No. 127952

IN THE
SUPREME COURT OF ILLINOIS

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

**BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS**

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NATURE OF THE CASE

Petitioner pleaded guilty to first degree murder and was sentenced to 25 years in prison. After his conviction was vacated, petitioner filed a petition for a certificate of innocence (COI) pursuant to 735 ILCS 5/2-702. Following an evidentiary hearing, the circuit court denied a COI, finding that petitioner voluntarily caused his conviction. The appellate court affirmed, and this Court granted petitioner's petition for leave to appeal. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether a petitioner who pleads guilty must demonstrate that his plea was involuntary to show that he did not cause "voluntarily cause" his conviction for purposes of 735 ILCS 5/2-702(g)(4).

2. Whether petitioner is entitled to a new hearing to determine whether he satisfies his burden of demonstrating that his guilty plea was not voluntary given that the circuit court failed (1) to grant him an opportunity to address the testimony that the court judicially noticed and (2) to consider the totality of the circumstances in weighing whether petitioner's guilty plea was voluntary.

JURISDICTION

Appellate jurisdiction lies under Supreme Court Rule 315. This Court granted leave to appeal on March 30, 2022.

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STATUTORY PROVISION INVOLVED

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

In order to obtain a certificate of innocence the petitioner must prove by a preponderance of 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, 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.

STATEMENT OF FACTS

A. Petitioner and Tyrone Hood Were Convicted of First Degree Murder, But Their Convictions Were Later Vacated.

Petitioner and Tyrone Hood were prosecuted for the murder of Marshall Morgan, Jr. A529, ¶ 3.[1] Petitioner's jury trial ended in a mistrial.

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1 "Pet. Br." and "A" refer to petitioner's opening brief and appendix. "C" refers to the common law record (volumes 1 through 6) and "R" refers to the reports of proceedings (volumes 1 and 2) in *People v. Hood*, No. 1-16-2964. "Sup. C" refers to the supplemental record in Appeal No. 1-16-3024.

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Id. Hood was then tried, convicted, and sentenced to 75 years in prison. *Id.* Petitioner subsequently pleaded guilty in exchange for a 25-year sentence. *Id.*

After petitioner had served his sentence, and while Hood continued to challenge his own conviction and sentence, the Cook County State's Attorney's Office (CCSAO) moved the circuit to vacate the convictions of both petitioner and Hood, and then dismissed the charges. A529, ¶ 6.

B. The Circuit Court Denied Petitioner's and Hood's Petitions for a COI.

Hood and petitioner then filed COI petitions, *see* C774-999 (Hood's petition), A518-19 (petitioner's petition), which the CCSAO did not oppose, R.A1-2. The circuit court held a joint evidentiary hearing, *see* A358-445, at which the CCSAO presented no argument or evidence, A377 (declining to make opening statement), A402 (declining to cross-examine Hood), A421 (declining to cross-examine petitioner), A429 (declining to present evidence), A443 (declining to present closing argument).

Hood and petitioner testified that they were not involved in Morgan's killing. A400 (Hood's testimony), A420 (petitioner's testimony). Hood attached to his petition documentation supporting a theory that Morgan's father had killed him to collect on a life insurance policy, *see, e.g.*, A24-34 (expert report summarizing evidence), that prosecution witness Jody Rogers claimed to have been coerced to provide false testimony against Hood and

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petitioner, A101-14, and that officers involved in the investigation had invoked the Fifth Amendment in civil litigation when questioned about their interrogations of Hood, Jody Rogers, petitioner, and other witnesses during the investigation of Morgan's murder, A163-73 (deposition of John Halloran), A177-90 (deposition of James O'Brien). Hood moved the documents into evidence at the hearing, and petitioner stated that he had "adopted that when [he] filed [his] petition"; the court indicated that the evidence was "admitted for both defendants." A362-63.[2]

Petitioner testified that he had falsely confessed to being present at the killing after detectives shoved and pushed him. A410-19. Petitioner acknowledged that he had pleaded guilty to Morgan's murder. A420. Before entering his plea, he was aware that Hood had been convicted of this crime and sentenced to 75 years in prison, and he explained why he pleaded guilty:

> I had just went through a hung jury, and to be perfectly honest, sir, waiting on my jury to deliberate, I physically got sick. I couldn't put myself through it no more, and I couldn't imagine spending 75 years in the penitentiary for a crime I didn't do.
>
> So when the deal for 25 years was offered to me, I calculated, with the time I had served in the Cook County Department of Corrections, I would be 32 years old when I came home. I still had a chance at a life. So I weighed out my options, and I felt like that 25 years was the lesser of two evils.

