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*

BRIEF AND APPENDIX OF PETITIONER-APPELLANT

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Oral Argument Requested

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

Petitioner filed a petition for a certificate of innocence under 735 ILCS 5/2-702 after the circuit court vacated his unconstitutional conviction of one count of Aggravated Unlawful Use of a Weapon.

Pursuant to statute, the petition requested "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). Although it is undisputed that petitioner demonstrated his "innocence of the offense as it was charged in the indictment or information that resulted in the wrongful criminal conviction," *People v. Palmer*, 2021 IL 125621, ¶ 72, the circuit court denied the petition, and the appellate court affirmed.

The appellate court held that petitioner's showing that he was innocent of the charge that resulted in the wrongful conviction was not enough. In the view of the appellate court, petitioner was required to show innocence of every offense charged in the original information, including charges the State had dismissed by *nolle prosequi* and for which petitioner was neither convicted nor incarcerated. Petitioner contends that this "all charges" rule is contrary to the certificate of innocence statute.

ISSUE PRESENTED FOR REVIEW

Does the certificate of innocence statute require proof of innocence of the offense for which the petitioner was incarcerated, or must the petitioner

prove innocence of every offense charged, including those charges the State dismissed by *nolle prosequi* and for which the petitioner was neither convicted nor incarcerated?

STATEMENT OF JURISDICTION

The Appellate Court entered judgment under Supreme Court Rule 23(c) on February 7, 2024, and issued a corrected order on February 23, 2024. Petitioner filed a timely petition for rehearing on February 26, 2024. The Appellate Court denied the petition on March 6, 2024, and filed a modified order on March 7, 2024. (App. A1-A15.)

Petitioner filed his Petition for Leave to Appeal on April 8, 2024. The Court allowed the Petition on May 29, 2024. Jurisdiction lies under Illinois Supreme Court Rule 315.

STATUTE INVOLVED

This case involves 735 ILCS 5/2-702. The following provisions of the statute are most germane:

735 ILCS 5/2-702(b):

> (b) Any person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted. The petition 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(g)(3):

> (g) In order to obtain a certificate of innocence the petitioner must prove by a preponderance of evidence that:
>
> ***
>
> > (3) the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State

735 ILCS 5/2-702(h):

> (h) If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.

STATEMENT OF FACTS

Petitioner James Reed was charged by information with four counts of Aggravated Unlawful Use of a Weapon. (C29-C34.) Count 1 (C30) was charged under 720 ILCS 24-1.6(a)(1)/(3)(A), and Count 3 (C32) was charged under 720 ILCS 24-1.6(a)(2)/(3)(A), sections of the AUUW statute this Court held unconstitutional in *People v. Aguilar*, 2013 IL 112116 and *People v. Mosley*, 2015 IL 115872. Count 2 (C31) was charged under 720 ILCS 24-1.6(a)(1)/(3)(C), and Count 4 (C33) was charged under 720 ILCS 24-1.6(a)(2)/(3)(C), provisions that the Court upheld in *Mosley*.

Petitioner pleaded guilty to Count 1 on December 3, 2003. (S.R. 4-16.) As part of petitioner's plea agreement, the State dismissed Counts 2, 3, and 4 by *nolle prosequi*. (S.R. 5.) The prosecutor provided the following factual basis for the conviction:

> If this case proceeded to trial, the State would call Officer Lewis, star number 4065 of the 7th District. He would testify that he was so employed on October 6th of 2003 at approximately 10:44 a.m. in the vicinity of 6400 South Wood, Chicago, Cook County, Illinois; that he would identify the Defendant as the person that he saw on that date, time, location. The officer would further testify that the Defendant was involved in a shooting on a public street at the location of 6400 South Wood and that when the Defendant was placed into custody, he had in his possession a semi-automatic handgun which was a Glock .40 caliber. The officer found this handgun to contain one live round in the chamber as well as nine rounds in the magazine. The Defendant was placed into custody for this offense.

(S.R. 10-11.) The parties stipulated to these facts (S.R. 11), and the trial court sentenced petitioner to 2 years of probation, with the first 6 months to be served in the Cook County Department of Corrections, with credit for 59 days of actual incarceration already served. (S.R. 12-13.) Petitioner subsequently violated his probation and was resentenced to one year in the Illinois Department of Corrections on December 10, 2004, with credit for 80 days time served. (C65.)

On November 18, 2021, petitioner filed *pro se* a petition to vacate his conviction as unconstitutional under *People v. Aguilar*, 2013 IL 112116. (C66-C67.) The State agreed that the conviction was void. (R4.) On June 17, 2022, the circuit court granted the petition and vacated petitioner's conviction. (C111, R4.)

Petitioner then filed *pro se* a Petition for Certificate of Innocence and a Supplemental Petition for Certificate of Innocence on July 13, 2022. (C115-

C134.) Petitioner, whose *pro se* submissions were verified as required by 735 ILCS 5/2-702(d) (C125), relied on *People v. McClinton*, 2018 IL App (3d) 160648 (C130, C129, C128), and showed that he satisfied the requirements for issuances of a certificate of innocence.

(The *pro se* submissions are improperly paginated in the record on appeal. The original petition, in correct page order, appears at C133 and C132. The supplemental petition, again in correct page order, appears at C134, C131, C130, C129, C128, C127, C126, C125.)

The State filed written objections (C140-C147), asserting that petitioner was seeking a "financial windfall" and asking the circuit court to construe the statute to avoid this expense for the State. (C140.) The State also argued that petitioner could not prove that he was innocent of the nol-prossed Counts 2 and 4 and therefore could not satisfy 735 ILCS 5/2-702(g)(3). (C143-C144.) The State relied on *People v. Warner*, 2022 IL App (1st) 210260 to argue that a person seeking a certificate of innocence must prove innocence of all charges, including those that the State had dismissed by *nolle prosequi* and for which the petitioner was never incarcerated. (C145-C146.) The State did not argue that petitioner had failed to satisfy any other requirement of the statute. (C140-C147.)

The trial court accepted the State's argument, ruling that, to secure a certificate of innocence, a petitioner must show innocence of all offenses originally charged. (R48.) The trial court denied the petition because petitioner had not made this showing. (*Id.*)

The appellate court affirmed, agreeing that 735 ILCS 5/2-702(g)(3) requires a petitioner to show innocence of all offenses charged. (App. A7-A8, 2024 IL App (1st) 230669-U, ¶ 19.) The court relied on *People v. Warner*, 2022 IL App (1st) 210260, and *People v. Brown*, 2022 IL App (4th) 220171. (App. A8-A9, 2024 IL App (1st) 230669-U, ¶ 21-22.)

The Appellate Court, Third District, adopted the same reasoning in three recent decisions. *People v. Moore*, 2024 IL App (3d) 210496-U; *People v. Jones*, 2024 IL App (3d) 210414; *People v. Lesley*, 2024 IL App (3d) 210330. Petitions for Leave to Appeal are pending in *Moore*, Case Number 130783, *Jones*, Case Number 130700, and *Lesley*, Case Number 130699 & 130707.

The Appellate Court, Second District, considered the reasoning of *Warner* and *Brown* and, over a dissent, rejected the "all charges" rule. *People v. Green*, 2024 IL App (2d) 220328.

ARGUMENT

I. Standard of Review

This appeal presents issues of statutory interpretation, which the Court reviews *de novo*. *People v. Washington*, 2023 IL 127952, ¶ 27.

II. The Plain Language of the Certificate of Innocence Statute Limits Its Scope to Offenses of Incarceration

In construing a statute, the Court's "primary goal is to ascertain and give effect to the drafters' intention, and the most reliable indicator of intent is the language used, which must be given its plain and ordinary meaning." *People v. Smith*, 236 Ill. 2d 162, 167 (2010). The Court views "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. The Court considers "not only the language of the statute, but also the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved." *Alvarez v. Pappas*, 229 Ill. 2d 217, 231 (2008). A straightforward application of these rules requires that the Court reverse and remand with directions to issue the certificate of innocence.

A. The legislature enacted the certificate of innocence statute to remedy wrongful incarceration and limited the statute to offenses of incarceration

The legislature proclaimed the statutory purpose of the certificate of innocence statute in the first subsection of the act:

> (a) The General Assembly finds and declares that innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief through a petition in the Court of Claims.

735 ILCS 5/2-702(a). The Court has read this provision to state a three-fold purpose: "(1) to sweep away technical obstacles, (2) to preclude certificates to those petitioners who voluntarily caused or brought about their convictions, and (3) to provide resources and compensation for innocent people wrongly incarcerated." *People v. Washington*, 2023 IL 127952, ¶ 30.

The statute's clear statement of legislative intent requires "a broad interpretation to further the purposes of the statute." *Washington*, 2023 IL 127952, ¶ 31. The Court rejected a restrictive reading of the statute in *People v. Palmer*, 2021 IL 125621, ¶ 65 and reaffirmed that holding in *Washington*, 2023 IL 127952, ¶ 31. *Washington* expressly approved the "expansive reading of the statute" applied in *People v. Glenn*, 2018 IL App (1st) 161331, to "preserve the intent of the statute" to provide a remedy for wrongful imprisonment. *Washington*, 2023 IL 127952, ¶ 32.

The legislature defined "certificate of innocence" in subsection (b):

> (b) Any person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted. The petition 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).

