Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. WAYNE WASHINGTON, Petitioner-Appellant.	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-16-3024 There heard on Appeal from the Circuit Court of Cook County, Illinois, No. 93 CR 14676 The Honorable Domenica Stephenson, Judge, presiding.

REPLY BRIEF OF PETITIONER-APPELLANT WAYNE WASHINGTON

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INTRODUCTION

Justice Walker correctly asserted that "a guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials." A.543 ¶ 48 (Walker, P.J., dissenting). An innocent person who is effectively forced into a plea by a false and wrongful charge acts faultlessly, submitting to one injustice to avoid the threat of an even greater injustice. Such an innocent defendant faces severe—and completely unfair—pressure to plead and does not "by his or her own conduct voluntarily cause or bring about his or her conviction" under the certificate of innocence statute. *See* 735 ILCS 5/2-702(g)(4).

The State theorizes that the statutory text implies that innocent people who plead guilty cannot obtain a certificate of innocence if their plea, at the time it was entered, satisfied the minimum requirements for a knowing and voluntary plea under the Fifth Amendment. Wrong. "When met with a truly persuasive demonstration of innocence, a conviction based on a voluntary and knowing plea is reduced to a legal fiction." *People v. Reed*, 2020 IL 124940, ¶ 35. In fact, there is not a shred of evidence that the legislature incorporated the Fifth Amendment standard for a accepting a plea into the certificate of innocence statute. Such an interpretation would nullify the text of the statute, which speaks to sweeping away "a variety of substantive and technical obstacles in the law" that prevent innocent people from obtaining certificates of innocence, 735 ILCS 5/2-702(a), and the legislative history, which focuses on protecting innocent people who were convicted "through no fault of their own," *see* 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 9–10 (hereinafter "House Proceedings").

Washington did not volunteer for prison. On the contrary, he pled to 25 years in prison under enormous pressure. Having heard his coerced statement, his first jury had been

unable to reach a verdict. Washington faced the threat of 75 years in prison if he again went to trial, and he took the plea on the day his retrial was to begin. Rather than remanding for further proceedings, as the State proposes, the Court should order a certificate of innocence for Washington because he is manifestly innocent and did not "by his … own conduct voluntarily cause or bring about his … conviction."

As a second and independent ground for outright issuance of a certificate of innocence, Washington did not voluntarily cause his own conviction because Detectives Boudreau, Halloran, and O'Brien extracted a false confession through physical abuse, leaving him no real choice but to plead guilty. The State itself does not dispute that an innocent defendant who takes a plea based on a coerced confession is entitled to a certificate of innocence. The evidence that detectives physically abused Washington is overwhelming and one-sided. While the State asks for a remand for a new evidentiary hearing, it already waived the opportunity to present any evidence negating physical coercion at the first evidentiary hearing, and it fails to identify any evidence that it would now present if the Court granted its request to remand the case back to square one. There is no legitimate reason for such delay, and each day that passes harms Washington further by preventing him from restoring his good name. The Court should order a certificate of innocence outright.

ARGUMENT

I. Washington Is Entitled To A Certificate of Innocence Because He Pled Guilty Through No Fault of His Own.

A. Innocent People Who Accept A Guilty Plea Through No Fault Of Their Own Are Entitled To A Certificate of Innocence, Even When The Plea Itself Satisfies The Fifth Amendment Minimum.

Innocent people who plead guilty ordinarily do not bring about their own convictions "voluntarily" within the meaning of the certificate of innocence statute, even if their plea

satisfies the minimal requirements of the Fifth Amendment. Rather, an innocent person hauled to court faces a massive imbalance in power and a terrible threat: accept a guilty plea or risk an even more devastating sentence. Guilty people face plea dilemmas too, but only because they voluntarily engaged in criminal conduct. Innocent people face this awful choice not because of what they did but because of what the legal system *did to them* by wrongly charging them with a crime.

The State tries to avoid this logic by asserting that, so long as an innocent person's guilty plea satisfies the Fifth Amendment, the innocent person has voluntarily brought about their own conviction. Not so. An innocent person unjustly caught between a rock and a hard place may comprehend and agree to a plea, thereby satisfying the minimal standards of the Fifth Amendment. But that innocent person "voluntarily" brings about their conviction only in the sense that the family of a hostage "voluntarily" pays a ransom to the kidnappers: both the hostage's family and the innocent defendant choose one unjust and illegitimate harm to avoid something even worse. These decisions qualify as volitional in a narrow sense—but not as "voluntary" in any normal sense of the word. A Hobson's choice between two wrongful harms is no choice at all. An innocent person who takes a plea to avoid a harsher sentence is not volunteering for prison but bowing under the weight of unjust circumstances.

