Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. WAYNE WASHINGTON, Petitioner-Appellant.	)	Petition for Leave to 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.

PETITION FOR LEAVE TO APPEAL

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ORAL ARGUMENT REQUESTED IF PETITION GRANTED

POINTS AND AUTHORITIES

PRAYER FOR LEAVE TO APPEAL

Pursuant to Illinois Supreme Court Rule 315, Petitioner Wayne Washington respectfully requests that this Court grant him leave to appeal from the November 12, 2021, order of the Illinois Appellate Court, First District, denying rehearing and the June 28, 2021, decision of the Illinois Appellate Court, First District, affirming the circuit court's order denying his petition for a certificate of innocence.

Petitioner is indisputably innocent and spent 14 years locked up for a murder he did not commit. Petitioner's innocence is such a no-brainer that neither the State, nor the circuit court, nor the Appellate Court ever questioned Petitioner's obvious innocence in these proceedings. Both courts denied him a certificate of innocence anyway.

Why? Because the First District majority adopted a new rule that automatically vetoes a certificate of innocence for any innocent petitioner who pled guilty. Per the majority, "[a] defendant who has pled guilty . . . is not entitled to a certificate of innocence." Op. ¶ 25.

The majority's new rule throws the law into disarray. Before the instant decision, the First District itself had ordered the issuance of certificates of innocence to petitioners who had once pled guilty, commending them for "the sacrifice [they] made in their effort to bring the rule of law to Chicago." *People v. Glenn*, 2018 IL App (1st) 161331, ¶ 22 (Neville, J.). Consistent with this precedent, scores of innocent Illinoisans who pled guilty have obtained certificates of innocence. But now, the First District's radical departure from precedent slams the courthouse door on this same category of innocent petitioners.

This Court itself recently spotlighted the reality that "18% of all exonerees . . . pled guilty." *People v. Reed*, 2020 IL 124940, ¶ 33. The Appellate Court's decision will therefore preclude—categorically—nearly one fifth of innocent petitioners from obtaining

certificates of innocence. Illinois leads the entire nation in wrongful convictions. The absolute last thing this state needs is a new barrier that will prevent innocent people from clearing their names and reclaiming what remains of their lives.

This new obstacle will disproportionately harm innocent people of color. As Justice Walker wrote in dissent, the majority opinion will "continue[] the difficulty associated with the too many wrongful accusations against black and brown people. Wrongful convictions and accusations like these can devastate families, foreclose career opportunities, and undermine the integrity of our justice system." Op. ¶ 50 (Walker, P.J., dissenting).

The First District's new rule is dead wrong as a legal matter. When it enacted the certificate of innocence statute, "the legislature plainly stated its intent to ameliorate, not impose, technical and substantive obstacles to petitioners seeking relief from a wrongful conviction." *People v. Palmer*, 2021 IL 125621, ¶ 68. Because every conviction of an innocent person threatens the core legitimacy of our justice system, "[w]hen met with a truly persuasive demonstration of innocence, a conviction based on a voluntary and knowing plea is reduced to a legal fiction." *Reed*, 2020 IL 124940, ¶ 35. In other words, "sometimes a manifest injustice outweighs the consequences of defendant's voluntary plea." *Id.* ¶ 36. The First District got this exactly backwards by green-lighting a manifest injustice based on a plea that occurred decades in the past.

While the holding that a guilty plea automatically precludes a certificate of innocence sufficed to resolve the case, the First District did not stop there. It also concluded that Petitioner's confession, the product of coercion by notorious former subordinates of Jon Burge, was voluntary. That wrongful conclusion also deserves this Court's review.

This Court should grant leave to appeal in this case to resolve the legal disarray caused by the Appellate Court's decision, to correct this deviation in the law, and to prevent the breathtaking—and racially-skewed—injustice that the decision will visit on innocent Illinoisans. The Appellate Court's decision cannot stand.

STATEMENT OF JURISDICTION

Rule 315 confers jurisdiction. The appellate court issued its decision on June 28, 2021, affirming the circuit court's judgment denying the petition for a certificate of innocence. A timely petition rehearing for rehearing was filed on July 19, 2021, and the appellate court issued an order denying the petition on November 12, 2021. This January 11, 2022 petition is timely under an extension granted by Chief Justice Anne M. Burke.

STATEMENT OF FACTS

Petitioner Wayne Washington was arrested out of the blue, seemingly because he happened to be in the same store as his ultimate co-defendant, Tyrone Hood. R. U52-53. Petitioner was taken to the police station and handcuffed to a chair while detectives, including John Halloran and Kenneth Boudreau, interrogated him, beat him, and repeatedly kicked his chair over. R. U53-56. After enduring this abuse for an extended period, Petitioner signed a written statement containing information fed to him by the police and falsely confessing to the murder of Marshall Morgan, Jr. R. U59. Petitioner signed a statement making himself accountable because he could not stand the beatings any longer, and the police promised him he would go home if he did. C. 920; R. U59.

The only information tying Petitioner to the murder was his own coerced statement and the statement of Jody Rogers. Rogers implicated Petitioner because detectives abused him and threatened to charge him with the murder. C. 939. He repudiated his statement shortly

thereafter. C. 939-41, 956, 958. Rogers' statement was also obtained by Detectives Halloran and Boudreau. C. 930.

At Petitioner's trial, the jury was unable to reach a verdict. R. U65. On the morning he was to be retried, Petitioner spoke with Hood, his equally innocent co-defendant, who was about to be transferred to IDOC to serve the 75-year sentence he received following his conviction at trial. R. U64. Mr. Hood told Petitioner that "he was praying for him." R. U64. Despite his innocence, Petitioner took a plea deal that included a 25-year sentence (at 50%) because he knew he could not spend 75 years in prison. R. U65.

Petitioner is indisputably innocent. The victim's father, Marshall Morgan, Sr., killed his son to collect on a life insurance policy. C. 870-73, 882-84. The First District *granted* a certificate of innocence to Petitioner's co-defendant, Hood, summarizing the overwhelming evidence that inculpated Morgan, Sr.: "Although Morgan Sr., was in significant debt and his house was in foreclosure, he had taken a $50,000 life insurance policy out on Marshall, his healthy 20-year-old, college athlete son. Within months of his insurance application, Marshall was shot to death." *People v. Hood*, 2021 IL App (1st) 162964, ¶ 8. This was Morgan, Sr.'s modus operendi: "Hood also alleged that Morgan Sr. had previously taken out a life insurance policy on a former girlfriend, who was also murdered and found in the same manner as Marshall—wedged between the front and back seats of an abandoned car." *Id.* ¶ 9. On top of that, "Morgan Sr. also confessed to murdering another girlfriend in 2001 . . . . He shoved her body into the trunk of a car." *Id.*

On February 9, 2015, the State moved to vacate Petitioner's conviction (as well as Hood's), grant him a new trial, and dismiss the charges against him. A2. One week later, Petitioner filed a petition for a certificate of innocence. The State did not oppose the petition

for a certificate of innocence, nor did it participate in any way in Petitioner's appeal from the circuit court's denial of a certificate of innocence. Op. ¶¶ 10, 18. Both the circuit court and the Appellate Court denied the petition *sua sponte*. Op. ¶¶ 1, 16.

Neither the circuit court nor the Appellate Court said a word to question Petitioner's manifest innocence—instead, both courts denied the petition because petitioner pled guilty. Per the First District majority, "this is not an issue of whether [Petitioner] proved by a preponderance of the evidence that he is innocent." Op. ¶ 27. Instead, the majority denied the petition based entirely on subsection (g)(4) of the certificate of innocence statute, which provides that "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)(4). The majority adopted a categorical rule that precludes innocent people who plead guilty from obtaining certificates of innocence: "A defendant who has pled guilty 'cause[d] or [brought] about his or her conviction' and is not entitled to a certificate of innocence." Op. ¶ 25 (quoting 735 ILCS 5/2-702(g)(4)).