The second sentence of subsection (b) makes plain that the petitioner's certificate of innocence is limited to "all offenses for which he or she

was incarcerated." The word "shall" in subsection (b) is "a clear expression of legislative intent to impose a mandatory obligation." *People v. O'Brien*, 197 Ill. 2d 88, 93 (2001). Thus, a petitioner may not seek relief for counts that were dismissed by *nolle prosequi* and for which the petitioner was neither convicted nor incarcerated. The petitioner "may *only* request a COI that finds him innocent of 'all offenses for which he or she was incarcerated.'" *People v. Moore*, 2020 IL App (1st) 190435, ¶ 33 (emphasis in original.)

Subsection (h) imposes the same mandatory limitation on the relief available in the circuit court. This subsection begins as follows:

> (h) If the court finds that the petitioner is entitled to a judgment, it 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). Under this subsection, the certificate that the court "shall" enter is limited to the petitioner's offenses of incarceration: "all offenses for which he or she was incarcerated." *Id.* This language excludes charges that the State nolle prossed and for which the petitioner was never incarcerated.

The Court recognized the statute's limitation to offenses of incarceration in *People v. Palmer*, 2021 IL 125621:

> Consistent with these goals, section 2-702 authorizes any person convicted and subsequently imprisoned for a crime that they did not commit to file a petition seeking a certificate of

> innocence finding that the petitioner was innocent of all offenses for which they were incarcerated.

Id. ¶ 55. And the Court included this limitation in its construction of subsection (g)(3), discussed below at 12-15: "[S]ubsection (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 (emphasis added.)

B. Petitioner satisfies each of the four elements for issuance of a certificate of innocence

The legislature defined four elements for issuance of a certificate of innocence in subsection (g) of the certificate of innocence statute:

> (1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
>
> (2) (A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;
>
> (3) the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and

> (4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.

735 ILCS 5/2–702(g).

There is no dispute in this case that petitioner satisfies subsections (g)(1), (g)(2), and (g)(3).

Petitioner satisfies subsection (g)(1) because he was convicted of one count of AUUW, sentenced to probation and jail time, resentenced to prison time, and served his sentence. The original sentencing order included the finding that petitioner had already served 59 days. (C41.) The order on resentencing recites that petitioner had served 80 days. (C65.) As the trial court correctly found, petitioner "served part or all" of his sentence. (R47.)

Petitioner satisfies subsection (g)(2)(A) because his conviction of Count 1 was vacated and Counts 2, 3, and 4 were dismissed. *See People v. Moore*, 2020 IL App (1st) 190435, ¶ 69. Petitioner also satisfies subsection (g)(2)(B) because he was convicted under an unconstitutional statute. This subsection shows that the certificate of innocence statute contemplates the granting of a certificate where a petitioner is innocent because he was convicted under an unconstitutional statute.

Petitioner satisfies subsection (g)(4) because a petitioner cannot voluntarily cause or bring about conviction of a void offense. The Court adopted

this rule in *People v. Washington*, 2023 IL 127952, where it endorsed a decision by the Appellate Court, Third District:

> In *People v. McClinton*, 2018 IL App (3d) 160648, ¶ 21, the appellate court found that, because the statute under which the petitioner was convicted was found unconstitutional, the petitioner did not cause or bring about her conviction. The appellate court reasoned that, 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." *Id.* *McClinton* bolsters the intent of the legislature to broadly construe the statute for petitioners who did not voluntarily cause or bring about their convictions to provide an "available avenue to obtain a finding of innocence." 735 ILCS 5/2-702(a) (West 2016).

Washington, 2023 IL 127952, ¶ 44.

The third element, 735 ILCS 5/2–702(g)(3), is the only element in dispute. The appellate court held that petitioner could not satisfy (g)(3) because it read that provision to require a petitioner to prove he is "innocent of all offenses charged." (App. A7-A8, 2024 IL App (1st) 230669-U, ¶ 19.) Petitioner shows below that the Court should reject this "all charges" rule and conclude that subsection (g)(3) requires a showing that a petitioner is innocent of offenses of incarceration only.

C. The Court should adhere to its construction of subsection (g)(3) in *People v. Palmer*

The Court construed subsection (g)(3) in *People v. Palmer*, 2021 IL 125621, holding that subsection (g)(3) requires a petitioner to show "innocence of the offense as it was charged in the indictment or information that

resulted in the wrongful criminal conviction." *People v. Palmer*, 2021 IL 125621, ¶ 55. Petitioner satisfies this requirement.

Like this case, *Palmer* involved a theory of criminal liability that the State could have, but did not, assert in the original criminal proceedings. The petitioner there was charged with five counts of first-degree murder and one count of residential burglary. *Palmer*, 2021 IL 125621, ¶ 5. The State's theory at trial was that petitioner burgled the victim's apartment on August 26, 1998 and then returned on August 27, 1998 to kill the victim. *Id.* ¶ 7. The jury found the petitioner not guilty of residential burglary and guilty of first-degree murder. *Id.* ¶ 28.

Years later, Palmer was exonerated by DNA evidence; the circuit court vacated the conviction and ordered a new trial. *Palmer*, 2021 IL 125621, ¶ 33. Rather than retrying the petitioner, the State moved to dismiss the charges without prejudice. *Id.* ¶ 34. When the petitioner sought a certificate of innocence, the State argued that even though the petitioner was innocent of murder as originally prosecuted, he had not shown he was innocent of murder under a new theory of accountability. *Id.* ¶ 44.

The Court rejected the State's position as inconsistent with the language of the certificate of innocence statute, holding that "the proper focus of subsection (g)(3)" is on the allegations "as charged *and prosecuted* in

petitioner's criminal trial." *Palmer*, 2021 IL 125621, ¶ 73 (emphasis added). The "all charges" rule applied by the appellate court in this case expands subsection (g)(3) to include allegations that were not prosecuted in the original proceeding and is inconsistent with *Palmer*.

Petitioner in this case was not prosecuted on the nol-prossed charges just as the petitioner in *Palmer* had not been prosecuted on an accountability theory. Here, the State chose to dismiss Counts 2, 3, and 4 when petitioner pleaded guilty. In *Palmer*, the State chose to not assert accountability liability at the original trial and again after the petitioner's conviction was vacated. Consistent with *Palmer*, the focus of subsection (g)(3) of the certificate of innocence statute is limited to Count 1, the only offense charged and prosecuted.

The Court in *Palmer* also applied judicial estoppel to reject the State's position: "The State cannot now change course in a subsequent proceeding and assert the exact opposite of what it asserted at petitioner's criminal trial." *Id.* ¶ 77. The same is true here because the State formally abandoned Counts 2, 3, and 4 when it dismissed those counts by *nolle prosequi*. As in *Palmer*, the Court should not allow the State to change course and rely on a new theory of guilt that was not presented in the original proceedings.

Palmer summarized its holding as: "[S]ubsection (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." *Palmer*, 2021 IL 125621, ¶ 72. Under this reasoning, petitioner satisfies (g)(3). The charge in this case that "resulted in the wrongful criminal conviction" is Count 1. The Court should follow *Palmer* and hold that Petitioner need only show innocence of Count 1, the offense that resulted in the wrongful criminal conviction.

There is no dispute that petitioner was innocent of Count 1 because he "pled guilty to something that was never a crime." *People v. Shinaul*, 2017 IL 120162, ¶ 14. And there is no dispute that 735 ILCS 5/2-702(g)(2)(B) expressly anticipates granting certificates of innocence to individuals convicted under an unconstitutional statute. Thus, petitioner is entitled to a certificate of innocence because he is innocent of all offenses for which he was incarcerated. *Palmer*, 2021 IL 125621, ¶ 55.

D. The appellate court departed from this Court's decision in *Palmer*

The appellate court in this case mistakenly limited *Palmer* to cases where the State relies on an uncharged theory of culpability to oppose a certificate of innocence. (App. A14, 2024 IL App (1st) 230669-U, ¶ 29.) As shown above, *Palmer* is not so limited. The court below acknowledged that

Palmer involved both the failure to charge the new theory as well as the failure to argue the new theory: "Because the State did not *charge or argue* the defendant's guilt based on a theory of accountability, he was not required to disprove that theory to obtain a certificate of innocence." (App. A13, 2024 IL App (1st) 230669-U, ¶ 28) (emphasis added.)

That *Palmer* was not limited to uncharged theories is demonstrated by the State's argument in *Palmer* that the accountability theory was not uncharged; as the State pointed out, "it is permissible to charge a criminal defendant as a principal even though the proof is that the defendant was only an accomplice" *People v. Palmer*, 2021 IL 125621, ¶ 69 (citing *People v. Ceja*, 204 Ill. 2d 332, 361 (2003).) *Palmer* barred the State from relying on the accountability theory because it was not charged, it was not prosecuted, *and* it did not result in the wrongful conviction. *Id.* ¶¶ 72-73.

The Appellate Court, Second District, applied the correct reading of *Palmer* in a case with similar facts to this one. *People v. Green*, 2024 IL App (2d) 220328, ¶ 37. *Green* correctly held that *Palmer* applied, noting that "*Palmer* involved a theory of guilt not presented to the trier of fact, while [*Green*] involves charges never presented to the trier of fact." *Id.* ¶ 42.

The *Green* court also recognized that *Palmer* did not discuss the burglary charge on which the petitioner had been found not guilty. *Green*, 2024

IL App (2d) 220328, ¶ 43. That scope of the Court's discussion was consistent with the Court's limitation of subsection (g)(3) to "the offense as it was charged in the indictment or information that resulted in the wrongful criminal conviction." *Palmer*, 2021 IL 125621, ¶ 72.

