**Illinois Official Reports**

**Appellate Court**

# *People v. Brown*, 2022 IL App (4th) 220171

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| Appellate Court Caption | THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DAVID PRESTON BROWN, Defendant-Appellant.–THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DUANE PERRION SIMMONS, Defendant-Appellant. |
| District & No. | Fourth District<br>Nos. 4-22-0171, 4-22-0311 cons. |
| Filed | November 23, 2022 |
| Decision Under Review | Appeal from the Circuit Court of Peoria County, Nos. 06-CF-576, 11-CF-426; the Hon. Katherine S. Gorman, Judge, presiding. |
| Judgment | Affirmed. |
| Counsel on Appeal | Donald R. Jackson, of Peoria, for appellants.<br><br>Jodi M. Hoos, State's Attorney, of Peoria (Patrick Delfino, David J. Robinson, and David E. Mannchen, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People. |

Panel JUSTICE ZENOFF delivered the judgment of the court, with opinion.
Justices Steigmann and Doherty concurred in the judgment and opinion.
Justice Doherty also specially concurred, with opinion.

## OPINION

¶ 1 Defendants, David Preston Brown and Duane Perrion Simmons, appeal orders denying their respective petitions for certificates of innocence pursuant to section 2-702 of the Code of Civil Procedure (Code) (735 ILCS 5/2-702 (West Supp. 2021)). We consolidated the appeals because the cases present identical legal issues. For the following reasons, we affirm the judgments.

¶ 2 I. BACKGROUND

¶ 3 In unrelated cases, defendants were charged with multiple offenses in the circuit court of Peoria County. In June 2006, Brown was charged with (1) armed violence (720 ILCS 5/33A-2 (West 2006)), a Class X felony; (2) aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1) (West 2006)), a Class 2 felony; (3) unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2006)), a Class 2 felony; and (4) unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2006)), a Class 4 felony. In May 2011, Simmons was charged with (1) aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)), a Class X felony; (2) attempted armed robbery (720 ILCS 5/8-4(a), 18-2(a) (West 2010)), a Class 1 felony; and (3) AUUW (720 ILCS 5/24-1.6(a)(1) (West 2010)), a Class 4 felony. The AUUW charges against both Brown and Simmons alleged that they possessed uncased, loaded, and immediately accessible firearms.

¶ 4 Both defendants pleaded guilty to AUUW in exchange for the dismissal of all other charges. Pursuant to Brown's August 2006 negotiated plea agreement, he was sentenced to eight years in prison. Pursuant to Simmons's March 2012 negotiated plea agreement, he was sentenced to two years in prison.

¶ 5 Subsequently, our supreme court held that the subsection of the AUUW statute to which defendants pleaded guilty was void *ab initio* because it violated the second amendment to the United States Constitution. See *People v. Aguilar*, 2013 IL 112116, ¶ 22 (invalidating the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) of the AUUW statute, which relates to uncased, loaded, and immediately accessible firearms); *People v. Burns*, 2015 IL 117387, ¶ 25 (clarifying that section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute is facially unconstitutional "without limitation"). Defendants petitioned to vacate their AUUW convictions in light of this new case law. The trial court granted defendants' petitions.

¶ 6 Brown petitioned for a certificate of innocence in August 2021, and Simmons petitioned for one in February 2022. To obtain a certificate of innocence, the petitioner must prove the following by a preponderance of the evidence:

> "(1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;

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

(4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction." 735 ILCS 5/2-702(g) (West Supp. 2021).

The court denied defendants' petitions for certificates of innocence, determining that defendants could not establish elements three or four. The court reasoned that the orders vacating defendants' convictions restored the status quo as it existed before defendants pleaded guilty; at that point, defendants faced multiple other felony charges. The court also found that defendants voluntarily caused or brought about their own convictions by pleading guilty.

¶ 7 Defendants timely appealed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, the State concedes the trial court was incorrect insofar as its orders could be interpreted as suggesting that defendants can still be prosecuted for charges that were nol-prossed long ago. The statute of limitations on those offenses is three years (see 720 ILCS 5/3-5(b) (West 2020)), and that period was not tolled when the State nol-prossed the charges as part of defendants' plea agreements (*People v. Shinaul*, 2017 IL 120162, ¶ 16). Nevertheless, we review the trial court's judgment, not its reasoning, and we may sustain the judgment on any basis in the record. See *People v. Aljohani*, 2022 IL 127037, ¶ 28.

¶ 10 The parties dispute whether defendants satisfied elements three and four of the certificate-of-innocence statute. Again, element three is that "the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State." 735 ILCS 5/2-702(g)(3) (West Supp. 2021). Element four is 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) (West Supp. 2021).

¶ 11 "Generally, granting a certificate of innocence is within the sound discretion of the court." *People v. Amor*, 2020 IL App (2d) 190475, ¶ 11. However, *de novo* review is appropriate where the issue involves statutory interpretation. *People v. Moore*, 2020 IL App (1st) 190435, ¶ 11. Here, the parties' arguments require us to interpret the certificate-of-innocence statute. Thus, *de novo* review is appropriate.