While that holding alone sufficed to decide the case, the majority did not stop there. It also concluded that Petitioner brought about his own conviction by confessing falsely. Op. ¶ 29. In reaching that conclusion, the majority discounted Petitioners' evidence of coercion by two notorious detectives who had worked under Jon Burge. Justice Walker dissented.

ARGUMENT

I. This Court Should Review the Appellate Court's Holding That A Guilty Plea Automatically Precludes A Certificate Of Innocence.

The First District's decision throws the law surrounding certificates of innocence into chaos. This Court should intervene to resolve the confusion and to correct the Appellate Court's decision, which deviates from precedent and roadblocks the intent of the certificate

of innocence statute. Scores of innocent Illinois citizens who pled guilty and spent decades behind bars through no fault of their own have obtained certificates of innocence in the past. The First District's decision marks a revolution in the law that slams the courthouse door on this same category of petitioners in the present and the future. The decision does so based on reasoning that is dead wrong on the meaning of the certificate of innocence statute. That statute exists to sweep away arbitrary barriers that prevent innocent people from clearing their names. The First District got it exactly backwards by *inventing* its own, new arbitrary obstacle.

The harm of the First District's decision, should this Court not intervene, will fall principally on Black and brown people, as the dissent recognized. For Petitioner—a manifestly innocent man convicted after Jon Burge disciples extracted a false confession of accountability from him—the decision bars him from clearing his name through a certificate of innocence, even though his co-defendant has already obtained a certificate of innocence because he did not plead. Indeed, Petitioner pled guilty only after his first jury hung and after his innocent co-defendant went to trial and received a 75-year sentence. The inequitable state of affairs created by the decision below must not stand.

A. The Illinois Courts Are Now Divided On Whether An Innocent Person's Guilty Plea Automatically Precludes A Certificate Of Innocence.

Illinois courts have previously recognized that a guilty plea does not categorically prohibit issuance of a certificate of innocence. Rather, the Appellate Court—including the First Circuit—has held that innocent people who plead guilty should be denied certificates of innocence only when their prosecution and conviction was their own fault, through their own, additional, affirmative acts. Consistent with this doctrine, Illinois circuit courts have granted certificates of innocence to people who have plead guilty in at least 77 cases. But

the First District's decision below throws this settled framework into disarray, creating a novel rule that a guilty plea automatically precludes a certificate of innocence. This Court should grant leave to appeal to end this state of confusion, clarify the law, and correct the First District's deviation from precedent.

In previous cases, the Appellate Court recognized that innocent people who plead guilty may obtain a certificate of innocence. In *People v. Dumas*, the Second District recognized based on the "legislative history" of the certificate of innocence statute that its purpose "is to benefit 'men and women that have been falsely incarcerated through no fault of their own.'" 2013 IL App (2d) 120561, ¶¶ 18-19 (quoting 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 12 (statements of Representative Flowers)). The court noted that this fault-based analysis tracks the Seventh Circuit's interpretation of the federal certificate of innocence statute, which "tak[es] into account . . . whether [the petitioner] may be deemed responsible for his own prosecution." *Id.* ¶ 18 (quoting *Betts v. United States*, 10 F.3d 1278, 1283 (7th Cir.1993)). Specifically, innocent petitioners should be denied a certificate of innocence only if they "acted or failed to act in such a way as to mislead the authorities into thinking [they] had committed an offense." *Id.* (quoting *Betts*, 10 F.3d at 1285). Consistent with that rule, the court denied a certificate of innocence to a person who "took multiple steps to arrange a drug sale . . . , which ultimately led to his arrest and conviction." *Id.* ¶¶ 18-19.

In *People v. Simon*, the First District applied this fault-based approach to a guilty plea. The circuit court had held that the "petitioner's guilty plea indicated that he was a willing participant in [a] corrupt scheme" to frame himself in order to free the person who had been convicted of the crime. 2017 IL App (1st) 152173, ¶ 22. The First District disagreed,

"remanding the case for a hearing where petitioner has an opportunity to prove that he did not voluntarily cause his own conviction." *Id.* ¶ 31. Similarly, in *People v. Glenn*, the First District granted a certificate of innocence to Clarissa Glenn, an innocent petitioner who had pled guilty. Far from criticizing Glenn and her co-defendant, Ben Baker, for pleading guilty or denying a certificate of innocence because of the plea, the court commended "the sacrifice Glenn and Baker made in their effort to bring the rule of law to Chicago." 2018 IL App (1st) 161331, ¶ 22 (Neville, J.).

Clarissa Glenn and Ben Baker are but two of the innocent Illinoisans who cleared their names and restored "the rule of law," *id.*, by obtaining a certificate of innocence after pleading guilty. At least 77 innocent Illinoisans have done the same.[1]

[1] A partial list of those who originally pled guilty but then obtained certificates of innocence since 2016 includes: Demetrius Adams, 04CR17784, Chauncy Ali, 07CR421(03), Landon Allen, 04CR 5700(01), George Almond, 06CR19708(01), Ben Baker, 06CR810(01), Deandre Bell, 06CR22073(01) & 07CR11499(01), Harvey Blair, 04CR18641, Antwan Bradley, 08CR8917(01), Darron Byrd, 07CR10335(02), Raynard Carter, 07CR10335(01) & 06CR6565(02), Bobby Coleman, 03CR2644(01), Jermaine Coleman, 06CR12908(01), Craig Colvin, 04CR14263(01), Milton Delaney, 07CR6264(01), Gregory Dobbins, 04CR8728(01), Christopher Farris, 04CR18418(01), Robert Forney, 07CR3834, Marcus Gibbs, 07CR3741(01), Marc Giles, 03CR02644(04), Leonard Gipson, 03CR2644, 03CR12414 & 07CR20496, Clarissa Glenn, 06 CR 810(02), Cleon Glover, 06CR15063(01), Stefon Harrison, 06CR24269(01) & 07CR421(02), Sydney Harvey, 06CR25232(01), Eveless Harris, 07CR10335(03), Rickey Henderson, 02CR19048, 03CR21058, 05CR7952 & 06CR18229, Tyrone Herron, 07CR00421(04), Kenneth Hicks, 07CR22690(01), David Holmes, 07CR12171(01), Brian Hunt, 08CR5302(01), Allen Jackson, 06CR3375(01), Shaun James, 04CR10615(01), Goleather Jefferson, 06CR23620, Thomas Jefferson, 05CR14701, Zarice Johnson, 06CR18526(01) & 08CR4969(01), Derrick Lewis, 04CR17856 & 07CR22093(01), Robert Lindsey, 09CR20361(02), Larry Lomax, 03CR2644(06), Derrick Mapp, No. 06CR10364(01), Willie Martin, 06CR23620(02), David Mayberry, 06CR9651(03), Octayvia McDonald, 05CR21111(01), Gregory Mollette, 06CR22931(01), James Moore, 05CR28783(01), Jermaine Morris, 05CR2186(01) & 06CR8697(02), Terrence Moye, 08CR15102, Lloyd Newman, 06CR22250(01), Jajuan Nile, 07CR24156(02), George Ollie, 03CR2644(05), Bryant Patrick, 05CR01587(01), 07CR8410(01), Cordero Payne, 05CR28782(01), Mister Pearson, 07CR24156(02), Hasaan Potts, 03CR8635(01), Bruce Powell, 09CR14547, Lee Rainey, 03CR17007(01) & 05CR147, Clifford Roberts, 03CR02644(02), Calvin