Accordingly, the Court should reject the "all charges" rule as inconsistent with *Palmer*. If the Court had intended to adopt that rule in *Palmer*, it would have required the petitioner to show innocence of the burglary charge for which he was acquitted. *Green*, 2024 IL App (2d) 220328, ¶ 45.

III. The Appellate Court Misconstrued the Statute

A. The Court should reject the appellate court's decision to read subsection (g)(3) in isolation

Petitioner showed above at 8-9 that subsections (b) and (h) limit the scope of subsection (g)(3) to offenses of incarceration. The appellate court recognized the limitation of subsections (b) and (h) to offenses of incarceration, but read those sections in isolation from (g)(3). (App. A9-A10, 2024 IL App (1st) 230669-U, ¶ 23.) In the view of the appellate court,

> Section 2-702 differentiates between what a petitioner must prove, which is his innocence of all charges (*id.* §§ 2-702(d), (g)(3)), and the relief he obtains if he makes such a showing, which is a certification that he is innocent of the charges for which he was incarcerated (*id.* §§ 2-702(b), (h)).

(Id.) That is, the appellate court concluded that the legislature adopted inconsistent provisions within the same statute.

The appellate court did not explain its conclusion that the legislature drafted the statute to require proof of elements broader than the scope of the relief available. This conclusion departs from the presumption that that the legislature "did not intend absurd, inconvenient, or unjust consequence." *Home Star Bank & Fin. Servs. v. Emergency Care & Health Org., Ltd.*, 2014 IL 115526, ¶ 24. It also departs from the express intent of the certificate of innocence statute to remove "substantive and technical obstacles." 735 ILCS 5/2-702(a). Petitioner discusses the legislative intent in more detail at 24-27.

The Court should reject the appellate court's view that, "'[i]f the legislature had intended that a petitioner was required to allege and show only that they were innocent of the 'offenses for which he or she was incarcerated,' subsections (d) and (g)(3) would contain the same language as found in subsections (b) and (h).'" (App. A10, 2024 IL App (1st) 230669-U, ¶ 24, quoting *People v. Warner*, 2022 IL App (1st) 210260, ¶ 28.) This reasoning renders the limitation to offenses of incarceration in subsections (b) and (h) as mere surplusage, not serving any purpose. *People v. Maggette*, 195 Ill. 2d 336, 350 (2001) (court "should construe a statute, if possible, so that no term is rendered superfluous or meaningless.")

The appellate court's holding also violates the rule that, in reading a statute, a court must "view the statute as a whole, construing words and phrases in connection with other relevant statutory provisions rather than in isolation, while giving each word, clause, and sentence of a statute a reasonable meaning, if possible, and not rendering any term superfluous." *People v. Fair*, 2024 IL 128373, ¶ 61. As this Court held in *Fair*, when one provision of a statute modifies a second provision, the language of that modification need not be restated in the second provision.

Fair concerned the construction of a provision of the Illinois Torture Inquiry and Relief Commission Act, 775 ILCS 40/1 *et seq.* Under that provision, cases can be referred to the Circuit Court of Cook County "for consideration." 775 ILCS 40/50(a). The question in *Fair* was whether the circuit court's "consideration" under 775 ILCS 40/50(a) was limited by other sections of the Torture Act to the claim of torture.

The petitioner in *Fair* argued that the phrase "for consideration" should be read in isolation to mean that the entire case was being referred to the circuit court. *People v. Fair*, 2024 IL 128373, ¶ 69. This Court disagreed and held that the limitations of other subsections of the Act were incorporated into 775 ILCS 40/50(a) to mean that the circuit court's consideration was limited to the torture claim. *Fair*, 2024 IL 128373, ¶ 69.

The question in this case is similar: Is the reference in 735 ILCS 5/2-702(g)(3) to "the offenses" limited by other provisions of the certificate of innocence statute, subsections (b) and (h), to the offenses of incarceration? The appellate court's negative answer is inconsistent with *Fair* and the well-settled rule against reading statutory provisions in isolation.

The appellate court correctly applied that rule in *Scholl's 4 Season Motor Sports, Inc. v. Illinois Motor Vehicle Rev. Bd.*, 2011 IL App (1st) 102995 when it held that the definition of "motor vehicles" in 815 ILCS 710/2(a) is a limitation on the definition of "motorcycle" in 815 ILCS 710/10.1(a). Similarly, in *People v. Hayden*, 2018 IL App (4th) 160035, the court held that the definition of "victim" as the "child under the age of 13" was a limitation on the later use of the term "the victim" in 725 ILCS 5/115-10(a)(1).

The same reasoning applies here. The definite article "the" in "the offenses" in subsection (g)(3) is a restrictive word, meaning that "the offenses" was previously defined. *See Sibenaller v. Milschewski,* 379 Ill. App. 3d 717, 722 (2008). The definition of "the offenses" is found in subsection (b), which states in relevant part: "The petition 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.) Thus, when the

statute subsequently refers to "the offenses" in subsection (g)(3), that term is restricted to offenses of incarceration by the language of subsection (b).

The appellate court relied on its mistaken view that petitioner's argument "would allow a person who may have committed AUUW to, nevertheless, obtain a judicial finding that he is innocent of AUUW." (App. A10, 2024 IL App (1st) 230669-U, ¶ 23.) This is incorrect because subsection (b) prohibits a petitioner from seeking a finding that he is innocent of a charge for which he was neither convicted nor incarcerated and subsection (h) prohibits the court from making such a finding. *People v. Palmer*, 2021 IL 125621, teaches that a certificate of innocence does not certify innocence of every conceivable offense. As *Palmer* holds, the petitioner must show innocence only of the offenses "as charged and prosecuted in petitioner's criminal trial." *Id.* ¶ 73.

B. Language was readily available to the legislature had it intended to enact the "all charges" rule

In *People v. Washington*, 2023 IL 127952, the Court supported its holding that a guilty plea was not a bar to the granting of a certificate of innocence by considering language used in the legislation of other jurisdictions. *Id.* ¶ 35. The Court cited statutes from seven jurisdictions that "specifically provided that certificates of innocence are not available to those

who entered guilty pleas." *Id.* If our legislature had intended to apply the same bar, it "would have added that language to the statute." *Id.*

Application of this reasoning to the present case shows that the legislature would have used the language employed in other jurisdictions had it intended to require a certificate of innocence petitioner to show innocence of charges beyond the charges of conviction and incarceration.

Federal law expressly requires the claimant to show that he or she "did not commit any of the acts charged." 28 U.S.C. § 2513(a)(2). The statutes in New York, Vermont, and Washington also contain language expressly requiring a showing of innocence for all charges. N.Y. Ct. Cl. Act § 8-b(5)(c) (claimant must show "he did not commit any of the acts charged in the accusatory instrument"); Vt. Stat. Ann. tit. 13, § 5574(a)(3) (claimant must show he or she "did not engage in any illegal conduct alleged in the charging documents"); Wash. Rev. Code § 4.100.040(2)(a) (claimant must show he or she "did not engage in any illegal conduct alleged in the charging documents").

In Colorado, in addition to a showing that the petitioner did not commit the offense of conviction and incarceration, the petitioner must also show that he or she did not commit "any lesser included offense thereof."

Colo. Rev. Stat. Ann. § 13-65-102(3)(a). Oklahoma law likewise requires innocence of any lesser included offenses. Okla. Stat. tit. 51, § 154(B)(2)(e)(2)

Florida law requires the petitioner to show innocence of the offense of conviction and incarceration and demonstrate that "the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense." Fla. Stat. Ann. § 961.03(3). Massachusetts goes further, 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," Mass. Gen. Laws ch. 258D, § 1(C)(vi) (2017).

These statutes demonstrate how our legislature could have used language requiring a showing of innocence of offenses other than the offenses of conviction and incarceration. The legislature did not adopt any such requirement, and the court "shall not insert words into legislative enactments when the statute otherwise presents a cogent and justifiable legislative scheme." *Waste Mgmt. of Illinois, Inc. v. Illinois Pollution Control Bd.*, 145 Ill. 2d 345, 348 (1991). This rule applies with extra force here because, as petitioner shows below, inserting the word "all" frustrates the legislative intent of the statute.

C. The "all charges" rule contravenes the legislative intent of the certificate of innocence statute

The focus of the statute on persons who have been "wrongly convicted of crimes in Illinois and subsequently imprisoned," 735 ILCS 5/2-702(a), shows that the statute is aimed at convictions for which a petitioner was imprisoned. This limitation is reflected 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 (emphasis added.)

"While a statute's title cannot be used to limit the plain meaning of statutory text, it can provide guidance in resolving statutory ambiguities." *Home Star Bank & Fin. Servs. v. Emergency Care & Health Org.*, 2014 IL 115526, ¶ 40. For example, in *Land v. Bd. of Educ. of City of Chicago*, 202 Ill. 2d 414 (2002), the Court found the title of the statute at issue supported the Court's reading of the statute. *Id.* at 429. In this case, the express reference to offenses of incarceration in the title is contrary to the rule applied by the court of appeals that a petitioner must prove innocence of offenses for which he or she was never incarcerated.

The limitation to offenses of incarceration is repeated in subsections (b) and (h) of 735 ILCS 5/2-702. Those subsections define "certificate of innocence" as a certificate that the "petitioner was innocent of all offenses for which he or she was incarcerated." 735 ILCS 5/2-702(b), (h).

