in *Palmer*. Instead, *Palmer* properly focused only on the charge of conviction without discussing the burglary charge on which the jury acquitted. The Court should reject the State's request to adopt this new requirement here.

The State also asks the Court (State's Br. 16) to overlook the holding in *Palmer* that the "allegations, *as charged and prosecuted in petitioner's criminal trial*, are the proper focus of subsection (g)(3)." *People v. Palmer*, 2021 IL 125621, ¶ 72 (emphasis added). This reading of subsection (g)(3) is precisely the rule proffered by petitioner: Charges that were dismissed and

never prosecuted in a criminal trial are not considered on a petition for certificate of innocence. The State does not provide any reason for the Court to depart from the holding of *Palmer*.

II. The State's Proposed Reading of the Statute Is Inconsistent with the Statutory Language

In asking the Court to reject the reading it afforded the statute in *Palmer*, the State requests that the Court read subsection (g)(3) to require a showing of innocence of every charge in the indictment or information, including charges that the State dismissed by *nolle prosequi*. (State's Br. 9-10.) The Court should reject this request for several reasons.

First, the State's argument that subsection (b) and (h) do not limit subsection (g)(3) cannot be squared with the rule that the Court must "view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *People v. Gutman*, 2011 IL 110338, ¶ 12. Petitioner showed in his opining brief that when a limitation in one part of a statute applies to another part, the limitation need not be repeated. (Petitioner's Br. 19-21.)

The Court should reject the State's argument that there is a contradiction between subsection (g)(3) and subsections (b) and (h). (State's Br. 14.) When read together, those provisions require a showing of innocence of the offenses charged in the indictment or information for which the

petitioner was incarcerated. The State's claim of a contradiction is based on putting the phrase "for which he or she was incarcerated" in the wrong place. *(Id.)* There is nothing contradictory when the subsections are read together in the natural way as: "innocent of the offenses charged in the indictment or information for which he or she was incarcerated."

The State is also in error in viewing this as a case where the legislature intended different meanings when it used different words in different parts of a statute. (State's Br. 10.) The legislature used the word "offenses" in subsection (g)(3) and in subsections (b) and (h). "Where a word is used in different sections of the same statute, the presumption is that the word is used with the same meaning throughout the statute, unless a contrary legislative intent is clearly expressed." *People v. Maggette*, 195 Ill. 2d 336, 349 (2001). The Court should apply this rule and conclude that the definition of the word "offenses" in subsections (b) and (h) limits the use of that word in subsection (g)(3).

Finally, the State is also mistaken in seeking to characterize petitioner as asking the Court to rewrite the statute. (State's Br. 10.) Reading subsections (b) and (h) to limit subsection (g)(3) is the natural way to read the statute; it is the State's argument that would require the Court to rewrite the statue by adding "all charges" to subsection (g)(3). As the

Appellate Court, Second District concluded in *People v. Green*, 2024 IL App (2d) 220328, because the certificate of innocence statute is "clear and ambiguous," the Court may not "insert words." *Id.* ¶¶ 26-27.

The State's reading would also rewrite the statute by eliminating the limitations of subsection (b) and (h). The State seeks to defend this request by suggesting that the legislature adopted one standard for the relief available under the statute and a different standard for the evidentiary burden that must be met to receive that relief. (State's Br. at 10-11.) The State, however, is unable to explain why the legislature would adopt such a confusing and inconsistent standard. The Court should reject the State's proposed reading because it is contrary to the presumption that "the legislature did not intend to create absurd, inconvenient, or unjust results." *People v. Gutman*, 2011 IL 110338, ¶ 12.

The State's attempt to justify its proposed reading rests on a definition of wrongful imprisonment that the legislature did not adopt. In the State's view, wrongful imprisonment is only unjust if "the petitioner proves that he is innocent of all valid dismissed charges." (State's Br. 12.) Petitioner showed in his opening brief how other jurisdictions have adopted a similar requirement through express statutory language not found in our state's certificate of innocence statute. (Petitioner's Br. 22-23.) The State agrees

that these provisions set higher burdens than the Illinois statute. (State's Br. 19.)