Then came this case. The First District executed an abrupt and reckless U-turn—one that would have precluded a certificate of innocence for Glenn, Baker, and scores of other innocent people who have pled guilty. The Appellate Court bluntly adopted a categorical rule prohibiting people who plead guilty from obtaining a certificate of innocence. Per the court: "The plain and ordinary meaning of 2-702(g)(4) is clear. A defendant who has pled guilty 'cause[d] or [brought] about his or her conviction' and is not entitled to a certificate of innocence . . . We see no other way to interpret this provision." Op. ¶ 25 (quoting 735 ILCS 5/2-702(g)(4)). Rather than mentioning *Dumas*, *Simon*, or *Glenn*, the majority resurrected an eight-year-old, non-precedential summary order that *no court* had cited ever before and turned it into precedent. Op. ¶ 25 ("Defendant . . . cannot obtain a certificate of innocence because he pled guilty." (citing *People v. Allman*, 2013 IL App (1st) 120300-U, ¶ 19)). And just like that, legal precedents that have allowed scores of innocent Illinois citizens to clear their names and restore the rule of law were cast aside. This Court should grant review to correct majority's deviation from the law.

B. The Appellate Court's Opinion Creates An Egregious Injustice By Preventing An Innocent Man Who Blamelessly Pled Guilty From Clearing His Name.

Petitioner's innocence is undisputed and indisputable. The question is whether he should be prevented from clearing his name anyway, just because he pled guilty. The State

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Robinson, 07CR3834(03), Jamell Sanders, 06CR14950(01), Frank Saunders, 07CR8562(01), Chris Scott, 06CR9651(01), Angelo Shenault, Jr., 06CR9651(02), 08CR6802, 09CR14548, Angelo Shenault, Sr., 04CR28832 & 07CR418, Germain Sims, 09CR20361(01), Taurus Smith, 04CR10615(02), Jabal Stokes, 06CR12908(02), Henry Thomas, 03CR4666(01) & 07CR421(01), Nephus Thomas, 08CR6109, Lapon Thompson, 06CR13950(01), Alvin Waddy, 07CR9386, Gregory Warren, 06CR8697(01), Isaac Weekly, 07CR18861(01), Lionel White, Sr., 06CR12092, Lionel White, Jr., 06CR19188, Kim Wilbourn, 06CR22542(01), Vondell Wilbourn, 04CR20636 & 05CR222312(02), Deon Willis, 02CR82903 & 08CR16767, Martez Wise, 06CR27677.

itself moved to vacate Petitioner's conviction and then dismissed the case. Op. ¶ 6. The State did not oppose the petition for a certificate of innocence, nor did it participate in any way in Petitioner's appeal from the circuit court's denial of a certificate of innocence. Op. ¶¶ 10, 18. Neither the circuit court nor the Appellate Court said a word to question petitioner's manifest innocence—instead, both courts denied the petition only because petitioner pled guilty. As the First District majority put it, "this is not an issue of whether [Petitioner] proved by a preponderance of the evidence that he is innocent." Op. ¶ 27.

In addition, the First District's decision creates a troubling inconsistency because the same panel *granted* a certificate of innocence to Petitioner's co-defendant, Hood, just three months before denying the instant petition, finding that "the preponderance of the evidence established that [Hood] more likely than not did not commit the offenses." *Hood*, 2021 IL App (1st) 162964, ¶ 43. Petitioner's innocence is no less obvious than Hood's.

The only difference between Petitioner and Hood is that Petitioner ultimately pled guilty. That is what any rational person would have done—or begged a loved one to do—in Petitioner's place. At first, Petitioner pled not guilty, but his jury did not reach a verdict. R. U65. On the morning of the retrial, Petitioner spoke to Hood—who had been sentenced to 75 years in prison after being convicted at trial. R. U64. Petitioner pled guilty only after seeing his equally innocent co-defendant convicted and sentenced to *de facto* life in prison. Petitioner accepted a 25-year sentence "because he knew that Hood had been sentenced to 75 years' imprisonment." Op ¶ 15. To Washington, the plea deal meant he would have "a chance at life" after serving the sentence for a crime he did not commit. *Id*.

C. This State Has A Shameful History Of Convicting Innocent People, Especially Innocent People Of Color, And The Appellate Court's Decision Will Make The Situation Even Worse.

"[C]oncern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system." *Schlup v. Delo*, 513 U.S. 298, 325 (1995). Illinois leads the nation in convicting the innocent. In 2019 and 2020, Illinois accounted for more wrongful convictions than any other state.[2] This case arises in Chicago, a city dubbed "the wrongful conviction capital of America."[3] The last thing the Illinois justice system should do is invent new obstacles to block innocent people from clearing their names.

The Appellate Court's decision, however, does just that by preventing innocent people from obtaining certificates of innocence just because they pled guilty. The decision categorically disqualifies nearly *one-fifth* of wrongfully convicted people from receiving certificates of innocence. As this Court recently recognized, "18% of all exonerees . . . pled guilty." *Reed*, 2020 IL 124940, ¶ 33 (citing Peter A. Joy & Kevin C. McMunigal, *Post-Conviction Relief After a Guilty Plea?*, 35 CRIM. JUST. 53, 55 (Summer 2020). In Illinois, scores of certificates of innocence have been awarded to people who pled guilty. *See supra* n. 1. The Appellate Court's ruling slams the courthouse door in the face of present and future petitioners in the same position. This Court should intervene to prevent that injustice.

Wrongful convictions disproportionately harm Black and Latinx people. According to the National Registry of Exonerations, 62% of people who proved their innocence after

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[2] National Registry of Exonerations, ANNUAL REPORT, at 5 (2021), https://www.law.umich.edu/special/exoneration/Documents/2021AnnualReport.pdf.

[3] *See, e.g.*, Editorial, *Reforms Would Reduce Number Of Wrongful Convictions*, CHI. SUN-TIMES (Jan. 25, 2021), https://chicago.suntimes.com/2021/1/25/22249145/wrongful-convictions-police-criminal-justice-reforms-editorial.

being convicted were Black or Latinx.[4] Black people are seven times more likely to be wrongfully convicted of murder than white people.[5] As Justice Walker asserted, the majority opinion will "continue[] the difficulty associated with the too many wrongful accusations against black and brown people. Wrongful convictions and accusations like these can devastate families, foreclose career opportunities, and undermine the integrity of our justice system." Op. ¶ 50 (Walker, P.J., dissenting).

D. The Appellate Court Misinterpreted the Certificate of Innocence Statute.

Justice Walker's dissent correctly interprets the statute: "[A] guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials." Op. ¶ 48 (Walker, P.J., dissenting). The legislature intended the certificate of innocence statue to allow innocent people to clear their good name, unless their wrongful conviction was their own fault.

"In construing a statute, our primary goal is to ascertain and give effect to the intent of the legislature." *People v. Schoonover*, 2021 IL 124832, ¶ 39. The Appellate Court's decision in this case undermines the statute's purpose in three ways. First, the legislature intended to sweep away "technical obstacles," 735 ILCS 5/2-702, that had prevented innocent people from clearing their names. The Appellate Court, however, turned the statute on its head by creating a new technical obstacle that prevents innocent people from restoring their good name based on the happenstance of how they pled years or decades

[4] Nat'l Registry of Exonerations, Exonerations by Race/Ethnicity and Crime, (last visited Jan. 7, 2022) (noting that Black and Latinx people accounted for 1,822 established wrongful convictions), available at https://www.law.umich.edu/special/exoneration/Pages/ExonerationsRaceByCrime.aspx.