Petitioner showed at 8-9 that subsections (b) and (h) limit the scope of subsection (g)(3), as the Court recognized in *People v. Palmer*, 2021 IL 125621, ¶ 72. The Appellate Court, Third District, reached the same conclusion in *People v. McClinton*, 2018 IL App (3d) 160648, holding that subsection (b) "states the limits of which offenses we consider in evaluating whether [the petitioner] is entitled to a certificate of innocence." *Id.* ¶ 15. The court below sought to distinguish *McClinton* by pointing out factual differences, including that there was no guilty plea in *McClinton*. (App. A11, 2024 IL App (1st) 230669-U, ¶ 26.) But nothing in *McClinton* turned on the absence of a guilty plea, and the appellate court's reasoning is contrary to the express holding of *People v. Washington*, 2023 IL 127952: "the plain language of the [certificate of innocence] statute does not categorically bar an innocent petitioner who pleaded guilty from obtaining a certificate of innocence." *Id.* ¶ 62.

Similar language limiting the statute to offenses of conviction and incarceration appears in subsection (c), which identifies the documents that must be attached to a petition and refers to the relief being requested as a "certificate of innocence of an unjust conviction and imprisonment." 735 ILCS 5/2-702(c).

The legislature acknowledged the limitation of the statute to offenses of conviction and imprisonment in subsection (f), which permits the court to take judicial notice of evidence related "to the convictions which resulted in the alleged wrongful incarceration." 735 ILCS 5/2-702(c). And similar language appears in subsection (g)(1), which makes conviction and imprisonment an element of a certificate of innocence. 735 ILCS 5/2-702(g)(1).

All of these provisions demonstrate that the key question under the statute is whether the petitioner is innocent of the offense of incarceration. The Court should reject the appellate court's contrary holding.

Two other parts of the statutory purpose also support petitioner's reading. First, the statute is intended to remove "substantive and technical obstacles." 735 ILCS 5/2-702(a). The appellate court's rule adds such an obstacle. *See People v. Palmer*, 2021 IL 125621, ¶ 65 (rejecting reading of statute that would impose a technical legal obstacle.)

Second, the statute instructs courts to "give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf." 735 ILCS 5/2-702(a). As the Court held under similar facts in *Palmer*, it would be inconsistent with this provision to require a petitioner to make a showing of innocence on a charge that

the State formally abandoned more than a decade earlier. *See People v. Palmer*, 2021 IL 125621, ¶ 68.

D. The "all charges" rule is inconsistent with tort principles embodied in the certificate of innocence statute

The compensation scheme of the statute also shows why petitioner's interpretation is correct. The first subsection explains the statutory purpose of providing an "avenue to obtain a finding of innocence so that [the wrongfully incarcerated] may obtain relief through a petition in the Court of Claims." 735 ILCS 5/2-702(a). That relief comes through a claim "against the State for time unjustly served in prisons." 705 ILCS 505/8(c). A certificate of innocence issued in the circuit court is "conclusive evidence of the validity of the claim." *Id.*

Petitioner cannot seek relief for charges that were dismissed by *nolle prosequi* and for which he was never incarcerated. Requiring a showing of innocence on such charges is inconsistent with the certificate of innocence statute and with the Court of Claims Act.

As the Appellate Court, Second District recognized, the "nature of section 2-702 is a civil remedy that facilitates the award of compensatory damages for wrongful imprisonment based on innocence." *People v. Green*, 2024 IL App (2d) 220328, ¶ 35. Because petitioner was imprisoned for only one crime, "there is only one instance of damages proximately caused and

only one crime that requires proof of innocence thereof." *Id.* ¶ 36. The *Green* court continued:

> It is counterintuitive to suggest that "all" the crimes listed in the *original* indictment are relevant and material when defendant cannot prove a scintilla of damages proximately caused arising from "all" those other unrefiled, unprosecuted, unconvicted, and unsentenced crimes in the indictment. The *Warner* analysis requires a defendant to present evidence not germane to his right to recover in basic tort law and creates substantial obstacles to recover under all charges for which there are, in reality, no damages. There was no prison time imposed on those other charges and, therefore, there could be no possible recovery for damages.

Id. ¶ 36.

The Court should hold that the "all charges" rule is inconsistent with basic tort law because of the mismatch between the injury (imprisonment on one charge out of four) and the required showing (innocence of all four charges).

The primary goal of tort law is "that an injured plaintiff be made whole." *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 406 (1997). "Our civil justice system does this by an award of money damages to the tort victim commensurate with the injury he suffered." *Cotton v. Coccaro*, 2023 IL App (1st) 220788, ¶ 42 (citing *McLane v. Russell*, 131 Ill. 2d 509, 523-24 (1989).) Petitioner's injury was incarceration, and he seeks damages for that injury. The three charges that were dismissed by *nolle prosequi* and for which petitioner was never incarcerated are irrelevant.

The Appellate Court, Third District, disagreed with this reasoning, stating that "a valid dismissed charge is relevant to the issue of whether the petitioner was injured." *People v. Lesley*, 2024 IL App (3d) 210330, ¶ 40. The appellate court was unable to explain how a dismissed charge for which petitioner was neither convicted nor incarcerated had any connection to petitioner's injury from conviction and incarceration on a different charge. Perhaps the court meant that the possibility that the petitioner could have been imprisoned on a nol-prossed charge shows a lack of injury. This is incorrect because speculative damages are not compensable in tort actions. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 543 (1996.)

E. The "all charges" rule disregards the meaning of a dismissal by *nolle prosequi*

The court should also reject the "all charges" rule because it is inconsistent with the well-established meaning of a *nolle prosequi*. As the Appellate Court, Second District, recognized, a charge that is dismissed by *nolle prosequi* is no longer part of the charging instrument:

> "A motion to nol-pros is comparable to a motion to dismiss." *People v. Daniels*, 187 Ill. 2d 301, 312 (1999). "[T]he ordinary effect of a *nolle prosequi* is to *terminate the charge to which it is entered* and to permit the defendant to go wherever he pleases, without entering into a recognizance to appear at any other time." (Emphasis added.) *People v. Watson*, 394 Ill. 177, 179 (1946). "The *nolle pros terminates the charge* and requires the institution of a new and separate proceeding to prosecute a defendant for that offense." (Emphasis added.) *People v. Sanders*, 86 Ill. App. 3d 457, 469 (1980).

People v. Green, 2024 IL App (2d) 220328, ¶ 29.

Dismissal by *nolle prosequi* is different than striking a count with leave to reinstate (an "SOL"). *Green*, 2024 IL App (2d) 220328, ¶ 29. A *nolle prosequi* "reverts the matter to the same condition that existed before the commencement of the prosecution" and "no criminal charges remain pending against the defendant." *Id.* (quoting *People v. Totzke*, 2012 IL App (2d) 110823, ¶ 23.) When a charge is SOL'd, "'the defendant is still charged with a crime.'" *Id.* (quoting *Totzke*, 2012 IL App (2d) 110823, ¶ 24.)

The holding by the Appellate Court, Second District, that a nol-prossed charged is removed from the charging instrument is not novel. The United States Supreme Court explained more than 100 years ago that a dismissal by *nolle prosequi* "leaves the prosecution just as though no such count had ever been inserted in the indictment." *Dealy v. United States*, 152 U.S. 539, 542 (1894).

Accordingly, even if subsection (g)(3) required a showing of innocence of "all" charges, petitioner meets that requirement. After the State dismissed counts 2, 3, and 4 by *nolle prosequi*, the only charge in the information was count 1, the unconstitutional AUUW charge to which petitioner pleaded guilty. *Green*, 2024 IL App (2d) 220328, ¶ 30.

A division of the Appellate Court, First District, adopted similar reasoning when it rejected the State's argument that a petitioner must prove his innocence of charges that the State voluntarily abandoned by *nolle prosequi*. *People v. Smith*, 2021 IL App (1st) 200984. *Smith* explains:

> A *nolle prosequi* is a formal notice given by the State that a claim has been abandoned. Black's Law Dictionary (11th ed. 2019). Translated from Latin, the phrase literally means "not wish to prosecute." *Id.* Absent the refiling of the abandoned claim or a motion to vacate the *nolle prosequi* (*People v. Hughes*, 2012 IL 112817, ¶¶ 24-25), the State cannot pursue and thus has no ability to obtain a finding of guilt on an abandoned claim. We certainly do not read the COI statute to suggest that a petitioner would have to demonstrate his innocence of *nol-prossed* charges.

Id. ¶ 25.

The *Warner* court sought to distinguish this reasoning by relying on cases where a dismissal by *nolle prosequi* came after a conviction was vacated. *People v. Warner*, 2022 IL App (1st) 210260, ¶ 37. The facts of *Palmer* follow this pattern: the petitioner was incarcerated on a charge, the charge was vacated, and then the state dismissed the charge. *People v. Palmer*, 2021 IL 125621, ¶¶ 33-34. The petitioner in *Palmer* was required to show his innocence of that charge because it was the offense of incarceration. Here, however, petitioner was never incarcerated on the dismissed charges because the state abandoned those charges and petitioner was never convicted of them. Requiring petitioner to show innocence of those charges is

inconsistent with the State's formal abandonment of the charges without a conviction.

The Court should endorse the reasoning of *Green* and *Smith* and hold that the State may not oppose a certificate of innocence by relying on a charge that was dismissed by *nolle prosequi* and for which the petitioner was neither convicted nor incarcerated.