To treat such an innocent defendant as a volunteer unworthy of a certificate of innocence flies in the face of the statute's plain text, which declares that the law exists to dismantle "substantive and technical obstacles in the law" that stand in the way of "innocent persons who have been wrongfully convicted," preventing them from "obtain[ing] a finding of innocence." 735 ILCS 5/2-702(a). The State's proposed obstacle

also contradicts the legislative intent "to benefit 'men and women that have been falsely incarcerated through no fault of their own.'" *People v. Dumas*, 2013 IL App (2d) 120561, ¶¶ 18–19 (quoting House Proceedings at 12 (statements of Representative Flowers)). Accepting a plea to avoid the threat of an even harsher sentence does not demonstrate "fault." *Id.* Both the text and purpose of the statute require something more than just a plea to justify shutting out an innocent person from relief. As Justice Walker recognized in dissent, a wrongfully convicted person forfeits eligibility for a certificate of innocence only if they "culpably misled police or other officials." A.543 ¶ 48 (Walker, P.J., dissenting).

The State's contrary interpretation of the word "voluntarily" would deny relief to innocent people who are in no way at fault for being wrongfully convicted, yielding unjust and even absurd results. *See Evans v. Cook Cnty. State's Att'y*, 2021 IL 125513, ¶ 27 ("Statutes must be construed to avoid absurd or unjust results."). Say detectives frame an innocent defendant for a murder by planting the defendant's DNA at the crime scene and planting the victim's blood in the defendant's car. The apparent strength of the fabricated evidence leaves the innocent defendant with only one real choice: enter a guilty plea. The defendant does so, and the plea satisfies the Fifth Amendment minimum. Years later, the detectives' malfeasance comes to light, and the defendant is exonerated. Under the State's proposed standard, the exoneree "voluntarily" caused their own conviction and is ineligible for a certificate of innocence. This is an absurd result. The certificate of innocence statute exists to protect innocence, not to punish it.

Innocent persons who spent years or decades of their lives incarcerated for crimes they did not commit reenter society in need of the services secured by the certificate of innocence statute—"mental health services, job search and placement services, and other

assistance"—whether or not they went to trial. *People v. Glenn*, 2018 IL App (1st) 161331, ¶ 20 (Neville, J.); *see also* House Proceedings at 10–13 (highlighting exonerees' needs for "job training," "therapy," and help "to relearn how to maneuver around the system"). And they are no less deserving of these services just because they pled guilty. The line drawn by the State, like that drawn by the Circuit Court and the First District majority, makes a distinction between exonerees who pled guilty and exonerees who went to trial that undermines the purpose of the statute.

Moreover, the legislature would not—and did not—seek to reduce the certificate of innocence statute to the bare Fifth Amendment minimum because the Fifth Amendment plea bargaining rules have little to do with protecting innocent people, the core concern of 735 ILCS 5/2-702. As this Court has explained, "[p]lea agreements . . . are not structured to 'weed out the innocent' or guarantee the factual validity of the conviction." *Reed*, 2020 IL 124940, ¶ 33 (quoting *Schmidt v. State*, 909 N.W.2d 778, 788 (Iowa 2018)). The Fifth Amendment standard for accepting guilty pleas does not guard against "overpowering plea bargains" that coerce innocent defendants into false admissions of guilt. Lucian E. Dervan, *Bargained Justice: Plea-Bargaining's Innocence Problem and the* Brady *Safety-Valve*, 2012 UTAH L. REV. 51, 84–86 & n.260 (2012) (collecting studies estimating that "factually innocent" persons account for between 1.6 and 8 percent of all guilty-plea convictions); *see also Reed*, 2020 IL 124940, ¶ 33 (citing empirical data indicating that "18% of all exonerees and 11% of those exonerated through DNA pled guilty"). As *amici curiae* explain in this case, "an innocent person who falsely confesses in the context of a guilty plea is operating under the influence of the coercive plea-bargaining system—often from the confines of a cell in which he is wrongfully detained. Such action cannot be said to be

truly voluntary under the plain meaning of that word." Br. of *Amici Curiae* The Innocence Project and The Innocence Network 35 (footnotes omitted).

In sharp contrast to the system of plea bargaining, the very foundation of the certificate of innocence statute is a pronounced remedial concern for the "wrongly convicted" and "wrongfully incarcerated," 735 ILCS 5/2-702(a). The State rewrites the statute by divorcing the word "voluntarily" from the purpose of the statute—protecting innocence—and replacing that context with a Fifth Amendment standard that has no genuine connection to the certificate of innocence statute.