¶ 12 Our goal in interpreting the statute is to ascertain and effectuate the legislature's intent, which is "best indicated by the plain and ordinary meaning of the statutory language." *People v. Palmer*, 2021 IL 125621, ¶ 53. We may consider "the purpose of the statute, the problems to be remedied, and the consequences of interpreting the statute one way or another." *Palmer*, 2021 IL 125621, ¶ 53. We presume "the legislature did not intend absurd, inconvenient, or

unjust results." *Palmer*, 2021 IL 125621, ¶ 53.

¶ 13 A. Element Three

¶ 14 We must decide the following question: If a criminal defendant facing multiple charges enters a negotiated guilty plea to one charge in exchange for the dismissal of the others, and the conviction is later determined to be void *ab initio*, must the defendant prove his or her innocence of the dismissed, valid charges to be entitled to a certificate of innocence? The First District recently answered this question in the affirmative under operative facts that are virtually identical to those of the present cases. See *People v. Warner*, 2022 IL App (1st) 210260, ¶ 28. Specifically, like the defendants here, the defendant in *Warner* was charged with multiple offenses, pleaded guilty only to AUUW, and then petitioned for a certificate of innocence once his conviction was vacated pursuant to *Aguilar*. Upon reviewing the certificate-of-innocence statute, we reach the same conclusion as the court in *Warner*.

¶ 15 The title of the statute is "Petition for a certificate of innocence that the petitioner was *innocent of all offenses for which he or she was incarcerated*." (Emphasis added.) 735 ILCS 5/2-702 (West Supp. 2021). Although "[t]he titles of statutory sections are of course not controlling" (*People v. Smith*, 2021 IL App (1st) 200984, ¶ 22), subsection (b) of the statute contains similar language:

> "Any person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted. The petition shall request a certificate of innocence finding that the petitioner was *innocent of all offenses for which he or she was incarcerated*." (Emphasis added.) 735 ILCS 5/2-702(b) (West Supp. 2021).

Viewed in isolation, the italicized language might suggest that defendants here must prove their innocence only of AUUW, as that was the offense for which they were convicted and incarcerated. Clearly, defendants are innocent of that offense, as the subsection of the AUUW statute to which they pleaded guilty is void *ab initio*. See *Smith*, 2021 IL App (1st) 200984, ¶ 24 (AUUW under the void provision is "not a crime").

¶ 16 However, subsection (c)(2) of the statute requires a petitioner to provide documentation demonstrating that

> "his or her judgment of conviction was reversed or vacated, *and the indictment or information dismissed* or, if a new trial was ordered, either he or she was found not guilty at the new trial or he or she was not retried *and the indictment or information dismissed*; or 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." (Emphases added.) 735 ILCS 5/2-702(c)(2) (West Supp. 2021).

Subsection (c)(2) implies that a petitioner must be innocent of all charged offenses, not just the offense for which the petitioner was incarcerated.

¶ 17 Subsection (d) makes this more explicit:

> "The petition shall state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is *innocent of the offenses charged in the indictment or information* or his or her acts or omissions *charged in the indictment or information* did not constitute a felony or misdemeanor

against the State of Illinois ***." (Emphases added.) 735 ILCS 5/2-702(d) (West Supp. 2021).

Subsection (g) then lists the elements a petitioner must prove by a preponderance of the evidence. 735 ILCS 5/2-702(g) (West Supp. 2021). The third element is that "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." (Emphases added.) 735 ILCS 5/2-702(g)(3) (West Supp. 2021).

¶ 18 If a defendant is entitled to a judgment, subsection (h) of the statute directs the court to "enter a certificate of innocence finding that the petitioner was *innocent of all offenses for which he or she was incarcerated*." (Emphasis added.) 735 ILCS 5/2-702(h) (West Supp. 2021). Subsection (i) establishes that a petitioner must file his or her petition within two years after "the *dismissal of an indictment or information* or acquittal." (Emphasis added.) 735 ILCS 5/2-702(i) (West Supp. 2021).

¶ 19 Thus, different subsections of section 2-702 of the Code reference either innocence of "all offenses for which [the defendant] was incarcerated" or innocence of "the offenses charged in the indictment or information." Relying on the former language, defendants maintain they were not required to demonstrate their innocence of the nol-prossed charges. Relying on the latter language, the State urges the opposite result.