IV. Other Considerations Show that the Court Should Reject the "All Charges" Rule

In addition to being inconsistent with the statutory text and statutory purpose, the appellate court's rule is also inconsistent with the presumption of innocence and would lead to absurd results that the legislature could not have intended.

A. The "all charges" rule is inconsistent with the presumption of innocence

The presumption of innocence is "the touchstone of American criminal jurisprudence." *Illinois Pattern Jury Instructions, Criminal*, No. 2.03, Committee Note. The presumption is required by the Due Process Clause of the Fourteenth Amendment, *Taylor v. Kentucky*, 436 U.S. 478, 490 (1978), by the Due Process Clause of Article I, Section 2 of the Illinois Constitution, *People v. Watts*, 181 Ill. 2d 133, 147 (1998), and by statute, 720 ILCS 5/3-1.

The Due Process Clause of the Illinois Constitution does not move in lockstep with federal precedent. *People v. Washington*, 171 Ill. 2d 475, 485

(1996) (citing *People v. McCauley*, 163 Ill. 2d 414 (1994).) This Court broke with federal precedent in *Washington* when it applied the Illinois Constitution to hold that a free-standing claim of innocence was cognizable in a post-conviction petition. *Id.* at 487. Our state's constitution protects innocence more strongly than the federal constitution.

The presumption of innocence remains with the defendant "throughout every stage of the trial" and "is not overcome unless" the jury is "convinced beyond a reasonable doubt" of the defendant's guilt. *Illinois Pattern Jury Instructions*, *Criminal*, No. 2.03. Moreover, a defendant who lost the presumption of innocence upon conviction regains the presumption if the conviction is overturned. *E.g.*, *Johnson v. Mississippi*, 486 U.S. 578, 585 (1988); *People v. Thompson*, 75 Ill. App. 3d 901, 906 (1979).

Accordingly, once petitioner's conviction was vacated, he regained the presumption of innocence. The appellate court's rule requiring a showing of innocence on charges that were dismissed by *nolle prosequi* is inconsistent with that presumption. *See People v. Smith*, 2021 IL App (1st) 200984, ¶¶ 37-44 (Oden Johnson, J., dissenting.)

The decision of the United States Supreme Court in *Nelson v. Colorado*, 581 U.S. 128 (2017) illustrates how the presumption applies. There, the Court considered a Colorado law under which a defendant whose conviction

was overturned could recoup fines and fees paid because of the wrongful conviction. *Id.* at 133-34. The statute allowed recovery only if the defendant carried the burden of showing actual innocence by clear and convincing evidence. *Id.*

The Supreme Court held that Colorado's procedure violated due process because it ran afoul of the presumption of innocence. *Nelson*, 581 U.S. at 139. In response to the state's argument that the funds belonged to the state because the convictions were in place when the funds were taken, the Court explained, "once those convictions were erased, the presumption of innocence was restored." *Id.* at 135. The fact of a conviction did not justify keeping the funds because, "Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions." *Id.* at 136 (emphasis in original.)

The "all charges" rule has the same effect as Colorado's statute because even though petitioner's conviction of Count 1 has been vacated and the other Counts have been dismissed, the "all charges" rule presumes that petitioner was guilty *enough* for the denial of a certificate of innocence. The Court should reject the "all charges" rule because it is inconsistent with the presumption of innocence.

B. The "all charges" rule leads to absurd results

When the Court construes a statute, it considers "the consequences of construing the statute one way or another." *People v. Wells*, 2023 IL 127169, ¶ 31. The "all charges" rule leads to absurd consequences.

First, as Justice Martin observed in his concurring opinion in *People v. Warner*, 2022 IL App (1st) 210260, the rule would in some cases be "unduly cumbersome upon the petitioner, contrary to the legislature's intent, and unjust." *Id.* ¶ 49 (Martin, J, specially concurring.) For example, "[a] petitioner not proven guilty of nol-prossed charges through stipulated facts or evidence adduced at trial may face great difficulty in proving their innocence of those charges, especially if such charges were not closely connected to the offense of conviction." *Id.* ¶ 53.

Justice Martin provided the example of a defendant wrongly convicted of first-degree murder who had also been charged with possessing unlawful drugs. *Warner*, 2022 IL App (1st) 210260, ¶ 54. In Justice Martin's view, that defendant was entitled to a certificate of innocence:

> If such a defendant were wrongly convicted and could prove himself innocent of the murder after languishing in prison for many years, he could not obtain a COI, under a strict, literal reading of subsection (g)(3), if the drug charge was included in the charging instrument. I believe that the legislature intended for such a defendant to be considered innocent of first degree murder and, thus, eligible to obtain a COI.

Id. ¶ 54.

But Justice Martin did not propose a reading of the statute that would apply consistently to every fact pattern. Modifying the court's interpretation of the statute on a case-by-case basis is inconsistent with *stare decisis* and could amount to "an amendment of the statute itself." *Froud v. Celotex Corp.*, 98 Ill. 2d 324, 337 (1983). As the United States Supreme Court has explained,

> Congress, not this Court, has the responsibility for revising its statutes. Were we to alter our statutory interpretations from case to case, Congress would have less reason to exercise its responsibility to correct statutes that are thought to be unwise or unfair.

Neal v. United States, 516 U.S. 284, 296 (1996). Justice Martin's discussion shows that in order to adopt a uniform interpretation of the statute, the Court should reject the "all offenses" rule.

Another absurd result from the "all charges" rule will arise when two defendants are charged in the same indictment. The "all charges" rule would require one defendant to prove innocence of all charges in the indictment, including any that were brought solely against the co-defendant. This is the type of "absurdity, inconvenience, or injustice" that the Court presumes the legislature did not intend. *People v. Casler*, 2020 IL 125117, ¶ 24.

The "all charges" rule creates other puzzles for future cases. Justice Doherty ruminated on four such puzzles in a concurring opinion in *People v. Brown*, 2022 IL App (4th) 220171:

> For example, if the prosecution chooses to nol-pros a charge due to lack of evidence and later enters into a plea agreement on the remaining charges, will the defendant seeking a certificate have to prove innocence of the claim the State abandoned on the merits? If a defendant must prove innocence of the other charges reflected in "the" indictment, and if a plea agreement resolves two separate indictments, will this obligation extend to all charges in both indictments? If a defendant wrongfully convicted of a major felony is successful in having that conviction vacated, will the inability to prove innocence of a misdemeanor charged in the same indictment or information thwart a request for a certificate of innocence on the felony charge? If a defendant goes to trial and is found guilty of one charge but not guilty of the other, and knowing that a finding of not guilty beyond a reasonable doubt is not the same as a finding of "innocence," would that defendant be required to show innocence with respect to both charges—including the one ending in acquittal—to receive a certificate of innocence?

Id. ¶ 42 (Doherty, J., specially concurring.) Each of these questions is easily answered under the correct reading of the statute as limited to offenses of incarceration.

V. Conclusion

For the reasons above stated, the Court should reverse the judgment below and remand for entry of the certificate of innocence.

Respectfully submitted,

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2024 IL App (1st) 230669-U

No. 1-23-0669

Order filed February 7, 2024

Modified Upon Denial of Rehearing March 6, 2024

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 03 CR 23217
	)	
JAMES REED,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAN TINE delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's denial of defendant's petition for a certificate of innocence because defendant did not prove that he was innocent of all charges.

¶ 2 Defendant James Reed was charged with four counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (C); (a)(2), (a)(3)(A), (C) (West 2002)). In

2003, he pled guilty to one count and the State nol-prossed the remaining three counts.[1] Defendant's conviction was later vacated pursuant to *People v. Aguilar*, 2013 IL 112116, which struck down as unconstitutional portions of the AUUW statute that categorically prohibited possession of an operable firearm outside the home. *Aguilar*, 2013 IL 112116, ¶ 22. Defendant then filed a petition for a certificate of innocence pursuant to section 2-702 of the Code of Civil Procedure (735 ILCS 5/2-702 (West 2022)), which the circuit court denied because defendant failed to prove that he was innocent of all four AUUW counts. Defendant appeals, arguing that he only had to prove his innocence of the one count of AUUW for which he was convicted and incarcerated. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was arrested on October 6, 2003, and charged by information with four counts of AUUW. Count I alleged that defendant knowingly carried an uncased, loaded, and immediately accessible firearm outside his home (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2002)). Count II alleged that he knowingly carried a firearm without a valid Firearm Owner's Identification (FOID) card (*id.* §§ 24-1.6(a)(1), (a)(3)(C)). Count III alleged that he knowingly carried an uncased and loaded firearm on a public street. (*id.* §§ 24-1.6(a)(2), (a)(3)(A)). Count IV alleged that he knowingly carried a firearm on a public street without a valid FOID card (*id.* §§ 24-1.6(a)(2), (a)(3)(C)).

[1]"Nol-prossed" refers to the State dismissing charges *nolle prosequi*, which is "a formal notice given by the State that a claim has been abandoned." *People v. Smith*, 2021 IL App (1st) 200984, ¶ 25; see also *People v. Stafford*, 325 Ill. App. 3d 1069, 1073 (2001). When a charge is nol-prossed, it is no longer pending against the defendant and the State must file a new charging document to reinstate that charge. *Stafford*, 325 Ill. App. 3d at 1073.