---

[2] The circuit court initially dismissed petitioner's COI petition for attaching no supporting documentation, A523, but petitioner filed a motion to reconsider, which "incorporate[d] all of his prior pleadings, and those of Mr. Hood," Sup. C79-80, and the court vacated the dismissal, R.H2-5.

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A420-21.

Hood argued that he had demonstrated his innocence through his uncontradicted testimony that he had not killed Morgan and the substantial evidence that Morgan's father did so. A430-38. Petitioner adopted Hood's argument as to innocence and focused his argument on the prong of the COI statute requiring him to prove that he did not voluntarily cause his own conviction. A438-39. Petitioner emphasized that his confession was "not a voluntary act" because he was "coerced and physically abused," according to his undisputed testimony. A440-41. At the time he pleaded guilty, he had already proceeded to a jury trial that ended in a mistrial. A441. "And then faced with the decision of doing very little time, barely over the minimum, or potentially being in Mr. Hood's predicament and seeing the rest of his life end up in jail," he accepted the deal. *Id.* Petitioner asserted that even if "he may have voluntarily pled guilty," he did so "after many other circumstances of involuntary conduct put him in that position." *Id.*

After the close of the evidence, the circuit court asked to review the records from petitioner's 1995 suppression hearing, petitioner's 1996 jury trial, and Hood's trial. A425. Petitioner and Hood objected, noting that the transcripts were not in evidence and that the testimony at the hearing stood undisputed. A425-29. However, the court stressed that it did not want "to rule on something in a vacuum and just a partial record." A448.

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After reviewing this additional record evidence, the circuit court denied both petitions. It found that Hood failed to satisfy his burden of demonstrating his innocence of the crime. C1248-49, C1252-63. And it found that petitioner failed to show that he did not voluntarily cause his own conviction. A512. The court did not credit petitioner's testimony that his confession was coerced, finding that his allegations were "vague and non-specific" and not substantiated, and citing inconsistencies between his evidentiary hearing testimony and his testimony at the 1995 suppression hearing and 1996 trial. A514. The court noted, with respect to the guilty plea, that petitioner claimed that "he pled guilty because he learned that [Hood] was convicted and sentenced and feared receiving a comparably long sentence," and reasoned that "fear of a harsher sentence does not invalidate an otherwise voluntary plea." A513-14. Accordingly, the court found "no basis to discount petitioner's plea as a voluntary act which helped to bring about his conviction." A514.

C. The Appellate Court Reversed the Denial of Hood's Petition and Affirmed the Denial of Petitioner's Request for a COI.

Petitioner and Hood appealed the judgments denying their petitions for a COI. The CCSAO filed no brief in either appeal. *See* A520 (letter declining to participate in appeals). Although the appeals were initially consolidated, the appellate court vacated that order *sua sponte* and issued separate decisions. A529, n.1.

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The appellate court reversed the judgment denying Hood's petition, holding that the circuit court had abused its discretion in finding that Hood had not demonstrated his innocence. *People v. Hood*, 2021 IL App (1st) 162964, ¶ 43. It emphasized that the circuit court erred by *sua sponte* requesting and reviewing the trial record where no party had asked the court to take judicial notice, and held that the circuit court should have accepted as true Hood's uncontradicted testimony at the COI hearing that he was innocent. *Id.* ¶¶ 32-34.