[5] Nat'l Registry of Exonerations, *Race and Wrongful Convictions* , https://www.law.umich.edu/special/exoneration/Pages/Race-and-Wrongful-Convictions.aspx.

ago. Second, the legislature intended to deny innocent people a certificate of innocence only if their conviction was their own fault. The Appellate Court takes fault out of the equation and adopts a categorical rule that a guilty plea prohibits a certificate of innocence, regardless of fault. Third, the legislature intended to provide job training and mental health services to exonerees in need of them. Pleading guilty has nothing to do with whether an innocent person needs job training and mental health access when returning to society after years in prison. Moreover, if the legislature had wanted to prevent all innocent people who plead guilty from obtaining certificates of innocence, it would have done what several other states have done—refer to guilty pleas explicitly in the certificate of innocence statute. The Illinois legislature did not do so because it did not intend to categorically deprive innocent people who plead guilty from obtaining certificates of innocence.

1. The Appellate Court's Decision Undermines Legislative Intent By Creating A Technical Obstacle That Prevents Innocent People From Clearing Their Names.

The Appellate Court invented a technical barrier that thwarts innocent people from obtaining a certificate of innocence—the very thing the General Assembly commanded courts *not* to do when it enacted the statute. In this case, there is no need to guess at legislative intent because the legislature wrote its intent into the statute:

> 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 . . .

735 ILCS 5/2-702(a).

This Court recently described this exact portion of the statute as "a clear statement of legislative intent." *Palmer*, 2021 IL 125621, ¶ 54. In *Palmer*, the Court rejected a crabbed reading of the certificate of innocence statute on the ground that it "would defeat the

legislative purpose of section 2-702 by effectively imposing a technical legal obstacle on a petitioner seeking relief from a wrongful conviction." *Id.* ¶ 65 This Court explained: "[T]he legislature plainly stated its intent to ameliorate, not impose, technical and substantive obstacles to petitioners seeking relief from a wrongful conviction." *Id.* ¶ 68.

Less than two months after *Palmer*, the Appellate Court decided this case. The Appellate Court did the very thing to Petitioner that *Palmer* said not to do—it "impos[ed] a technical legal obstacle on a petitioner seeking relief from a wrongful conviction," *see id.*, by categorically prohibiting innocent people who pled guilty from obtaining certificates of innocence. The Appellate Court failed to acknowledge *Palmer*, and it also ignored the "clear statement of legislative intent" on which *Palmer* is based. *See id.* ¶ 54.

In the context of establishing one's innocence of a heinous crime—one of the most weighty determinations a court system can make—whether one pled guilty years or decades ago is indeed a "technical legal obstacle." *See id.* ¶ 65. Another recent decision of this Court—*Reed*, 2020 IL 124940, explains as much. *Reed* holds that "a defendant whose conviction is the result of a guilty plea may assert an actual innocence claim." 2020 IL 124940, ¶ 57. Thus, "[w]hen met with a truly persuasive demonstration of innocence, a conviction based on a voluntary and knowing plea is reduced to a *legal fiction*." *Id.* ¶ 35 (emphasis added). In fact, "it is well accepted that the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt." *Id.* ¶ 33. This is so because "[p]lea agreements . . . are not structured to 'weed out the innocent' or guarantee the factual validity of the conviction." *Id.* (quoting *Schmidt v. State*, 909 N.W.2d 778, 788 (Iowa 2018)). On the contrary, "horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is." *Id.* (quoting

Missouri v. Frye, 566 U.S. 134, 144 (2012)). Moreover, this case involves a *vacated* conviction, a fact that wipes out the plea and makes it a nullity. "When a circuit court vacates and sets aside a judgment . . . , the prior judgment is eliminated, and the case thereby returns to its status before the judgment was made." *People v. Shinaul*, 2017 IL 120162, ¶ 14 (citing *People v. Evans*, 174 Ill.2d 320, 332, (1996)). Practically, and in fact, there was no guilty plea because the plea was wiped away when it was vacated.

It thwarts the purpose of the statute—and makes no sense—to prevent an innocent person like Petitioner from clearing his name, all because of the vagaries of plea bargaining. *Reed*, 2020 IL 124940, ¶ 33. Of course, an innocent person who pleads guilty is no less innocent than an innocent person convicted after trial. The certificate of innocence procedure offers the only way for a wrongfully convicted Illinois citizen to definitively establish their innocence. *See Hood*, 2021 IL App (1st) 162964, ¶ 28 ("[T]he fact that the State . . . agreed to vacate [a defendant's] conviction and dismiss the charges . . . does not tend to prove that petitioner is innocent (he did not commit the charged offenses)."). Representative Mary Flowers, the principal sponsor of the legislation, explained: "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 . . .[*T*]*heir name is not cleared* . . . . [T]hat's the reason why the certificate of innocence is very important." 95th Ill. Gen. Assem., House Proceedings 7-8, May 18, 2007, (emphasis added) (hereinafter "House Proceedings").[6] She declared that wrongfully convicted people "are entitled to be completely set free and *given their good name back* for a crime that they did not commit, and I urge your 'aye' vote. These are innocent men and women, innocent, Ladies and

[6] Available at: https://www.ilga.gov/house/transcripts/htrans95/09500056.pdf.

Gentlemen of the House. Innocent." *Id.* at 13. The Appellate Court's decision tramples on the statute's intent by preventing innocent people from clearing their name just because they happened to plead guilty.

2. The Appellate Court's Decision Undermines Legislative Intent By Denying Certificates Of Innocence To People Who Pled Guilty Through No Fault Of Their Own.

The legislature intended to deny certificates of innocence to innocent people only if their conviction was their own fault. The majority opinion flouts that statutory purpose by inventing a *per se* rule that prevents exonerees who pled guilty from obtaining certificates of innocence, regardless of fault. The dissent understood the proper standard intended by the legislature: "[A] guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials." Op. ¶ 48 (Walker, P.J., dissenting).[7]

Representative Flowers repeatedly stated that the statute aimed to help innocent people clear their name if they were convicted through no fault of their own. A certificate of innocence "would be a right of passage, Sir, for men whose lives have been turned upside down *through no fault of their own.*" *See* House Proceedings 9-10 (emphasis added). She declared that barriers to compensation are "a disservice to the men and women that have been falsely incarcerated *through no fault of their own*." *Id.* at 12 (emphasis added).

The statutory language also focuses on the petitioner's fault by making an innocent petitioner eligible for a certificate of innocence so long as the petitioner "did not by his or

[7] The dissent's analysis of fault also tracks the Seventh Circuit's interpretation of the federal certificate of innocence statute, which bars relief only when an innocent person "has it within his means to avoid prosecution but elects not to do so, instead acting in such a way as to ensure it. In that sense, he is responsible for his own prosecution and deserves no compensation for his incarceration . . . [T]here must be either an affirmative act or an omission by the petitioner that misleads the authorities as to his culpability." *Betts*, 10 F.3d 1278.

her own conduct *voluntarily* cause or bring about his or her conviction." 735 ILCS 5/2-702(g)(4) (emphasis added). Certificate of innocence statutes in other states often omit the word "voluntarily," thereby denying certificates of innocence to anyone who brings about or causes their own conviction, regardless of volition or fault.[8] By adding the word "voluntarily" to the Illinois statute the General Assembly rejected this "strict liability" approach, refusing to deny certificates of innocence to innocent people who did not contribute to their own convictions in a volitional or blameworthy manner.

3. The Appellate Court's Decision Undermines Legislative Intent By Denying Job Training and Mental Health Services To Exonorees Who Need Them.