¶ 5 On December 3, 2003, defendant pled guilty to count I and was sentenced to six months in the Cook County Department of Corrections and two years' probation. The State nol-prossed counts II, III, and IV. As the factual basis for the plea, the State proffered that defendant was involved in a shooting on the 6400 block of South Wood Street in Chicago on October 6, 2003. When defendant was arrested that day, police recovered from his person a loaded semiautomatic handgun. Defendant violated his probation and was resentenced to one year of incarceration.

¶ 6 In 2021, defendant filed *pro se* petitions pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2020)) to vacate his AUUW conviction, arguing that his conviction was unconstitutional and void pursuant to *Aguilar*. On June 17, 2022, the circuit court vacated defendant's conviction.

¶ 7 In 2022, defendant filed a *pro se* petition for a certificate of innocence pursuant to section 2-702 (735 ILCS 5/2-702 (West 2022)). Defendant argued that he met the requirements for a certificate of innocence because he was convicted of a felony and served a term of imprisonment, his conviction had been vacated, and he did not bring about his own conviction. Defendant noted that he "pled guilty to a charge and statute that was unconstitutional (Aggravated Unlawful Use of a Weapon) statute—720 [ILCS] 5/24-1.6(a)(1)."

¶ 8 The State objected, arguing that defendant failed to establish that he was innocent of all four charges; therefore, he could not fulfill the requirements of subsection 2-702(g)(3) (735 ILCS 5/2-702(g)(3) (West 2022)). The State maintained that, even if defendant was innocent of counts I and III due to their unconstitutionality under *Aguilar*, he could not establish his innocence of counts II and IV because it remained illegal to possess a firearm without a FOID card. The State

attached to its written objection documents from the Illinois State Police indicating that defendant had never been issued a FOID card.

¶ 9 Defendant filed a *pro se* reply to the State's objections. He argued that he was relying on the second clause of subsection 2-702(g)(3), which allows a petitioner to prove that his acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor at all, rather than the first clause, which requires proof that the petitioner is innocent of the charges in the indictment or information (*id.*). Defendant cited *People v. McClinton*, 2018 IL App (3d) 160648, in support of his claim that "his acts charged in the indictment *** did not constitute a felony or misdemeanor against the State because the charge was based on a statute later held unconstitutional."

¶ 10 The circuit court denied defendant's petition for a certificate of innocence, finding that defendant "ha[d] to be able to demonstrate [his] innocence as to all the offenses charged in the information or indictment" and that he could not establish his innocence of the AUUW counts premised on his lack of a FOID card.

¶ 11 Defendant timely appealed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues that the circuit court erred in denying his petition because he was not required to prove that he was innocent of all four charged counts of AUUW. Rather, defendant contends that he only had to prove his innocence of the one count for which he was convicted and incarcerated.

¶ 14 This appeal concerns the interpretation of subsection 2-702(g)(3), so *de novo* review applies.[2] See *People v. Hilton*, 2023 IL App (1st) 220843, ¶ 15. *De novo* review means that we perform the same analysis as the circuit court. *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 151. Our primary goal in interpreting a statute is to ascertain and give effect to the legislature's intent. *People v. Palmer*, 2021 IL 125621, ¶ 53. The language of the statute is the best indication of the legislature's intent. *Id.* We cannot "depart from the plain language and meaning of the statute by reading into it exceptions, limitations, or conditions that the legislature did not express." *People v. Woodard*, 175 Ill. 2d 435, 443 (1997). If the statute is unambiguous, we must apply it as written. *Hernandez v. Lifeline Ambulance, LLC*, 2019 IL App (1st) 180696, ¶ 11. "A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses." *Advincula v. United Blood Services*, 176 Ill. 2d 1, 18 (1996). We presume that the legislature did not intend absurd, inconvenient, or unjust results. *Palmer*, 2021 IL 125621, ¶ 53.

¶ 15 Section 2-702 of the Code of Civil Procedure governs petitions for certificates of innocence. 735 ILCS 5/2-702 (West 2022). The legislature created certificates of innocence because "innocent persons who have been wrongly convicted of crimes in Illinois and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law." *Id.* § 2-702(a). Accordingly, "[a]ny person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he

[2]Generally, we review a circuit court's denial of a petition for a certificate of innocence for an abuse of discretion. *People v. Hilton*, 2023 IL App (1st) 220843, ¶ 15.

or she did not commit may, under the conditions hereinafter provided, file a petition for a certificate of innocence in the circuit court." *Id.* § 2-702(b).

¶ 16 Subsection (c) requires the petitioner to present documentation demonstrating that he was convicted of a felony and served all or part of a sentence of imprisonment and that his "conviction was reversed or vacated, and the indictment or information dismissed," or that "the statute, or application thereof, on which the indictment or information was based" was unconstitutional. *Id.* § 2-702(c)(1)-(2). Subsection (d) requires the petition to "state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information," or that "his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State of Illinois," and that the petitioner "did not by his or her own conduct voluntarily cause or bring about his or her conviction." *Id.* § 2-702(d).

¶ 17 Subsection (g) sets out the elements of a petition:

> "(g) In order to obtain a certificate of innocence the petitioner must prove by a preponderance of the evidence that:
>
> (1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
>
> (2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed ***; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;

(3) the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and

(4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction." *Id.* § 2-702(g)(1)-(4).

"If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated." *Id.* § 2-702(h).

¶ 18 Subsection (g)(3) requires a petitioner to prove either that (1) he is innocent of the "offenses charged in the indictment or information" or (2) "his *** acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor." *Id.* § 2-702(g)(3). The first approach appears to require proof of innocence of *all* offenses set out in the charging document.[3] There is no indication that the first clause of subsection (g)(3) allows a petitioner to prove his innocence of only the offense for which he was convicted and incarcerated without proving his innocence of the other offenses in the charging document. Defendant has abandoned, on appeal, his petition's argument under the second approach.

¶ 19 In this case, the information charged four counts of AUUW, two of which were premised solely on defendant's possession of a firearm, and two of which were premised on his possession of a firearm without a FOID card. To fulfill subsection (g)(3), defendant had to prove that he was innocent of all four charges. See *id.* Defendant did not prove that he was innocent of counts II and

[3]By saying "appears," we do not imply that the statute is ambiguous. We simply note that the statute does not use "all" to modify "offenses charged in the indictment or information."

IV. Those charges were premised on defendant's possession of a firearm without a valid FOID card on October 6, 2003. Defendant has never claimed that he did not possess a firearm on October 6, 2003, and the record confirms that defendant has never been issued a FOID card. Post-*Aguilar*, it remains illegal to possess a firearm without a FOID card. *People v. Mosley*, 2015 IL 115872, ¶ 44 (upholding section 24-1.6(a)(3)(C) of the AUUW statute as constitutional). Therefore, defendant is not innocent of AUUW as charged in counts II and IV. Defendant did not meet the requirements of subsection (g)(3), so the circuit court correctly denied his petition for a certificate of innocence.

¶ 20 *People v. Warner*, 2022 IL App (1st) 210260, supports this conclusion. In that case, the defendant was charged with six counts of AUUW including possession of a firearm without a valid FOID card. *Id.* ¶ 2. He pled guilty to one count of AUUW and was sentenced to one year in prison; the State nol-prossed the remaining counts. *Id.* ¶¶ 3-5. The defendant's conviction was later vacated pursuant to *Aguilar*. *Id.* ¶ 6. The defendant filed a petition for a certificate of innocence, arguing that he had been convicted and incarcerated under an unconstitutional statute. *Id.* ¶ 7. However, his petition "contained no allegations to establish [his] innocence as to the other valid offenses charged in the information." *Id.* The circuit court denied the petition and this court affirmed. *Id.* ¶¶ 1, 9. We held that subsections (d) and (g)(3) unambiguously require a petitioner to allege and prove that he is innocent of all charged offenses, not just the offense for which he was incarcerated. *Id.* ¶ 28.

¶ 21 *People v. Brown*, 2022 IL App (4th) 220171, is similar. The defendant was charged with AUUW, armed violence, unlawful possession of a weapon by a felon, and unlawful possession of a controlled substance. *Id.* ¶ 3. He pled guilty to AUUW and was sentenced to eight years in prison;

the other charges were dismissed. *Id.* ¶ 4. The defendant's conviction was later vacated pursuant to *Aguilar,* and he filed a petition for a certificate of innocence. *Id.* ¶¶ 5-6. The circuit court denied the petition, finding that the defendant could not establish his innocence of all charged offenses and, therefore, could not meet the requirements of subsection (g)(3). *Id.* ¶ 6. The court affirmed. *Id.* ¶¶ 36-37. Citing *Warner*, the court found that the "plain meaning of [subsections (d) and (g)(3)] is that petitioners must demonstrate their innocence of all charged offenses, not just the ones for which they were convicted and incarcerated." *Id.* ¶ 24.

¶ 22 We see no meaningful difference between *Warner*, *Brown*, and this case. All three cases involve defendants who pled guilty to one count of AUUW in exchange for the dismissal of the other counts, AUUW convictions that were later vacated pursuant to *Aguilar*, and defendants who failed to prove their innocence of all charged offenses. Like the defendants in *Warner* and *Brown*, defendant is not entitled to a certificate of innocence because he does not meet the requirements of subsection (g)(3).