A majority of the same appellate panel affirmed the judgment denying petitioner's request for a COI because petitioner had failed to demonstrate that he did not voluntarily cause his own conviction, which is "an element of the cause of action." A536-37, ¶ 30. On petitioner's confession, the court reasoned:

> The circuit court correctly stated it was Washington's burden to prove by a preponderance of the evidence that he did not cause or bring about his conviction. His evidence on this score failed because his testimony that his confession was the result of police coercion was not credible and was otherwise uncorroborated. The circuit court was entitled to give whatever weight it deemed appropriate to the testimony at the hearing and to the affidavits, stipulations and other exhibits offered in support of the petition. Critically, the only testimony the circuit court heard on the issue of police coercion came from the petitioner and a finding that he was not credible was within the circuit court's discretionary authority. Clearly the circuit court was not required to accept Washington's hearing testimony on its face and his previous contradictory sworn testimony when he entered his guilty plea cannot be ignored.

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A534-35, ¶ 26. The majority noted that petitioner's guilty plea necessarily caused his conviction, A534, ¶ 25, and reasoned that "[t]he circuit court did not have to credit Washington's explanation for why he pleaded guilty or ignore the fact that he never claimed his plea of guilty was anything but voluntary," A535, ¶ 26. It concluded that petitioner was not entitled to a COI because "his confession and voluntary plea of guilt caused or brought about his conviction." A536, ¶ 29.

Justice Walker dissented, finding that "[t]he record contains overwhelming evidence that police coercion led to the wrongful conviction of Washington." A540, ¶ 40 (Walker, J., dissenting). To conclude otherwise, the circuit court "explicitly based its credibility finding on evidentiary material not presented," which petitioner had no opportunity to counter. A540, ¶¶ 41-42 (Walker, J., dissenting). Indeed, "no party made the August 1995 hearing transcript a part of the circuit court's record, and the transcript is not included in the record on appeal." A540, ¶ 40 (Walker, J., dissenting). Justice Walker further reasoned that petitioner's guilty plea should not bar a COI because his decision to plead guilty was not culpable. A542-44, ¶¶ 45-49 (Walker, J., dissenting).

This Court granted leave to appeal to consider the circumstances under which a guilty plea bars a COI.

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STANDARDS OF REVIEW

"It is well settled that the determination of whether a petitioner is entitled to a certificate of innocence is committed to the discretion of the circuit court." *People v. Rodriguez*, 2021 IL App (1st) 200173, ¶ 44. However, the construction of the COI statute is "a question of law that is subject to *de novo* review." *People v. Palmer*, 2021 IL 125621, ¶ 53.

ARGUMENT

To obtain a COI, a petitioner must prove by a preponderance of the evidence not only that he "is innocent of the offenses charged in the indictment," but also that he "did not by his . . . own conduct voluntarily cause or bring about his . . . conviction." 735 ILCS 5/2-702(g). The circuit and appellate courts were correct that a voluntary guilty plea bars a COI. Nevertheless, petitioner is entitled to a new hearing, because the circuit court failed to (1) give petitioner a fair opportunity to explain or rebut the testimony in the judicially noticed records, and (2) consider the totality of the circumstances when weighing petitioner's claim that his guilty plea was involuntary.

I. As a Matter of Statutory Construction, to Obtain a COI, a Petitioner Who Pleads Guilty Must Demonstrate that His Plea Was Not Voluntary to Show that He Did Not Voluntarily Cause His Conviction.

A person who pleaded guilty is not categorically barred from obtaining a COI. *See, e.g., People v. Glenn*, 2018 IL App (1st) 161331, ¶¶ 8, 11, 24

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(affirming grant of COI where petitioner who pleaded guilty nevertheless demonstrated that she "did not by her conduct voluntarily cause or bring about her own conviction"); *People v. Simon*, 2017 IL App (1st) 152173, ¶¶ 13, 26 (remanding for evidentiary hearing so petitioner who pleaded guilty could "present evidence in support of his claim that he did not voluntarily cause his own conviction").

However, like any other applicant for a COI, a petitioner who pleaded guilty must prove by a preponderance of evidence that he "did not by his . . . own conduct voluntarily cause or bring about his . . . conviction." 735 ILCS 5/2-702(g). Accordingly, by the plain language of the statute, to obtain a COI, a petitioner who caused his own conviction by pleading guilty must demonstrate that his plea was involuntary.