Our legislature did not employ the language used in other jurisdictions to require proof of innocence on all charges. Instead, as the Court recognized in *Palmer*, our legislature limited the relief to offenses of incarceration. *People v. Palmer*, 2021 IL 125621, ¶ 72.

Similarly, the legislature could have used language to require the petitioner to show innocence of even uncharged offenses. *E.g.,* Mass. Gen. Laws ch. 258D, § 1(C)(vi) (2017) (requiring a claimant to show innocence of "any other felony arising out of or reasonably connected to the facts supporting the indictment or complaint, or any lesser included felony.") This Court declined to read such a requirement into the statute in *Palmer*, and it should again decline to rewrite the statute here.

III. The State's Proposed Reading of the Statute Leads to Unjust and Anomalous Results

The State declines to respond to the amicus brief filed by four exonerees who received certificates of innocence despite being charged with offenses beyond the offenses of conviction. (Exonerees' Br.) The exonerees explain the importance of their certificates of innocence in remedying the harms from their wrongful convictions. (*Id.* at 2-10.) The exonerees also

show that the rule applied by the court below would likely have prevented each from receiving a certificate of innocence. (*Id.* at 2.)

The exonerees explain that it would be an absurd result to require a petitioner to prove innocence of criminal charges that a prosecutor determined not to pursue or of charges on which a jury returned an acquittal. (Exonerees' Br. 14-17.) That result would be inconsistent with the purpose of the certificate of innocence statute to "sweep away technical obstacles" (Exonerees' Br. 15, citing *People v. Washington*, 2023 IL 127952, ¶ 30.) It would also be inconsistent with the legislative command to apply "a broad interpretation to further the purposes of the statute." *Washington*, 2023 IL 127952, ¶ 31.

The State argues that a requirement to show innocence of dismissed charges or acquitted charges is consistent with an intent to grant certificates only to a petitioner who "should not 'have been in jail in the first place.'" (State's Br. 24, quoting Ill. Gen. Assem., House Proceedings, May 18, 2007 (statement of Representative Flowers).) The State made the same argument in *Palmer*, relying on the same statement by Representative Flowers. (*People v. Palmer*, Case No. 15621, State's Br. 27.) The Court in *Palmer* declined to adopt the argument and should do the same here. As the Court wrote in *People v. Hickman*, 163 Ill. 2d 250, 262 (1994), "while a court

gives some consideration to statements by the sponsor of a bill, such statements are not controlling." *Id.* at 262.

The State sought to rely on its "should not have been in jail in the first place" theory in *Palmer* to argue that the petitioner did not deserve a certificate of innocence because an alternate theory of guilt supported his incarceration. The State makes the same argument here when it asks the Court to read the statute to require petitioner to show his innocence of charges dismissed by *nolle prosequi*. The Court should again reject this argument and adhere to its holding in *Palmer* that the "the proper focus of subsection (g)(3)" is on the allegations "as charged and prosecuted in petitioner's criminal trial." *People v. Palmer*, 2021 IL 125621, ¶ 73.

The State acknowledges the absurd result its "all charges" rule would have in a case with a multi-defendant indictment. (State's Brief 25.) The "all charges" rule would require one defendant to prove innocence of all charges in the indictment, including those brought solely against the co-defendant. In the State's view, the Court should avoid this absurdity by re-writing subsection (g)(3) to include only the charges brought against the petitioner. (State's Br. 25.) The Court should not rewrite the statute. *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418,

¶ 28. Instead, the Court should read the plain language of the statute, read the statute as a whole, and reject the State's proposed reading.