¶ 23 Defendant argues that a certificate, if granted, only declares a petitioner innocent of "offenses for which he or she was incarcerated" (702 ILCS 5/2-702(b), (h) (West 2022)), so the circuit court can only consider whether the petitioner is innocent of the charge for which he was convicted and incarcerated. That is, defendant reads subsections (b) and (h) to limit *all* of section 2-702 to the offense for which the petitioner was incarcerated; no other charges are relevant. We disagree. Section 2-702 differentiates between what a petitioner must prove, which is his innocence of all charges (*id.* §§ 2-702(d), (g)(3)), and the relief he obtains if he makes such a showing, which is a certification that he is innocent of the charges for which he was incarcerated (*id.* §§ 2-702(b), (h)). This case illustrates why the legislature created this difference. Defendant can establish that

he is innocent of the charge for which he was convicted because that charge is unconstitutional. However, defendant did not establish that he is innocent of AUUW as the State alleged in counts II and IV. Accepting defendant's argument would allow a person who may have committed AUUW to, nevertheless, obtain a judicial finding that he is innocent of AUUW. Moreover, if, as defendant argues, the only charge the circuit court can consider is the charge for which the petitioner was convicted and incarcerated, then subsections (d) and (g)(3)'s requirement that a petitioner prove his innocence of the charges in the indictment or information becomes superfluous. We cannot accept such a reading of section 2-702. See *People v. Kidd*, 2022 IL 127904, ¶ 29.

¶ 24 Defendant is not the first to claim that certificate of innocence proceedings concern only charges resulting in conviction and incarceration. This court has already rejected the exact argument that defendant makes regarding subsections (b) and (h). *Smith*, 2021 IL App (1st) 200984, ¶¶ 22-23. Similarly, in *Warner*, this court explained that "[i]f the legislature had intended that a petitioner was required to allege and show only that they were innocent of the 'offenses for which he or she was incarcerated,' subsections (d) and (g)(3) would contain the same language as found in subsections (b) and (h)." *Warner*, 2022 IL App (1st) 210260, ¶ 28. "Instead, the legislature chose the phrase 'offenses charged in the *** information,' demonstrating its clear intent that a petitioner must allege and prove that they are innocent of all the offenses charged in the information." *Id.*; see also *Hilton*, 2023 IL App (1st) 220843, ¶ 30.

¶ 25 Defendant contends that we should follow *People v. McClinton*, 2018 IL App (3d) 160648, and find that charges of which a defendant was not convicted play no role in certificate of

innocence proceedings.[4] In that case, the defendant was charged with AUUW, bringing a firearm into a penal institution, and bringing cannabis into a penal institution. *Id.* ¶ 3. Following a bench trial, she was convicted of AUUW but her conviction was later vacated pursuant to *Aguilar*. *Id.* ¶¶ 3-6. The defendant filed a petition for a certificate of innocence, which the circuit court denied, explaining that the trial evidence established that she possessed a firearm inside a prison, so she was not innocent of AUUW. *Id.* ¶ 7. The defendant appealed and the Third District ordered issuance of a certificate of innocence. *Id.* ¶ 1. The Third District reasoned that the AUUW statute "that criminalized [the defendant's] actions is void *ab initio*" due to *Aguilar*, so the "actions for which she was charged, convicted, sentenced and incarcerated were not criminal at the time."[5] *Id.* ¶ 21.

¶ 26 We find *McClinton* unpersuasive. *McClinton* did not involve a guilty plea or charges that the State nol-prossed as part of that plea. It also did not involve AUUW charges premised on possessing a firearm without a valid FOID card. Defendant has not proved that he is innocent of possessing a firearm without a FOID card and *McClinton* does not change that conclusion. Moreover, *McClinton*'s analysis focused on whether the defendant brought about her own conviction under subsection (g)(4), not whether she proved her innocence of all charges under subsection (g)(3). *Id.* ¶¶ 18-20. The Third District did not discuss whether subsection (g)(3) required the defendant to prove that she was innocent of the charges of bringing a firearm and

[4]Oddly, defendant argues that we *should* follow the Third District's decision in *McClinton* but should *not* follow the First District, Fourth Division's decision in *Warner* or the First District, Second Division's decision in *Hilton* because the decisions of other appellate divisions and districts are not binding upon us.

[5]To the extent *McClinton* suggests that a defendant whose AUUW conviction was vacated pursuant to *Aguilar* cannot possibly have committed any criminal offenses in the incident that led to the AUUW conviction, we disagree. *Aguilar* finds one subsection of the AUUW statute unconstitutional (*Aguilar*, 2013 IL 112116, ¶ 22); it does not retroactively wipe out all potentially illegal conduct.

cannabis into a penal institution, so *McClinton* offers little guidance in this case. Nevertheless, defendant claims that *McClinton* supports his attempt to use subsections (b) and (h) to limit subsections (d) and (g)(3), citing the Third District's statement that "[t]he only crime at issue in the instant case is the unconstitutional AUUW conviction." *Id.* ¶ 15. That quotation is a single line without further analysis or explanation, not the holding of *McClinton*. *Id.*

¶ 27 Defendant also argues that *Palmer* supports his position because it holds that "the proper focus of subsection (g)(3)" is on the allegations "charged and prosecuted in [the] petitioner's criminal trial." *Palmer*, 2021 IL 125621, ¶ 72. In that case, the defendant was charged with five counts of first-degree murder arising out of the victim's beating death. *Id.* ¶ 5. Each count alleged a different theory of culpability for murder. *Id.* At trial, the State presented evidence that the defendant and another man burgled the victim's apartment and, the following night, the defendant returned alone and killed the victim. *Id.* ¶ 7. The defendant was found guilty of first degree murder on the count alleging that he intentionally killed the victim. *Id.* ¶¶ 5, 28. Years later, his conviction was vacated based on testing that excluded him as a contributor of DNA profiles found under the victim's fingernails. *Id.* ¶¶ 31-34. The defendant filed a petition for a certificate of innocence, which the State opposed, arguing that, while the DNA evidence established that he was not the primary assailant, he could still be guilty of murder as an accessory at the scene during the murder. *Id.* ¶¶ 37, 43-44. The circuit court denied the petition for a certificate of innocence, finding that the defendant had not established by a preponderance of the evidence that he was "innocent of the charge of murder," and the appellate court affirmed. *Id.* ¶¶ 47-48.

¶ 28 The supreme court reversed. *Id.* ¶ 80. The court framed the issue as whether subsection (g)(3) required the defendant to prove that he "was innocent of the offense only as it was originally

charged or innocent of every conceivable theory of criminal liability for that offense." *Id.* ¶ 1. The court held that "because the word 'offenses' is modified by the phrase 'charged in the indictment or information,' the legislature intended that a petitioner establish his or her innocence of the offense on the factual basis *charged* in the indictment or information." (Emphasis in original.) *Id.* ¶ 64. The court reasoned that, at trial, the State argued that the defendant alone beat the victim to death and did not advance the theory that he was an "accomplice or unidentified third party" until certificate of innocence proceedings. *Id.* ¶¶ 65-66. Because the State did not charge or argue the defendant's guilt based on a theory of accountability, he was not required to disprove that theory to obtain a certificate of innocence. *Id.* ¶ 67. That is, subsection (g)(3) does not "require a petitioner to prove his innocence of a novel theory of guilt that was never charged." *Id.* ¶ 68.

¶ 29 *Palmer* does not mean that a petitioner can fulfill subsection (g)(3) by proving his innocence of the charge for which he was convicted and incarcerated, but not the other charges against him. Rather, *Palmer* holds that a petitioner does not have to prove his innocence of *uncharged* theories of culpability. *Id.* In this case, the State does not claim that defendant must prove his innocence of a theory of culpability for AUUW that it never charged. For example, the State does not contend that defendant must prove that he is innocent of AUUW premised on possessing a firearm while committing a misdemeanor involving the use or threat of violence (720 ILCS 5/24-1.6(a)(1), (a)(3)(H) (West 2002)). Rather, the State's position is that defendant is not innocent of AUUW because he was charged with possessing a firearm without a valid FOID card, which is still illegal and which defendant has not disproved. The defendant in *Palmer* used DNA evidence to prove that he did not kill the victim, the act giving rise to all the charges against him.

By contrast, in this case, defendant has not proved that he did not possess a firearm on October 6, 2003.

¶ 30 Defendant also relies on *Smith*'s discussion that a petitioner does not have "the burden of affirmatively demonstrating his innocence *** on charges that were nol-prossed by the State" because "the State cannot pursue and thus has *no ability* to obtain a finding of guilt on" a charge the State abandoned by nol-prossing it. (Emphasis in original.) *Smith*, 2021 IL App (1st) 200984, ¶ 25. However, *Warner* rejected that conclusion, explaining that "[s]ection 2-702 does not contain any language or any indication that the petitioner's burden of pleading and proving innocence applies only to the charges in the indictment or information on which the State has an ability to obtain a finding of guilty." *Warner*, 2022 IL App (1st) 210260, ¶¶ 36-37. We agree with *Warner*. Subsection (g)(3) requires proof of innocence of charges in the indictment or information and says nothing about charges that are later nol-prossed. The State's decision to dismiss a charge *nolle prosequi* does not mean that the offense was never charged, and it certainly does not mean that the State conceded the defendant's innocence of that charge. *People v. Rodriguez*, 2021 IL App (1st) 200173, ¶ 59. Subsection (g)(3) applies to nol-prossed charges.

¶ 31 This case has reached an accurate and fair result. Defendant is not guilty of the AUUW charge for which he was convicted and incarcerated because that charge was unconstitutional under *Aguilar.* Defendant's conviction has been properly vacated. However, that does not mean defendant is innocent of all charges of AUUW. Accordingly, we find that the circuit court correctly denied defendant's petition for a certificate of innocence.