Although petitioner argues that requiring him to make this showing imposes a "new technical obstacle" to obtaining a COI, Pet. Br. 15, this showing is "an element of the cause of action" set forth in the statute, A536-37, ¶ 30. A petitioner bears the burden of proof on four elements, 735 ILCS 5/2-702(g), and his failure to satisfy this element precludes the grant of a COI, regardless of whether the petitioner has demonstrated his innocence, *see People v. Amor*, 2020 IL App (2d) 190475, ¶¶ 16-25.

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A. By its plain language, the statute precludes those who "voluntarily" pleaded guilty from obtaining COIs.

"The fundamental goal of statutory construction is to ascertain and give effect to the legislature's intent, best indicated by the plain and ordinary meaning of the statutory language." *Palmer*, 2021 IL 125621, ¶ 53. Where the language is clear and unambiguous, this Court applies the statute as written, without further aids of statutory construction. *People v. Legoo*, 2020 IL 124965, ¶ 14. In interpreting a statute, a court "may not depart from the plain language and meaning of a statute by reading into the statute exceptions, limitations, or conditions that the legislature did not express," *id.*, and "may not, in the guise of statutory construction, rewrite the statute," *Lauer v. Am. Fam. Life Ins. Co.*, 199 Ill. 2d 384, 390 (2002).

A guilty plea plainly "causes" a conviction. *See Boykin v. Alabama*, 395 U.S. 238, 242 (1969) ("[a] plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction"); *People v. Reed*, 2020 IL 124940, ¶ 27 ("A guilty plea is an admission of guilt and a conviction and in and of itself."). As the appellate court correctly reasoned, "[a] defendant who has pled guilty has 'caused or brought about his conviction'"; there is "no other way to interpret this provision." A534, ¶ 25 (quoting 735 ILCS 5/2-702(g)(4)).

In fact, the appellate court has held that even a voluntary confession may bar a COI for purposes of this element. *See Amor*, 2020 IL App (2d)

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190475, ¶¶ 16-25 (circuit court did not err in finding that voluntary confession admitted at trial caused conviction within meaning of COI statute). In *Amor*, the defendant voluntarily confessed to setting a fire and was convicted of murder at trial. *Id.* ¶¶ 3-4. Expert testimony later established that the fire could not have been set as Amor claimed, his murder conviction was vacated, and he was acquitted at a retrial. *Id.* ¶¶ 6-8. But the circuit court held that a COI was barred because Amor's confession, introduced at the first trial, *caused* Amor's conviction, and the appellate court affirmed. *Id.* ¶¶ 12, 16-25. Here, there was no trial, making it even clearer that petitioner's guilty plea (rather than his confession) caused his conviction.

Although petitioner contends that the vacatur of his conviction renders his plea a "nullity" that must be ignored for all purposes, Pet. Br. 25-26, every COI action proceeds from a vacated conviction, *see* 735 ILCS 5/2-702(g)(2). The fourth element of the statute simply asks what *caused* that now-vacated conviction. In some cases, as here, the cause was a guilty plea.

Because a petitioner who has pleaded guilty has caused his own conviction, to obtain a COI, the express terms of the statute require him to demonstrate that he did not do so "voluntarily." *See* 735 ILCS 5/2-702(g)(4). Contrary to petitioner's assertion, the appellate court did not adopt a "categorical" bar for guilty plea defendants, *see* Pet. Br. 15-25, but rather concluded that a COI was barred in *this* case by petitioner's "*voluntary* plea of guilty," A536, ¶ 29 (emphasis added). Though the court's conclusion as to

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voluntariness cannot stand due to errors at the COI hearing, *see infra* Section II, its interpretation of the statute was correct.

Petitioner's proposed rule requires rewriting the COI statute. Petitioner argues that a COI should be barred only if a person "'culpably misled police or other officials,'" Pet. Br. 20 (quoting A543, ¶ 48 (Walker, J., dissenting)), but this rule would replace the word chosen by the General Assembly — "voluntarily" — with a different word, "culpably." Those words carry different meanings. An act is done voluntarily as long as it is done freely and without coercion. *See, e.g., Brady v. United States*, 397 U.S. 742, 748 (1970) (referring to "voluntary" plea as an "expression of [the defendant's] own choice"); *People v. Richardson*, 234 Ill. 2d 233, 253 (2009) (describing voluntary statement as one given "freely[ ] . . . and without compulsion or inducement of any sort"); *see also Voluntarily*, *Black's Law Dictionary* (11th ed. 2019) ("Intentionally; without coercion."). But an act is *culpable* only if it is "blameworthy." *See Culpable*, *Black's Law Dictionary* (11th ed. 2019) ("Guilty; blameworthy.").