The legislature enacted the statute in part to provide compensation, job training, and therapy to exonerees. It makes no sense and undermines legislative intent to deny these benefits to innocent people just because they plead guilty through no fault of their own. As the First District has noted, "[o]ther statutes provide that persons granted certificates of innocence have rights to mental health services, job search and job placement services, and other assistance. *Glenn*, 2018 IL App (1st) 161331, ¶ 20 (Neville, J.) (citing 20 ILCS 1015/2; 20 ILCS 1710/1710-125: 730 ILCS 5/3-1-2(o)). In the legislature, Representative Flowers stated that exonerees "should have job training," explaining that "[y]ou're talking about people that have spent a vast majority of their youth incarcerated. You're talking about a marked man. You're talking about a person who still . . . who have to relearn how to maneuver around the system, who do not know the programs are out there." House Proceedings 10-11. She continued: "They are entitled to therapy." *Id.* at 13.

[8] *See, e.g.*, NY Ct. Cl. Act § 8-b.4(b) ("[H]e did not by his own conduct cause or bring about his conviction."); NJ Stat Ann § 52:4C-3(c) (same).

The trauma caused by prolonged, wrongful imprisonment—and the consequent need for mental health services—does not depend on whether an innocent petitioner pled guilty. Nor does a plea determine whether an exoneree who "spent a vast majority of their youth incarcerated," *id.* at 10-11, needs job training. The majority opinion undermines the statute's purpose by making one's plea a condition for access to these services.

4. The Legislature Declined To Adopt Statutory Language Used By Other States To Prohibit Innocent People Who Plead Guilty From Obtaining Certificates of Innocence.

If the legislature had wanted the categorical rule adopted by the Appellate Court—no certificates of innocence for innocent people who plead guilty—it would have said so in the statute itself. Representative Flowers was clearly aware of other models from other states; she mentioned on the record that other states had enacted certificate of innocence laws. House Proceedings 6. Many other states expressly prohibit innocent people who pled guilty from obtaining certificates of innocence. These states do so with direct language in the statutes themselves, using the words "plead guilty," "guilty plea" or "plea of guilty" to exclude people who plead guilty from obtaining a certificate of innocence.[9] If the General Assembly had wanted to do that, it would have said so, just as other states have done. The fact that the legislature took a different path shows that it did not intend guilty pleas to automatically veto certificate of innocence petitions.

[9] See, e.g., Iowa Code § 663A.1(1)(b) (requiring that the petitioner "did not plead guilty to the public offense charged"); Mass. Gen. Laws. ch. 258D, § 1(c)(iii) (requiring that the petitioner "did not plead guilty to the offense charged"); Ohio Rev. Code Ann. § 2743.48(A)(2) (requiring that the petitioner "did not plead guilty to, the particular charge or a lesser-included offense"); Okla. Stat. Ann. 51, § 154(B)(2) (requiring that the petitioner "did not plead guilty to the offense charged"); D.C. Code § 2-425 (requiring that the petitioner's conviction did not result "from his entering a plea of guilty unless that plea was pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).").

II. This Court Should Review the Appellate Court's Holding That Petitioner Voluntarily Confessed.

While the holding that a guilty plea categorically precludes a certificate of innocence sufficed to resolve the case, the majority added another incorrect argument as a fallback. It opined that Petitioner caused his own conviction through a voluntary confession. Op. ¶ 29. The Court should hear this case to correct the majority's error on this second issue as well. As Justice Walker correctly found, "[Petitioner] proved by a preponderance of the evidence from multiple witnesses . . . that police used physical coercion and threats to obtain [his] wrongful conviction." Op. ¶ 43 (Walker, P.J., dissenting). "[W]hen police questioned [Petitioner], he answered them honestly. He knew nothing about the murder of Morgan. Police beat him and threatened him, just as they beat and threatened their other victims. . ." Op. ¶ 49. Petitioner signed a confession that the police wrote "because police threatened him, beat him, and promised he could go home if he signed the statement." *Id.*

This case involves Detectives John Halloran and Kenneth Boudreau, notorious Jon Burge disciples known for extracting false confessions from Black and brown people through a pattern of abuse. *See People v. Tyler*, 2015 IL App (1st) 123470, ¶ 189 ("[C]ountless instances of claims of police misconduct cited in defendant's petition establish a troubling pattern of systemic abuse by the same detectives [including Boudreau and Halloran] that interrogated [defendant]."); *People v. Plummer*, 2021 IL App (1st) 200299, ¶ 98 ("Defendant's . . . petition undoubtedly presents evidence of a systematic pattern of . . . abuse by Detectives Kill and Boudreau . . .").

The record includes affidavits from Petitioner describing two days of abuse at the hands of Boudreau and Halloran, in addition to affidavits from two other witnesses who affirm that they were abused and gave false statements in the case. C. 920-21, 937-965. A third

witness, Terry King, won a civil award the abuse by detectives in this case. Sup. C. 18. Former Chicago Police Superintendent Richard Brezezek provided an expert report which concluded that a "pattern of investigative malpractice on the part of these detectives is significantly and obviously present in this investigation." C. 929, 930, 933. The State itself, having never opposed Petitioner's claim of coercion in these proceedings, appears to accept that coercion occurred.

In addition, Halloran has taken the Fifth Amendment when questioned about beating Petitioner and Hood, refusing to answer questions such as: "Did you strike Washington during his interrogation about the Marshall Morgan murder?" Op. ¶ 38. As Justice Walker asserted, "[t]he circuit court should have drawn a negative inference from Halloran's invocation of the fifth amendment, and that inference strongly corroborates the testimony of [Petitioner] and other witnesses to police coercion." Op. ¶ 40.

To discount Petitioner's evidence about the abuse he suffered, the majority improperly relied on Petitioner's testimony at a 1995 hearing—a transcript that "no party" made "a part of the circuit court's record," or "included in the record on appeal." Op. ¶ 41 (Walker, P.J., dissenting). As the dissent correctly asserted, at a bare minimum, "[Petitioner] deserves an answer as to why the circuit court may find him not credible" with regard to his allegations of physical torture by Boudreau and Halloran, "based on evidence no party presented, where the circuit court does not even permit [Petitioner] to respond to the evidence the circuit court found." Op. ¶ 42.

CONCLUSION

The First District's decision does violence to innocent people and to the law of this State. This Court should grant leave to appeal and remedy this miscarriage of justice.

Respectfully submitted,

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2020 IL App (1st) 163024

FIRST DIVISION
June 28, 2021

No. 1-16-3024

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. WAYNE WASHINGTON, Petitioner-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County No. 93 CR 14676 The Honorable Domenica Stephenson, Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court, with opinion.
JUSTICE COGHLAN concurred in the judgment and opinion.
JUSTICE WALKER dissented.

OPINION

¶ 1 Petitioner, Wayne Washington, appeals from the denial of his petition for a certificate of innocence filed pursuant to section 2-702 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-702 (West 2016)). Washington argues that the circuit court abused its discretion in denying his petition for a certificate of innocence because the court improperly imposed a procedural bar when it found that a petitioner, who pled guilty, could not receive a certification of innocence and because the trial court relied on improper evidence. For the following reasons, we affirm the circuit court's judgment.

¶ 2 I. BACKGROUND

¶ 3 Washington and co-defendant Tyrone Hood[1] were convicted of the May 1993 armed robbery and murder of college basketball star Marshall Morgan, Jr. Washington had a jury trial where the jury failed to reach a verdict, resulting in a mistrial. Hood was convicted following a bench trial and was sentenced to 75 years' imprisonment.[2] After Hood was convicted and sentenced, Washington entered a plea of guilty in exchange for a 25-year sentence.