Unsurprisingly, the State's creative attempt to read a Fifth Amendment standard into the certificate of innocence statute finds precisely zero support in the text and legislative history. The statutory text does not contain a single word about guilty pleas. Nor does it say anything about the Fifth Amendment. Nor does the entire legislative history of the statute mention guilty pleas or the Fifth Amendment in any way. Nonetheless, the State theorizes that "[p]resumably" the legislature intended to reduce the statutory test for voluntarily bringing about one's own conviction to the constitutional minimum for a guilty plea to be voluntary under the Fifth Amendment. Resp. Br. 14. There is no reason to "presum[e]" such a thing, *id*., and every reason to reject it as a *non sequitur*.

The State's purported incorporation of the Fifth Amendment standard requires at least two unsupported and illogical leaps. First, one must speculate that the legislature intended the phrase "cause or bring about his or her conviction" to include all guilty pleas, or at least all validly accepted guilty pleas, even though the statute and legislative history do not say anything about guilty pleas. Next, one must surmise that the legislature intended the statutory term "voluntarily" to take its meaning exclusively from the Fifth Amendment,

even though the legislature never mentioned the Fifth Amendment. But the Illinois legislature knows how to reference guilty pleas in a statute when it means to differentiate between individuals who went to trial and those who pled guilty. *See* 735 ILCS 5/2-1401(c-5) (expanding timeframe to petition for relief from certain judgments that were "entered based on a plea of guilty or nolo contendere"). The legislature's decision *not* to link the certificate of innocence statute to the Fifth Amendment or guilty pleas in the text of the statute shows that the legislature did not intend to graft the standards for such matters onto certificate of innocence cases.

B. Washington Is Not At Fault For Pleading Guilty.

Washington cannot be faulted for his guilty plea, and he did nothing to mislead officials as to his lack of culpability. Washington initially pled not guilty and maintained this plea through a full jury trial, after which the jury could not reach a verdict. A.87, 421. He agreed to the prosecutor's offer of a plea agreement for a 25-year sentence only after he learned that Hood, his equally innocent co-defendant, had been sentenced to 75 years in prison. A.87, 421. Under these circumstances, "[t]he assistant state's attorney had no illusions as to whether Washington claimed innocence" by the time the offer was made and accepted. A.544 ¶ 49 (Walker, P.J., dissenting). Where the State imposed on Washington the choice between risking a 75-year sentence and preserving "a chance at a life" after incarceration, A.421, Washington did not voluntarily choose to be convicted in any meaningful sense. To hold otherwise would elevate a "legal fiction," *Reed*, 2020 IL 124940, ¶ 35, over the remedial and dignitary purposes for which the General Assembly designed the certificate of innocence.

II. Washington Is Entitled To A Certificate Of Innocence Because Overwhelming Evidence Shows—And The State Never Disputed—That The Detectives Coerced Washington's Confession Through Physical Abuse.

It is also open to the Court to resolve this case on an alternate ground: Washington did not voluntarily bring about his own conviction because detectives physically coerced his false confession, which left him no real choice but to plead guilty. The State does not dispute that if Washington falsely confessed due to physical coercion, he did not voluntarily bring about his own conviction under the certificate of innocence statute just by pleading guilty. Resp. Br. 18–19.

The Court need not remand for a new evidentiary hearing—instead, the Court should simply order the certificate to be issued because the one-sided record demonstrates physical coercion. As Justice Walker dissent explains, "Washington proved by a preponderance of the evidence from multiple witnesses . . . that police used physical coercion and threats to obtain [his]wrongful conviction." A.541 ¶ 43 (Walker, P.J., dissenting). Washington signed a confession that the police wrote "because police threatened him, beat him, and promised he could go home if he signed the statement." A.543 ¶ 49 (Walker, P.J., dissenting). As stated in Washington's opening brief, record evidence of physical abuse in this case includes: (1) Washington's unequivocal testimony, (2) the testimony of others interrogated in the case, including Tyrone Hood, that the officers engaged physically abused them as well, (3) the report of former Chicago Police Superintendent Richard Brezezek, showing that Boudreau, Halloran, and O'Brien "have been previously identified as engaging in patterns of similar coercive conduct," A.95, and (4) detailed allegations of abusive conduct by Detectives Boudreau, Halloran, and O'Brien in over twenty cases. *See* Pet. Br. 4–7, 29–30. Because the State does not challenge any of this record evidence, the

Court should simply hold that Washington proved that the detectives extracted a false confession through physical abuse. A remand is not necessary.