IV. Petitioner is Innocent of All Charges that Remained in the Information

Petitioner showed in his opening brief that when the State dismissed counts 2, 3, and 4 by *nolle prosequi*, those charges were no longer part of the Information. (Petitioner's Br. 29-32.) Thus, petitioner was innocent of all charges in the Information. The State responds (State's Br. 26-27) by relying on this Court's recent discussion of the difference between a unilateral and bilateral *nolle* in *People v. Smollett*, 2024 IL 130431, ¶ 58. *Smollett* teaches that a bilateral *nolle* is one that is entered as part of an agreement and "bars further prosecution." *Id.* In contrast, "when a *nolle* is entered as a unilateral act by a prosecutor, the defendant may be tried again." *Id.* ¶ 57.

The State agrees that a unilateral *nolle* "reverts the matter to the same condition that existed before the commencement of the prosecution." (State's Br. 26-27, quoting *People v. Green*, 2024 IL App (2d) 220328, ¶ 29 (cleaned up).) The State contends, however, that a bilateral *nolle* has a different effect. There is no support for this contention.

The State seeks to rely on the Court's statement in *Smollett* that "if a dismissal is entered as part of a nonprosecution agreement between the State and the defendant, the manner of the dismissal is not important."

(State's Br. 26, citing *People v. Smollett*, 2024 IL 130431, ¶ 60.) But that statement has nothing to do with the effect of a *nolle*.

This Court long ago made plain that a *nolle prosequi* "is like a nonsuit or discontinuance in a civil suit, and leaves the matter in the same condition in which it was before the commencement of the prosecution." *People v. Watson*, 394 Ill. 177, 179 (1946). The Court has applied this rule to bilateral and unilateral *nolles*. *People v. Norris*, 214 Ill. 2d 92, 104 (2005) (unilateral *nolle*: State dismissed charges without any agreement); *People v. Shinaul*, 2017 IL 120162, ¶ 9 (bilateral *nolle*; State dismissed charges as part of plea agreement).

Following a *nolle prosequi*, there are two ways in which the State may reinstate the dismissed charges: The State may file a new case or the State may move to vacate the *nolle* and reinstate the dismissed charge. *People v. Hughes*, 2012 IL 112817, ¶¶ 24-25.

The State now argues for a new rule, asserting that the vacatur of petitioner's conviction automatically revived the dismissed charges. (State's Br. 27-28.) This argument runs afoul of *Hughes* and was expressly rejected by the Court in *People v. Shinaul*, 2017 IL 120162. As the State explains in its own description of *Shinaul*, "where defendant's AUUW conviction was vacated pursuant to Aguilar, the People could properly reinstate previously

nol-prossed charges." (State's Br. 28, citing *Shinaul*, 2017 IL 120162, ¶ 9.) The State did not reinstate the nol-prossed charges in this case, and the State's recognition of the need to reinstate the charges shows that those charges did not automatically return to the case when the conviction was vacated.

V. Petitioner Did Not Voluntarily Cause His Void Conviction

Finally, the State argues for the first time that petitioner cannot satisfy 735 ILCS 5/2-702(g)(4): "the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction." The State concedes that it "did not press this argument below." (State's Br. 31.) The Court should not permit the State to raise the argument for the first time here.

As the appellee, the State may raise a new argument only if "there is a factual basis for it." *Estate of Johnson v. Condell Mem'l Hosp*, 119 Ill. 2d 496, 502 (1988). But no facts about petitioner's decision to plead guilty were ever adduced because the State failed to raise this argument in the trial court.

In any event, the Court considered and rejected the State's argument in *People v. Washington*, 2023 IL 127952, when it endorsed the Appellate Court's opinion in *People v. McClinton*, 2018 IL App (3d) 160648. In

McClinton, the petitioner had been convicted under the same unconstitutional statute at issue here. As the Court explained,

> because the statute criminalizing the petitioner's conduct was void, her actions that resulted in her conviction were not criminal when she committed them and she did not "intentionally cause or bring about her conviction."

Washington, 2023 IL 127952, ¶ 44. That is, none of the actions that lead to a void conviction can be considered voluntary.