Similarly, petitioner's reliance on precedent interpreting the federal certificate of innocence statute, *see* Pet. Br. 20 n.4 (citing *Betts v. United States*, 10 F.3d 1278 (7th Cir. 1993)), is misplaced because that statute uses substantively different language. A federal prisoner may obtain a certificate of innocence by showing that (1) "[h]e did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no

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offense"; and (2) "he did not *by misconduct or neglect* cause or bring about his own prosecution." 28 U.S.C. § 2513(a)(2) (emphasis added). In other words, the federal statute does not ask whether the applicant's conduct was voluntary, but whether it amounted to "misconduct or neglect" — *i.e.*, was culpable. Had the General Assembly intended for the COI statute to carry the same meaning, it would have used that same language. Instead, it required a petitioner to show that his conduct in causing his own conviction was not voluntary.

Thus, under the plain language chosen by the General Assembly, petitioner must show that his conduct causing his conviction — the guilty plea — was involuntary.

B. Case law lends meaning to the term "voluntariness" in the context of guilty pleas.

The "voluntariness" of a guilty plea is a term of art rooted in the Fifth Amendment. *See Boykin*, 395 U.S. at 242-43 (standard governing voluntariness of confession "must be applied to determining whether a guilty plea is voluntarily made"). Presumably, the General Assembly was aware of this case law when it used this word in the COI statute. *See generally United States v. Glispie*, 2020 IL 125483, ¶¶ 10-17 (Court would interpret statutory language in light of prior judicial decisions, which General Assembly presumably knew about when crafting statute).

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The majority of guilty pleas are voluntary, even where the defendant's conviction is subsequently vacated. As this Court explained in *Reed*, a rational "decision to plead guilty may be based on factors that have nothing to do with defendant's guilt." 2020 IL 124940, ¶ 33. Specifically, "[t]he plea system encourages defendants to engage in a cost-benefit assessment where, after evaluating the State's evidence of guilt compared to the evidence available for his defense, a defendant may choose to plead guilty in hopes of a more lenient punishment than that imposed upon a defendant who disputes the overwhelming evidence of guilt at trial." *Id.* Such pleas entered for the purpose of receiving a reduced sentence are not involuntary under well-established principles of law. *See Brady*, 397 U.S. at 755 (guilty plea not involuntary "merely because entered to avoid the possibility of a death penalty").

To be sure, *Reed* held that a defendant who has pleaded guilty may be entitled to vacate his conviction through the postconviction process if he satisfies a stringent standard demonstrating that he is actually innocent. 2020 IL 124940, ¶¶ 41, 45-50. Petitioner has already received the type of relief envisioned by *Reed*: his conviction has been vacated. But *Reed* did not suggest that a guilty plea would be *involuntary* if the person who entered it was innocent. And, while due process entitles an actually innocent convicted defendant to seek postconviction relief even if he voluntarily pleaded guilty,

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the plain language of the COI statute is unambiguous in providing that such a defendant may not subsequently receive a COI.

II. Petitioner Is Entitled to a New Hearing to Satisfy His Burden of Demonstrating That His Guilty Plea Was Involuntary Under the Totality of the Circumstances.

Even though the circuit court answered the correct question —whether petitioner demonstrated that his guilty plea was voluntary — it committed errors at petitioner's COI hearing that warrant a new hearing on that question.

A. The circuit court erred by providing petitioner no opportunity to rebut or explain the records in petitioner's criminal case.

The circuit court properly took judicial notice of the records in petitioner's criminal case. The COI statute provides that "[i]n any hearing seeking a certificate of innocence, the court may take judicial notice of prior sworn testimony or evidence admitted in the criminal proceedings related to the convictions which resulted in the alleged wrongful incarceration." 735 ILCS 5/2-702(f). The circuit court's discretion to judicially notice these materials does not turn on whether a party requests it. *See* Ill. R. Evid. 201 (where judicial notice is discretionary, as opposed to mandatory, "[a] court may take judicial notice, whether requested or not").