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, we affirm the circuit court's denial of defendant's petition for a certificate of innocence.

¶ 34 Affirmed.

Sheet #	CRIMINAL DISPOSITION SHEET	Branch/Room/Location	Court Interpreter
20	Defendant Sheet #1	Criminal Division, Courtroom 101 2650 South California Avenue, Chicago, IL, 60608	

Case Number	Defendant Name	Attorney Name	Session Date	Session Time
03CR2321701	REED, JAMES	ATASSI, RANDAH 006224360	3/14/2023	09:30 AM -

CB/DCN#	IR #	EM	Case Flag	Bond #	Bond Type	Bond Amt
	1454786			D7788848	D	$3,000.00

CHARGES	** IN CUSTODY 11/4/2003 ** COURT ORDER ENTERED	CODES
C001 VOP Violation of Probation - Office Use Only 12/10/2004 DEFT. SENTENCED TO IDOC	State to writ Ruling on COZ (200m) IN PERSON: PETITIONER-CCMC VIA ZOOM: ASA BOWDEN PETITION FOR COI DENIED	
C001 720-5/24-1.6(A)(1)1 AGG UNLAWFUL USE OF WEAPON/VEH 12/3/2003 DEFT. SENTENCED TO Cook County		
C002 720-5/24-1.6(A)(1)1 AGG UNLAWFUL USE OF WEAPON/VEH 12/3/2003 Nolle Prosequi		
C003 720-5/24-1.6(A)(2)1 AGG UNLAWFUL USE OF WEAPON/PER 12/3/2003 Nolle Prosequi		
C004 720-5/24-1.6(A)(2)1 AGG UNLAWFUL USE OF WEAPON/PER 12/3/2003 Nolle Prosequi		

JUDGE: Reddick, Erica L	JUDGE'S NO: 2038	RESPONSIBLE FOR CODING AND COMPLETION BY DEPUTY CLERK:	VERIFIED BY:

Order Denying Certificate of Innocence **(12/01/20) CCCR 0708**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

v.

JAMES REED

Defendant/Petitioner

No.: 03CR2321701

ORDER DENYING CERTIFICATE OF INNOCENCE

This cause comes before the Court on the Defendant/Petitioner's Petition for Certificate of Innocence pursuant to 735 ILCS 5/2-702. The Court being fully advised finds:

1. ☐ **The Defendant/Petitioner was not convicted of one or more than one felony by the State of Illinois and was not subsequently sentenced to a term of imprisonment, or did not serve all or any part of the sentence;**

2. ☐ **The Defendant/Petitioner's judgment or conviction was not reversed or vacated or, ☐ the judgment or conviction was reversed or vacated but the indictment or information was not dismissed or, ☐ if a new trial was ordered, s/he was found guilty at the new trial or the indictment or information was not dismissed; or ☐ the statute, or application thereof, on which the indictment or information was based did not violate the Constitution of the United States or the State of Illinois;**

3. ☐ **The Defendant/Petitioner's indictment or information was dismissed or s/he was acquitted and the Petition was not filed within 2 years of the dismissal of the indictment or information or acquittal;**

4. ☐ **The Defendant/Petitioner failed to comply with the requirements of the statute by attaching to his/her Petition sufficient documentation, as required by 735 ILCS 5/2-702(c)(1-3).**

5. ☑ **The Defendant/Petitioner is not inocent of the offenses charged in the indictment or information, or ☐ his/her acts or omissions charged in the indictment or information constituted a felony or misdemeanor against the State; and/or**

6. ☑ **The Defendant/Petitioner by his/her own conduct voluntarily caused or brought about his/her conviction.**

IT IS THEREFORE ORDERED as follows:

That the Petition for a Certificate of Innocence is DENIED.

ENTERED
MAR 14 2023
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ENTERED:

Dated: 14 March, 2023

Judge Thomas L. Kilbride 2038
Judge **Judge's No.**

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,
vs. No. 03 CR 23217-01
JAMES REED, Defendant.

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause, before the HONORABLE ERICA REDDICK, Judge of said Court, on March 14, 2023.

APPEARANCES:

HON. KIMBERLY M. FOXX,
State's Attorney of Cook County, by:
MS. CHRISTA BOWDEN,
Assistant State's Attorney,
Appeared on behalf of the People.

TRACY OVEROCKER, CSR
Official Court Reporter
CSR: #084-004439

THE COURT: Next case, James Reed.

MS. BOWDEN: Assistant State's Attorney Christa Bowden for the People.

Judge, Mr. Reed is currently in the Cook County Department of Corrections. I did put a writ through -- a Zoom writ.

THE COURT: You did or did not?

MS. BOWDEN: I did.

THE COURT: Okay. What division is he in?

MS. BOWDEN: That, I don't know.

THE SHERIFF: Judge?

THE COURT: Yes.

THE SHERIFF: I was notified that I have a James Reed downstairs.

THE COURT: Okay. It appears that he's downstairs, so he can be brought up.

THE SHERIFF: Give me minute to get him?

THE COURT: Yes. We will recess to give the deputy a minute to bring him up.

MS. BOWDEN: Okay. Thank you.

THE COURT: All right. Recess.

(Recess taken.)

THE COURT: We are back in session. Recalling the case of James Reed.

All right. Good morning, sir.

THE DEFENDANT: Good morning.

THE COURT: State your name.

THE DEFENDANT: James Reed.

THE COURT: Okay. Mr. Reed, your case is here today with respect to the petition for Certificate of Innocence.

State, identify, please.

MS. BOWDEN: Assistant State's Attorney Christa Bowden for the People.

THE COURT: All right. So it actually is here for ruling today. So I've had an opportunity to read the petition that you filed.

I also read and reviewed the State's filing and after reviewing and consideration, I do see that you were charged by information with four separate counts, that you did enter a plea of guilty to one of the counts and the rest of them were dismissed.

You were then sentenced to a special type of probation. It did not go that well. It was -- but you were sentenced and served part or all of your ultimate sentence, but from that time, your -- the case you pled guilty to was determined to be unconstitutional under Aguilar after the fact and so I believe you sought to

have that one dismissed. Did you?

THE DEFENDANT: Yes.

THE COURT: Okay. From there, though, moving forward with the request for petition for a Certificate of Innocence, there's been lot more development in the law since the beginning of these petitions being filed in 2020, 2021 and now '22 and '23 and the change and the development of the law is now currently that to be granted a petition for a Certificate of Innocence, you have to be able to demonstrate your innocence as to all the offenses charged in the information or indictment.

It appears a couple of the charges of the -- at least one was regard to a Firearm Owner's Identification Card, so although it was dismissed, the State did not go forward on it, under the law that governs the grant of the petition for a Certificate of Innocence, the petitioner, that would be you, has to demonstrate innocence as to all charges in the charging instrument, so it is for that reason that the request for a petition for a Certificate of Innocence is denied and then I'll just enter an order indicating that as part of this. Okay.

THE DEFENDANT: So I can appeal it? I can appeal it; right?

THE COURT: Yes. I'm going to enter an order so you can do that.

All right. Thank you.

(Which were all the proceedings had in the above-entitled cause.)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Tracy Overocker, an Official Court Reporter of the Circuit Court of Cook County, County Department-Criminal Division of Illinois, do hereby certify that I reported in machine shorthand the proceedings had in the aforementioned cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the Report of Proceedings had before the Honorable ERICA REDDICK, Judge of said court.

Tracy Overocker

_____

Official Shorthand Reporter
Circuit Court of Cook County
County Department - Criminal Division
Certification No. 084-004439

Dated this 18th day of
May, 2023.

APPEAL TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	03-CR-23217
Respondent-Appellee,	)	
-vs-	)	
JAMES REED,	)	
Petitioner-Appellant.	)	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that James Reed, by counsel and pursuant to Supreme Court Rule 303, hereby appeals to the Appellate Court of Illinois, First District from the Order of March 14, 2023.

Petitioner-Appellant requests that the Appellate Court vacate the trial court's judgment and remand for issuance of a certificate of innocence.

Respectfully submitted,

Joel A. Flaxman, #58466
Kenneth N. Flaxman, #00339
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-3200
jaf@kenlaw.com
attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on the below date, I electronically filed the foregoing with the Clerk of the Court, by using the Odyssey eFileIL system.

I further certify that the other participants in this case, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system: Christa Bowden, christa.bowden@cookcountyil.gov.

I also served the foregoing by email to: Christa Bowden, Maureen Renno, and Enrique Abraham, Assistant State's Attorneys, christa.bowden@cookcountyil.gov, maureen.renno@cookcountyil.gov, enrique.abraham@cookcountyil.gov.

Dated: April 4, 2023

/s/ Joel A. Flaxman
an attorney for Petitioner

INDEX TO RECORD ON APPEAL

Common Law Record

Report of Proceedings

Supplemental Record

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, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 37 pages.

Dated: August 6, 2024

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

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I certify that on the below date, 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:

Enrique Abraham, Paul Wojcicki
Criminal Appeals Division
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Chief, Criminal Appeals Division
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115 South LaSalle Street
Chicago, Illinois 60603
katherine.doersch@ilag.gov
eserve.criminalappeals@atg.state.il.us.

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: August 6, 2024

/s/ Joel A. Flaxman
Joel A. Flaxman
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An Attorney for Appellant