The State labels the Court's adoption of *McClinton* as dicta and argues that *McClinton* applies to a petitioner's conduct in committing an offense but not to the act of pleading guilty. (State's Br. 33-34.) The Appellate Court, Third District correctly rejected this argument in *People v. Lesley*, 2024 IL App (3d) 210330:

> The fact that petitioner pled guilty to the offense later held unconstitutional, rather than being found guilty at trial as in *McClinton*, does not change the analysis. The point is that, in either case, the statute that criminalized the conduct was void and so the conduct was not criminal at the time.

Id. ¶ 50; *see also People v. Pruitt*, 2024 IL App (3d) 210343-U, ¶¶ 29-30 (rejecting State's argument because "our court's reasoning in *McClinton* applies equally to a petitioner who pleads guilty to AUUW").

The State's argument is contrary to the well-settled rule that a party cannot voluntarily enter into a void contract: "A contract that is void *ab initio* is treated as though it never existed and, thus, cannot be enforced by

either party." *1550 MP Rd. LLC v. Teamsters Local Union No. 700*, 2019 IL 123046, ¶ 43.

Illinois courts have long applied this rule to plea bargaining. More than forty years ago, the Appellate Court explained, "It is well established that a guilty plea is not voluntary and intelligent if it is entered on the basis of a misapprehension of law or fact." *People v. Kraus*, 122 Ill. App. 3d 882, 888 (1984). The Appellate Court has applied this rule to permit a defendant to withdraw his guilty plea based on the misapprehension that he would not be subject to a mandatory life sentence, *People v. Lee*, 2023 IL App (1st) 211080, ¶ 45, and where a defendant pleaded guilty based on a misapprehension about whether a prior conviction could serve as a predicate for the offense of armed violence. *People v. Cady*, 2020 IL App (3d) 190199, ¶ 22.

Because there is no dispute that petitioner pleaded guilty to a void offense, there can be no dispute that his plea was based on a misapprehension that the offense was not void. Where a statute is void *ab initio*, "the statute was constitutionally infirm from the moment of its enactment and is, therefore, unenforceable." *People v. Blair*, 2013 IL 114122, ¶ 30. Accordingly, petitioner "essentially pled guilty to something that was never a crime" and his guilty plea is "defective." *People v. Shinaul*, 2017 IL 120162,

¶ 14. This misapprehension means that petitioner's plea of guilty was not voluntary. *People v. Kraus*, 122 Ill. App. 3d 882, 888 (1984).

The State appears to argue that petitioner does not deserve a certificate of innocence because he received a benefit through his guilty plea. (State's Br. 35.) The State is unable to provide any textual support for its meritless theory that being imprisoned for an unconstitutional offense was beneficial to petitioner. Moreover, the argument is no different than the argument this Court rejected in *People v. Shinaul*, 2017 IL 120162.

The defendant in *Shinaul* pleaded guilty to a conviction later vacated as unconstitutionally void; as part of the guilty plea, the State dismissed other counts by *nolle prosequi*. The State argued that the statute of limitations did not bar reinstating the nol-prossed charges because "fairness demands that the statute of limitations be tolled in perpetuity when charges are dismissed pursuant to a plea agreement." *Shinaul*, 2017 IL 120162, ¶ 16. The Court rejected this argument and refused to "read into the statute of limitations a nonexistent exception in order to benefit the State." *Id.* ¶ 17. The same result is required here. The Court should refuse to read a "nonexistent exception" into the certificate of innocence statute.

CONCLUSION

For these reasons and those previously advanced, the Court should reverse the judgment below and remand for entry of the certificate of innocence.

Respectfully submitted,

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RULE 341 CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 17 pages.

Dated: January 30, 2025

/s/ Joel A. Flaxman
Joel A. Flaxman
an attorney for appellant

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I certify that on January 30, 2025, I electronically filed the foregoing with the Clerk of the Court, by using the Odyssey eFileIL system.

I further certify that I served the foregoing by email to:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Dated: January 30, 2025

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