Indeed, a circuit court *must* have leeway to fairly evaluate whether a COI petitioner has met his burden of proof. *See* A448 (court here stating that it was unwilling "to rule on something in a vacuum and just a partial

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record"). The COI statute does not contemplate judgments on the pleadings, but it requires a petitioner to prove his entitlement to a COI by a "preponderance of the evidence." 735 ILCS 5/2-702(g). That burden must be carried even where the People have opted not to oppose a COI petition. *See, e.g., People v. Hawkins*, 221 Ill. App. 3d 460, 463 (2d Dist. 1991) ("While the party not having the burden of proof may introduce contrary evidence, it is under no compulsion to do so and may submit the issue to the trier of fact on the evidence presented by the burdened party.") (citing M. Graham, *Cleary & Graham's Handbook of Illinois Evidence* § 301.4, at 74 (5th ed. 1990)).

Moreover, although petitioner argues that the circuit court was required to accept his testimony as true because it was "undisputed," Pet. Br. 29, the circuit court, as factfinder, had discretion to reject testimony that it found was not credible, *see* A534-35, ¶ 26. The court could have properly rejected petitioner's testimony based on its observations of his demeanor during testifying or its review of the documents submitted at the hearing. *See People v. Terrell*, 2022 IL App (1st) 192184, ¶¶ 67-68 (circuit court could reject petitioner's claim of innocence based on contents of search affidavit he attached to his petition).

Yet, while a circuit court is permitted to make credibility determinations, and the statute expressly allowed the court to take judicial notice of petitioner's testimony during the criminal proceedings, when a court takes judicial notice, "[a] party is entitled . . . to an opportunity to be heard as

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to the propriety of taking judicial notice and the tenor of the matter noticed." *See* Ill. R. Evid. 201(e). Petitioner was denied that opportunity here. After petitioner had presented his testimony (without cross-examination) and the evidence had closed, the circuit court requested the transcripts of petitioner's suppression hearing and jury trial. A425. It did not provide petitioner with an opportunity to address inconsistencies between his testimony in those proceedings and his testimony at the COI hearing. The court then relied solely on those inconsistencies to reject petitioner's testimony at the hearing. A514.

The circuit court's rejection of petitioner's COI petition, which turned solely on its assessment of petitioner's credibility in light of the records of prior proceedings that petitioner had no opportunity to counter, should be reversed, and the case remanded for a new hearing.

B. The circuit court did not properly evaluate the totality of the circumstances in determining whether petitioner's guilty plea was voluntary.

Beyond the circuit court's procedural error, which alone warrants a new hearing, the circuit court applied the wrong legal test to petitioner's claim.

The voluntariness of a guilty plea "can be determined only by considering all of the relevant circumstances surrounding it." *Brady*, 397 U.S. at 749. The circuit court rejected petitioner's claim that his plea was not voluntary on the principle that "fear of a harsher sentence does not invalidate

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an otherwise voluntary plea." A514 (citing *People v. Mason*, 29 Ill. App. 3d 121, 126 (5th Dist. 1975), and *People v. Wilbourn*, 48 Ill. 2d 187 (1971)). That is true. But petitioner did not claim merely that he pleaded guilty to avoid a harsher sentence.

Petitioner also testified that had been physically coerced to provide a false confession and emphasized that he had attempted, and failed, to win an acquittal at trial. A410-21. Indeed, petitioner expressly linked his decision to plead guilty to his physically coerced confession. *See* A441 (emphasizing that even if his guilty plea, standing alone, seemed voluntary, he entered that plea only "after many other circumstances of involuntary conduct put him in that position"); *see also* Pet. Br. 29 (arguing that "the coercive interrogation undermines . . . any argument that Washington's guilty plea precludes a certificate of innocence" because "Washington's false and coerced confession left him with little choice but to take the plea").