¶ 4 On December 5, 2003, Washington filed a *pro se* petition for *habeas corpus* relief, which was denied on February 27, 2004. He subsequently filed a *pro se* petition for postconviction relief alleging actual innocence based on newly discovered evidence. On July 2, 2013, the petition was dismissed because Washington had served his sentence and had been released and therefore had no standing to bring the petition.

¶ 5 Hood fought his conviction through a series of appeals and postconviction petitions. After a 2014 investigative article in *The New Yorker*, then Governor Quinn commuted Hood's sentence. The January 12, 2015, commutation order indicated that Governor Quinn was granting "commutation of sentence to time considered served leaving the mandatory supervised release period in effect."

¶ 6 Thereafter, on February 9, 2015, the State, on its own motion, moved to vacate Hood's and Washington's convictions, and grant them a new trial. The State then *nolle prosequi* the charges against both Hood and Washington pursuant to section 2-1401of the Code. 735 ILCS 5/2-1401 (West 2014).

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[1] Hood's (1-16-2964) and Washington's (1-16-3024) cases were originally consolidated in this court upon the parties' request. We have vacated that consolidation and will consider each petitioner's case separately.

[2] A lengthy discussion of the evidence adduced at Hood's trial can be found in *People v. Hood*, No. 1-97-0342 (July 8, 1999) (unpublished order pursuant to Supreme Court Rule 23).

¶ 7 Subsequently, Washington promptly filed a petition for a certificate of innocence in the circuit court.

¶ 8 A. Washington's Petition

¶ 9 Washington's verified petition for a certificate of innocence was a two-page document to which he appended a prior section 2-1401 petition setting forth claims nearly identical to co-defendant Hood's. See *People v. Hood*, 2021 IL App (1st) 162964. His petition stated that "he/she will establish by a preponderance of the evidence" that he was convicted of murder, he completed his sentence of imprisonment, that his conviction was vacated, and the indictment was dismissed and that he "did not, by my own conduct, voluntarily cause or bring about my conviction."

¶ 10 Pursuant to statute, the Illinois Attorney General was notified of the petition and did not intervene. The State's Attorney's office was also notified of the petition and appeared only for the purpose of advising the circuit court that it would not oppose Washington's petition. The circuit court initially denied the petition without a hearing. Petitioner moved for reconsideration. The circuit court struck its previous order, and at a joint hearing with Hood, allowed petitioners to present evidence in support of their petitions.

¶ 11 B. Washington's Evidence in Support of Petition

¶ 12 Washington adopted Hood's testimony. See *Hood*, 2021 IL App (1st) 162964. He stated that he served 12 years' imprisonment for Marshall Morgan's murder. Washington stated that he knew Hood from the neighborhood but denied being with Hood on the night of the murder. He had nothing to do with Marshall's murder. He was inside a neighborhood convenience store when detectives came into the store, handcuffed Hood and took him to a police car. A short time later, after viewing his identification, detectives asked Washington to come to the station to answer

questions. Hood was still in the backseat of the car. Washington was "wrestled to the car" and handcuffed.

¶ 13 He was taken a police station for a short time and then transported to 51st and Wentworth. Hood was in the car with him. Hood looked like he had been beaten up. Washington was taken to an interrogation room and was handcuffed to the chair. He sat there for several hours. Detective Boudreau came in and asked him about a murder and told him that he and Hood were in a lot of trouble. Washington told Detective Boudreau that he did not know anything about a murder. Washington was "pushed around, slapped around. The chair was knocked over a few times, picked back up, knocked over again."

¶ 14 Washington ended up giving a statement to the police implicating himself. The police told him that if he said certain things he could go home. Washington told his lawyer about what happened at the police station. His lawyer filed a motion to suppress but it was denied.

¶ 15 Washington testified that he pleaded guilty because he knew that Hood had been sentenced to 75 years' imprisonment and that if he took the deal, he would be "32 years old when I came home. I still had a chance at a life."

¶ 16 After a full hearing, the circuit court denied Washington's petition for a certificate of innocence. Washington timely filed his appeal.

¶ 17 II. ANALYSIS

¶ 18 We consider this matter on appellant's briefs only. The State did not participate in the proceedings in the circuit court and has not participated in either appeal.

¶ 19 Section 2-702(b) of the Code provides that:

> "[a]ny 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) (West 2016).

¶ 20 In order to obtain a certificate of innocence under section 2-702(g) of the Code, a 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, 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; ***;
>
> (3) the petitioner is innocent of the offenses charged in the indictment or information ***; and
>
> (4) the petitioner did not voluntarily cause or bring about his or her conviction." 735 ILCS 5/2-702(g) (West 2016).; See also *People v. Fields*, 2011 IL App (1st) 100169, ¶ 13.

¶ 21 "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) (West 2008). A person who secures a certificate of innocence may file a petition in the state's Court of Claims seeking compensation. *Rodriguez v. Cook County, Illinois*, 664 F. 3d 627, 630 (7th Cir. 2011) (citing 735 ILCS 5/2-702(a) (West 2008)); see also

Betts v. United States, 10 F.3d 1278, 1283 (7th Cir. 1993) ("[a] certificate of innocence serves no purpose other than to permit its bearer to sue the government for damages").

¶ 22 In determining whether a petitioner has showed by a preponderance of the evidence that he is innocent of the charged offenses, the trial court must consider the materials attached to the petition in relation to the evidence presented at trial. *Fields*, 2011 IL App (1st) 100169, ¶ 19. In a certificate of innocence hearing, 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, if the petitioner was either represented by counsel at such prior proceedings or the right to counsel was knowingly waived. 735 ILCS 5/2-702(f) (West 2016). Whether or not a petitioner is entitled to a certificate of innocence is generally a question left to the sound discretion of the court. *Rudy v. People*, 2013 IL App 1st 113449, ¶ 11. An abuse of discretion occurs only where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. Rivera*, 2013 IL 112467, ¶37. However, "[t]he interpretation of a statute is a question of law that is reviewed *de novo*." *Fields*, 2011 IL App (1st) 100169, ¶ 18.

¶ 23 The circuit court denied Washington's petition for a certificate of innocence because it found that Washington had failed to satisfy the fourth prong of section 2-702(g) "because, by his own conduct, he voluntarily brought about his own conviction by giving a statement to police and pleading guilty." The court dismissed Washington's claims of police coercion because Washington gave differing accounts of what occurred and therefore the court questioned his credibility. Washington now argues that the court improperly imposed a procedural bar which is not included in section 2-702(g) arguing that the circuit court held that a petitioner who pleaded guilty cannot receive a certificate of innocence. In addition, Washington argues that he presented unrebutted and

uncontradicted evidence demonstrating his innocence and the circuit court relied on evidence that was not part of the record.

¶ 24 The fundamental rule of statutory interpretation is to give effect to the intent of the legislature. *People v. Smith*, 236 Ill. 2d 162, 166-67 (2010). The best indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. *Id*. at 167. If the language in the statute is clear and unambiguous it must be applied as written without resorting to extrinsic aids of construction. *People v. Dabbs*, 239 Ill. 2d 277, 287 (2010). The interpretation of a statute is a question of law that is reviewed *de novo*. *Smith*, 236 Ill. 2d at 167.

¶ 25 The plain and ordinary meaning of 2-702(g)(4) is clear. A defendant who has pled guilty "cause[d] or [brought] about his or her conviction" (735 ILCS 5/2-702(g)(4) (West 2016)) and is not entitled to a certificate of innocence. See also *People v. Allman*, 2013 IL App (1st) 120300-U, ¶ 19 ("Defendant also cannot obtain a certificate of innocence because he pled guilty."). We see no other way to interpret this provision. We find petitioner's contention that the circuit court denied the certificate because a plea of guilty is a procedural bar is simply not supported by the record.