After all, the State has repeatedly waived the opportunity to present any evidence of its own and is not entitled to a re-do of the evidentiary hearing. "[I]ssues not raised in the trial court are generally considered waived on appeal," *People v. O'Neal*, 104 Ill. 2d 399, 407 (1984). The waiver principle reflects "basic considerations . . . that litigation should not be presented piecemeal[] and that all parties are entitled to have matters determined as quickly as possible and at one trial, if possible." *People v. McAdrian*, 52 Ill. 2d 250, 253–54 (1972). The State has waived many times any attempt to prove that Washington confessed voluntarily.

In the Circuit Court, the State did not participate in the proceedings at all, aside from agreeing to Washington's and Hood's stipulations, A.424, and joining a motion to exclude witnesses, A.361. When the Circuit Court invited the Assistant State's Attorney to give an opening statement or closing argument, the Assistant State's Attorney "waive[d]." A.377, 443. The Circuit Court invited objections to Washington's and Hood's exhibits, and the Assistant State's Attorney had "[n]one." A.362. The Circuit Court invited cross-examination of Washington and Hood, and the State passed. A.402, 421. It appears that the court's inquiries of the State were simply out of habit, or politeness, since the State declined altogether to "intervene in the proceedings in the Circuit Court as permitted by 735 ILCS 5/2-702(e)." A.520, 521. Having foregone its chance to develop the record at the evidentiary hearing, the State should not be heard to argue that it is entitled to a new evidentiary hearing.

Before the Appellate Court, too, the State declined the chance to take any position. The State filed no brief and affirmatively filed a letter stating that it "did not intervene in the proceedings in the Circuit Court . . . and is therefore not a party to these appeals." A.520. This journey through every level of the Illinois judicial system has delayed a certificate of innocence that Washington should have received long ago, preventing him from getting a job and from chaperoning field trips for his daughter—and now the State wants to restart the proceeding at square one.

Indeed, having failed to participate at all below, in both the trial and appellate courts, all the arguments the State is now making have been waived. "A party waives consideration on appeal of a theory it had not raised below." *People v. Rodgers*, 106 Ill. App. 3d 741, 744 (1982) (citing *People v. McAdrian*, 52 Ill.2d 250, 255 (1972)).

The Court should dispense with a remand that will cause further the delay and instead order the certificate to be issued outright. Even now, the State does not deny that Washington's statement was physically coerced, does not meaningfully challenge the clear record evidence of physical coercion, cannot identify what evidence it might present in the event of a remand, and cannot even bring itself to say that it would present evidence at all.

III. Washington Is Entitled To A Certificate of Innocence Based On Arguments That The State's Brief Fails To Address.

In addition to the points above, Washington's opening brief argued in detail that denying certificates of innocence to innocent people who plead guilty would violate the state and federal equal protection clauses by drawing an arbitrary distinction between innocent people who go to trial and innocent people who plead guilty. *See* Pet. Br. 23–25. Separately, Washington contended that he could not have voluntarily relinquished a claim to a certificate of innocence by pleading guilty because the certificate of innocence statute

had not even been enacted when he pled guilty. *See* Pet. Br. 26–27. The State does not respond to these arguments in any way, providing yet further grounds to reverse the Appellate Court and grant Washington a certificate of innocence.

IV. In The Alternative, And At Minimum, The Court Should Remand For Further Proceedings.

As stated above, the Court should reverse and order a certificate of innocence rather than giving the State an undeserved re-do of the proceedings below. However, in the event the Court is not inclined to reverse, Washington agrees with the State that, at a bare minimum, a remand for further proceedings is warranted. Washington and the State further agree that the Circuit Court erred by denying a certificate of innocence "solely on its assessment of petitioner's credibility in light of the records of prior proceedings that petitioner had no opportunity to counter." Resp. Br. 18.

If this Court does remand for further proceedings, Washington respectfully requests that the Court reassign the case to a new judge on remand. The circuit court judge not only denied a certificate of innocence that no party opposed, but also ignored evidence of physical coercion submitted by Washington and found him not credible based on evidence to which he was not permitted to respond. The interests of justice would be best served by reassignment to a new judge if the case is remanded for a new hearing.

CONCLUSION

This Court should reverse the Appellate Court and remand for the issuance of a certificate of innocence to Washington or, at a minimum, for further proceedings on his petition.

Respectfully submitted,

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WAYNE WASHINGTON,	)	
Petitioner-Appellant.	)	The Honorable Domenica Stephenson, Judge, presiding.

CERTIFICATE OF COMPLIANCE

I, David M. Shapiro, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words 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 11 pages.

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.

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CERTIFICATE OF SERVICE

I, David M. Shapiro, an attorney, certify that on December 15, 2022, the *Consent Motion for Extension of Time to File Appellant's Reply Brief* was filed by electronic means with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701. I further certify that the same were served by electronic transmission on:

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