As discussed, the circuit court's rejection of petitioner's claim that his confession was physically coerced rested on a credibility determination that should be revisited at a new hearing.[3] And if petitioner demonstrates

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[3] Petitioner argues that the circuit court was compelled to draw an adverse inference because officers invoked the Fifth Amendment when questioned in a civil proceeding. Pet. Br. 28, 32-33. This issue should also be explored at a new hearing. Although the circuit court has discretion over whether to draw an adverse inference, *see People v. Gibson*, 2018 IL App (1st) 162177, ¶ 86, the court does not appear to have exercised its discretion here, *see* A514 (stating only that petitioner failed to corroborate his claim of coercion), as neither party requested an adverse inference. Although the deposition

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through credible evidence that his confession was physically coerced, that fact should be considered in assessing the voluntariness of his guilty plea. To the extent that petitioner suggests his confession (and, apparently, his guilty plea) was involuntary because he faced a "prolonged interrogation," *see* Pet. Br. 33-36, this would not be enough. *See, e.g., People v. Nicholls*, 42 Ill. 2d 91, 101 (1969) (claim of being illegally detained for 34 hours did not render confession involuntary); *People v. Dodds*, 190 Ill. App. 3d 1083, 1090-91 (1st Dist. 1989) (detention for 30 hours before confessing did not render statement involuntary).

However, as Illinois courts have emphasized, "the law reserves a special place for physically coerced confessions." *Gibson*, 2018 IL App (1st) 162177, ¶ 106. The use of physical "coercion by the state . . . constitutes an egregious violation of an underlying principle of our criminal justice system . . . — 'that ours is an accusatorial and not an inquisitorial system.'" *People v. Wrice*, 2012 IL 111860, ¶ 73 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 293 (1991) (White, J., dissenting)). Accordingly, although the use of a confession procured through psychological coercion may constitute harmless

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transcripts were admitted at the evidentiary hearing, R.U6-7, neither party discussed the transcripts in arguments or requested an adverse inference, *see* R.U7-21 (opening statements), R.U74-86 (closing arguments). At a new hearing, petitioner can expressly request that the circuit court draw an adverse inference, and the court can exercise its discretion.

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error, the "use of a defendant's *physically* coerced confession as substantive evidence of his guilt is never harmless error." *Id.* ¶ 71 (emphasis in original).

Nor would the circuit court be precluded from finding petitioner's guilty plea involuntary by *McMann v. Richardson*, 397 U.S. 759, 771-75 (1970), which held that a valid guilty plea waives a postconviction challenge that a confession was physically coerced. *McMann* emphasized the sanctity of guilty pleas and held that a defendant who intelligently pleaded guilty and forewent a challenge to his confession had waived any later claim that the confession was coerced. *See id.*; *see also* *People v. Johnson*, 2021 IL App (1st) 152310, ¶¶ 21-38 (guilty plea defendant's claim that confession was tortured was barred on postconviction review by waiver principles set forth in *McCann*).

But here petitioner is not attempting to use an allegedly coerced confession to undermine the validity of his conviction: that conviction has *already* been invalidated. Instead, petitioner is seeking to obtain a COI. Whether he is allowed to do so turns on whether he "voluntarily" caused that now-vacated conviction. Whether his confession, which petitioner testified contributed to his decision to plead guilty, was voluntarily given is relevant to that inquiry. Indeed, to ignore petitioner's testimony that his confession was not voluntary due solely to his guilty plea would place petitioner in a Catch-22: He could not challenge the voluntariness of his confession because he pleaded guilty, but he could not challenge the voluntariness of his guilty

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plea based on his coerced confession. Such an outcome would run contrary to the purpose of the COI statute. *See* Ill. Gen. Assem., House Proceedings, May 18, 2007 (statement of Representative Flowers) ("This legislation is about men and women who have been wrongfully convicted of a crime; they never should have been in jail in the first place.").

Thus on remand, the circuit court should consider whether petitioner has shown by a preponderance of the evidence that his guilty plea was involuntary, based on the totality of the circumstances, including the voluntariness of his confession.

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CONCLUSION

This Court should reverse the appellate court's judgment and remand for a new hearing on the petition for a certificate of innocence.

November 7, 2022

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 23 pages.

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CERTIFICATE OF FILING AND SERVICE

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. On November 7, 2022, the foregoing **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and served on the following parties via electronic mail:

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