¶ 26 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. See *People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981) (explaining that uncontradicted testimony may be disregarded when it is "contradicted, either by positive testimony or by circumstances," is "inherently improbable," or where a witness has been impeached). The circuit court's finding that Washington was not credible was the basis for the court's conclusion that Washington's handwritten confession and guilty plea voluntarily caused or brought about his conviction. The 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. We cannot find that the circuit court's judgment is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.

¶ 27 To be clear, this is not an issue of whether Washington proved by a preponderance of the evidence that he is innocent under the Act. The issue is whether Washington proved by a preponderance of the evidence the fourth statutory requirement for the issuance of a certificate of innocence: petitioner's conduct did not voluntarily cause or contribute to his conviction.

¶ 28 We have recently found that a petitioner who gave a detailed confession leading to his conviction could not obtain a certificate of innocence even though postconviction expert testimony established the crime could not have been committed in the way petitioner detailed and, as a result, petitioner was found not guilty at a subsequent trial. In *People v. Amor*, 2020 IL App (2d) 190475, the defendant was charged with murder and arson. Defendant made a number of statements confessing to a series of acts that were critical to his conviction. *Id.* ¶ 3. A successive postconviction petition granting a new trial was ordered based on scientific evidence that indicated the fire could not have been started in the way defendant described which "undercut[s] this Court's confidence in the factual correctness of the guilty verdict." *Id.* ¶ 6. On retrial, the circuit court found defendant not guilty finding, in part, that defendant "confesses to a scenario that both

defense and state experts agree is scientifically impossible." *Id.* ¶ 8. We affirmed the dismissal of Amor's petition for a certificate of innocence based on the trial court finding that "defendant did act in such a manner voluntarily to bring about his or her own conviction." *Id.* ¶ 14. We held that the element of defendant's innocence is separate from the element of whether defendant voluntarily brought about his conviction and that "what is abundantly clear is that the only basis upon which the trial court dismissed defendant's petition was that defendant brought about his conviction by his conduct." *Id.* ¶¶ 14-15.

¶ 29 Similar to *Amor*, petitioner Washington was denied a certificate of innocence not because petitioner failed to prove his innocence but because his confession and voluntary plea of guilty caused or brought about his conviction. Because Washington failed to meet the fourth prong of section 2-702(g), we find that the trial court did not err in denying his petition for a certificate of innocence. We need not address his remaining claims.

¶ 30 During our consideration of this appeal, petitioner sought leave to file as additional authority *People v. Reed*, 2020 IL 124940. Defendant asserts *Reed* rejects the invited error doctrine used by the circuit court in "suggesting that a guilty plea foreclosed the innocence petition. That view is inconsistent with the tone of the *Reed* decision." We are not persuaded that *Reed* helps petitioner. In *Reed*, our supreme court held the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq. (West 2016)) does not foreclose a claim of actual innocence where a valid guilty plea was entered. As earlier stated, petitioner sought relief in the circuit court in the form of a certificate of innocence which, if granted, would allow petitioner to seek a monetary award from the State. Petitioner had to prove four elements and the circuit court found the fourth element was not proven by a preponderance of the evidence: "the petitioner did not voluntarily cause or bring about his or her conviction." This was not a procedural bar imposed by the circuit court due to

petitioner's guilty plea nor did the circuit court invoke the invited error doctrine. Proving he did not voluntarily cause or bring about his conviction was an element of the cause of action and the circuit court found petitioner failed to prove this element by a preponderance of the evidence. We cannot say that the circuit court erred in this finding.

¶ 31 III. CONCLUSION

¶ 32 In light of the foregoing, we affirm the judgment of the trial court denying Washington's petition for a certificate of innocence.

¶ 33 Affirmed.

¶ 34 PRESIDING JUSTICE WALKER, dissenting:

¶ 35 I respectfully dissent.

¶ 36 The majority makes a flagrant misstatement of fact when they say, "Critically, the only testimony [the court] heard on the issue of police coercion came from the petitioner." ¶ 26. Several other witnesses testified about police coercion in this case. Washington's co-defendant, Tyrone Hood testified that police officers trying to induce a false confession beat him and threatened him repeatedly. Jody Rogers swore in an affidavit that he testified falsely against Washington because police threatened to harm him physically and to charge him with murder if he "didn't tell the police what they wanted [him] to say about the murder." He lied to the grand jury because he "was afraid of what the police would do to [him] if [he] told the truth, which was that [he] didn't know anything about the murder." Michael Rogers swore in a notarized statement that after he honestly told police he knew nothing about the murder of Morgan, police then told him they had evidence implicating him and Jody in the murder. Police paid Michael for making the false statements used against Hood and Washington. Richard Brzeczek, former Superintendent of Police for the Chicago Police Department, stated in a report in support of Hood's petition:

¶ 37 "With regard to the statements that were taken from the two brothers, Jody and Michael Rogers, as well as Joe West and Tyrone Hood's co-defendant, Wayne Washington, each of these inculpatory statements was disavowed as untrue prior to trial. The aforementioned people from whom these statements were obtained, all alleged that the statements were the product of police coercion. Those allegations of coercion are directed at Detectives *** Kenneth Boudreau, John Halloran and/or James O'Brien who have been previously identified as engaging in patterns of similar coercive conduct and two of whom have asserted their Fifth Amendment rights against self-incrimination when questioned under oath, in civil proceedings, about coercing witnesses into giving statements."

¶ 38 In a civil suit concerning the liability of the City of Chicago and numerous police officers for their conduct in this case, Halloran invoked his Fifth Amendment right against self-incrimination in response to the following questions:

> Did you twist Tyrone Hood's arm during the course of your interrogation of him at Area 1?
>
> *** Did you strike Tyrone Hood during your interrogation of him in May of 1993?
>
> *** Did you point a gun at Tyrone Hood's head during his interrogation at Area 1?
>
> You fabricated Tyrone Hood's statement that, if I don't say anything to explain, I'll go to jail for a long time ***?
>
> *** Did you strike Jody Rogers during the time that you questioned him in May of 1993 at Area 1?

*** Did you threaten to cause physical harm to Jody Rogers if he did not implicate Tyrone Hood in a murder?

*** Did you tell Jody Rogers that if he didn't implicate Tyrone Hood that Mr. Rogers would be charged with murder?

*** Did you tell Jody Rogers that he could not go home unless he said that he saw Tyrone Hood commit a murder?

*** Did you twist Jody Rogers' arm during this interrogation at Area 1?

*** Did you threaten Michael Rogers with physical abuse if he didn't implicate Tyrone Hood in a murder?

*** Did you threaten Michael Rogers that, if he didn't implicate Tyrone Hood in the murder, then his brother Jody Rogers would go to jail?

*** You struck Michael Rogers during your interrogation of him in May of 1993?

*** Did you tell Joe West that he could not leave until he agreed to either implicate himself of Tyrone Hood?

*** Did you threaten Joe West with physical abuse unless he implicated himself or Tyrone Hood in the murder of *** Morgan?

*** Did you strike *** Washington during his interrogation about the Marshall Morgan murder?

*** Did you threaten Wayne Washington with physical abuse if he did not implicate Tyrone Hood in the murder of Marshall Morgan?

*** Did you strike Wayne Washington with the intent of getting him to give a statement implicating Tyrone Hood in the murder of Marshall Morgan?"

¶ 39 In prior cases, this court has considered the invocation of the Fifth Amendment by police officers closely connected with former Commander Jon Burge. In *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 107, the court found, "although a court may draw a negative inference from a party's refusal to testify, it is not required to do so. Yet given that the State produced no evidence to rebut the evidence of torture and abuse by [Officer] Pienta, we believe Pienta's invocation of his fifth amendment rights is significant and a negative inference should have been drawn."

¶ 40 Here, too, the circuit court should have drawn a negative inference from Halloran's invocation of the fifth amendment, and that inference strongly corroborates the testimony of Washington and other witnesses to police coercion. The record contains overwhelming evidence that police coercion led to the wrongful conviction of Washington.

¶ 41 The majority holds that the circuit court appropriately found Washington's testimony about police coercion not credible, but the circuit court explicitly based its credibility finding on evidentiary material not presented. The circuit court stated, "Most significant, on August 24, 1995, [Washington] testified under oath in front of Judge Bolan that he was slapped once in the face and the chair that he was sitting in was pushed. He never testified that the police provided the information to put in his statement." The majority now fails to recognize that 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.

¶ 42 Washington argues the circuit court's investigation into matters not presented by the parties, and its reliance on that material without allowing Washington any opportunity to respond, requires reversal of the judgment and remand for a new hearing on the petition for a certificate of innocence. The majority does not respond to the argument despite its reliance on the circuit court's credibility determination. Washington deserves an answer as to why the circuit court may find

him not credible based on evidence no party presented, where the circuit court does not even permit Washington to respond to the evidence the circuit court found. The holding of *People v. Simon*, 2017 IL App (1st) 152173, ¶ 26, applies directly to this case. As the *Simon* court found, "petitioner should not be deprived of his right to respond to the evidence used as the basis for finding that he caused his own conviction. The court, on its own, pointed to certain evidence and used it to deny petitioner's request without giving him a meaningful opportunity to object to it. Just as in any other adversarial proceedings, petitioner must have an opportunity to object to the admissibility and the probative value of the evidence used to deny his claim." *Simon*, 2017 IL App (1st) 152173, ¶ 26. The circuit court must afford the petitioner an opportunity to object, especially when the circuit court engages in its own investigation.

~~¶ 43~~ We review the circuit court's findings of fact to determine whether they are against the manifest weight of the evidence. *Bauske v. City of Des Plaines*, 13 Ill. 2d 169 (1957); *People v. Pollock*, 2014 IL App (3d) 120773, ¶ 27. The purported statement from August 1995, and the other trivial inconsistencies the circuit court mentions, do not justify the circuit court's complete rejection of all the evidence of coercion. The circuit court's findings here completely ignore the manifest weight of the evidence. Washington proved by a preponderance of the evidence from multiple witnesses, including Halloran, that police used physical coercion and threats to obtain the wrongful conviction of Washington.

¶ 44 The majority asserts: "A defendant who has pled guilty 'cause[d] or [brought] about his or her conviction' (735 ILCS 5/2-702(g)(4) (West 2016)) [and] is not entitled to a certificate of innocence. [Citation.] We see no other way to interpret this provision." **¶ 25.** The legislative history of the statute makes no mention of subsection (g)(4). The primary sponsor of the legislation, Representative Fowler, intended the act to provide relief for "people who were unjustly

imprisoned" by helping with "job training and education and the amount of monies that they should receive because of their false incarceration." 95th Ill. Gen. Assem., House Proceedings May 16, 2007, at 13.

¶ 45 Section 2-702(g)(4) is similar to the related federal statute and a number of state statutes. 28 U.S.C.A. § 2513 (West); see Justin Brooks and Alexander Simpson, *Find the Cost of Freedom: The State of Wrongful Conviction Compensation Statutes Across the Country and the Strange Legal Odyssey of Timothy Atkins*, 49 San Diego L. Rev. 627, 649 (2012). A federal judge summarized his extensive research into the federal statute in *United States v. Keegan*, 71 F. Supp. 623, 636 (S.D.N.Y.1947). For the provision barring relief for persons who brought about their convictions, the judge stated: "This carries out simply the equitable maxim that no one shall profit by his own wrong or come into court with unclean hands. It follows the provisions generally found in the European statutes, although these provide, for example in the German act, that gross negligence must exist to bar the right ***.

¶ 46 Examples of the misconduct referred to, as stated in some of the statutes, are: [w]here there has been an attempt to flee, a false confession, the removal of evidence, or an attempt to induce a witness or an expert to give false testimony or opinion, or an analogous attempt to suppress such testimony or opinion." (Internal quotation marks omitted.) *Keegan*, 71 F. Supp. At 633, 638.

¶ 47 Following *Keegan*, the United States Court of Appeals for the Seventh Circuit held: "before the petitioner can be said to have caused or brought about his prosecution within the meaning of section 2513(a)(2), he must have acted or failed to act in such a way as to mislead the authorities into thinking he had committed an offense. *** [T]here must be either an affirmative act or an omission by the petitioner that misleads the authorities as to his culpability." *Betts v. United States*, 10 F.3d 1278, 1285 (7th Cir. 1993). A commentator contended that courts should not construe the

act to bar relief to victims who give coerced confessions or enter guilty pleas where the victim does not mislead authorities. Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, The University of Chicago Law School Roundtable: Vol. 6: Iss. 1, Article 7 (1999).

¶ 48 I would follow the guidance of the federal cases interpreting similar statutes. Section 702(g)(4) bars recovery "only if the accused can be blamed for his conduct -- if he has through his own reprehensible behavior invited the attentions of the police or made necessary his detention." Note, *Compensation of Persons Wrongfully Accused or Convicted in Norway*, 109 U. Pa. L. Rev. 833, 837–38 (1961). A false confession or a guilty plea should foreclose relief only when the person falsely accused culpably misled police or other officials.

¶ 49 Here, when police questioned Washington, he answered them honestly. He knew nothing about the murder of Morgan. Police beat him and threatened him, just as they beat and threatened their other victims, including Jody and Michael Rogers, West, and Hood, to obtain the wrongful convictions of Hood and Washington. Eventually Washington signed a statement an officer wrote (no one contends that police allowed Washington to draft the written statement himself). Washington signed because police threatened him, beat him, and promised he could go home if he signed the statement. When the case came to trial Washington pled not guilty. A full trial ended with a hung jury. The State subsequently obtained a wrongful conviction against Hood, based largely on the testimony of witnesses the State promised to use against Washington. Unlike Hood, Washington would also need to explain to a jury the false confession he signed. The trial court sentenced Hood to 75 years in prison. As our supreme court noted in *People v. Reed*, 2020 IL 124940, ¶ 33, "The 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. [Citation.] As such, it is well accepted that the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt." The Assistant State's Attorney had no illusions as to whether Washington claimed innocence when the Assistant State's Attorney offered to recommend a sentence of 25 years in exchange for a guilty plea. Because the record shows that Washington committed no culpable conduct and never misled police nor the Assistant State's Attorney, he has shown by a preponderance of the evidence that he did not cause or bring about his arrest or conviction.

¶ 50 Washington deserves the State's assistance in his recovery from the consequences of the offenses police committed against him. The majority's denial of that assistance continues the difficulty associated with the too many wrongful accusations against black and brown people. Wrongful convictions and accusations like these can devastate families, foreclose career opportunities, and undermine the integrity of our justice system.

¶ 51 Because Washington met all the requirements for a certificate of innocence, I would reverse the circuit court's judgment and remand with directions to grant Washington's petition. Accordingly, I respectfully dissent.

Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

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

CERTIFICATE OF COMPLIANCE

I, David M. Shapiro, certify that this brief conforms to the requirement of Rule 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 20 pages per Rule 315(d).

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

CERTIFICATE OF SERVICE

I, David M. Shapiro, an attorney, certify that on January 12, 2022, the foregoing PETITION FOR LEAVE TO APPEAL 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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