¶ 20 In *Warner*, the appellate court presumed the legislature acted intentionally when it used different language in different subsections of the certificate-of-innocence statute. *Warner*, 2022 IL App (1st) 210260, ¶ 25. The court observed that "[s]ubsections (b) and (h), using the phrase 'offenses for which he or she was incarcerated,' relate to who may petition for a [certificate of innocence] and the remedies if the petition is successful." *Warner*, 2022 IL App (1st) 210260, ¶ 26 (quoting 735 ILCS 5/2-702(b), (h) (West 2018)). By contrast, "[s]ubsections (d) and (g), using the phrase 'offenses charged in the indictment or information,' set forth the pleading and burden requirements for a petitioner to be successful." *Warner*, 2022 IL App (1st) 210260, ¶ 27 (quoting 735 ILCS 5/2-702(d), (g)(3) (West 2018)). The court explained:

> "We find the language of the statute to be clear. To obtain a certificate of innocence, a petitioner must allege specific facts in the petition demonstrating that they [*sic*] are innocent of the 'offenses charged in the *** information' (subsection (d)), and prove, by a preponderance of the evidence, that they [*sic*] were innocent of the 'offenses charged in the *** information' (subsection (g)(3)). If the legislature had intended that a petitioner was required to allege and show only that they [*sic*] were innocent of the 'offenses for which he or she was incarcerated,' subsections (d) and (g)(3) would contain the same language as found in subsections (b) and (h). Instead, the legislature chose the phrase 'offenses charged in the *** information,' demonstrating its clear intent that a petitioner must allege and prove that they [*sic*] are innocent of all of the offenses charged in the information." *Warner*, 2022 IL App (1st) 210260, ¶ 28.

The court deemed its interpretation to be consistent with case law, including *Palmer*, wherein our supreme court "recognized that 'because the word "offenses" is modified by the phrase "charged in the indictment or information," the legislature intended that a petitioner establish his or her innocence of the offense on the factual basis *charged* in the indictment or information.' " (Emphasis in original.) *Warner*, 2022 IL App (1st) 210260, ¶ 29 (quoting *Palmer*, 2021 IL 125621, ¶ 64). Furthermore, the *Warner* court reasoned that its interpretation was consistent with the statute's legislative history, which showed that certificates of

innocence were meant to " 'benefit men and women that [*sic*] have been falsely incarcerated through no fault of their own.' " (Internal quotation marks omitted.) *Warner*, 2022 IL App (1st) 210260, ¶ 32 (quoting *People v. Dumas*, 2013 IL App (2d) 120561, ¶ 19). According to the court, "[b]y using the language it did, the legislature recognized that a [certificate of innocence] and the advantages it provides toward obtaining a money judgment against the State should be granted only where a petitioner has demonstrated their [*sic*] innocence of all charges." *Warner*, 2022 IL App (1st) 210260, ¶ 32.

¶ 21 The *Warner* court then considered the defendant's argument that charges are not part of the indictment or information if the State nol-prosses the charges and does not refile them. *Warner*, 2022 IL App (1st) 210260, ¶ 33. In rejecting that argument, the court emphasized that section 2-702 of the Code "does not contain any language or any indication that the petitioner's burden of pleading and proving innocence applies only to the charges in the indictment or information on which the State has an ability to obtain a finding of guilty." *Warner*, 2022 IL App (1st) 210260, ¶ 37. To the extent that *dicta* in *Smith*, 2021 IL App (1st) 200984, suggested otherwise, the *Warner* court found that *dicta* unpersuasive. *Warner*, 2022 IL App (1st) 210260, ¶¶ 35-38.

¶ 22 Finally, the *Warner* court determined that its interpretation of section 2-702 avoided absurd results:

> "There was no explanation as to why the plea was taken on the one AUUW count that was later rendered void by *Aguilar*. If petitioner had pleaded guilty to any of the other constitutional charges for which there was apparent factual support, petitioner would not be entitled to a [certificate of innocence] solely on the ground that the information included two AUUW charges which were later determined to be constitutionally invalid. Granting petitioner's request for [a certificate of innocence] without showing his innocence as to the valid offenses charged in the information that were based on the same set of facts to which he stipulated when he pleaded guilty would lead to an absurd result." *Warner*, 2022 IL App (1st) 210260, ¶ 43.

Because the defendant in *Warner* failed to allege or prove his innocence of all charges, the trial court was determined to have properly denied the petition for a certificate of innocence. *Warner*, 2022 IL App (1st) 210260, ¶¶ 44-45.

¶ 23 Justice Martin wrote a special concurrence. *Warner*, 2022 IL App (1st) 210260, ¶¶ 48-58 (Martin, J., specially concurring). Although he concurred with the result, he envisioned scenarios in which a defendant might merit a certificate of innocence despite not being able to demonstrate his or her innocence of all charges.

¶ 24 We find the *Warner* majority's analysis of the statute persuasive. Subsections (d) and (g)(3), which identify the pleading and burden requirements to obtain a certificate of innocence, require a petitioner to demonstrate either innocence of the "offenses charged in the indictment or information" or that the acts or omissions "charged in the indictment or information" were not criminal offenses. 735 ILCS 5/2-702(d), (g)(3) (West Supp. 2021). The plain meaning of that language is that petitioners must demonstrate their innocence of all charged offenses, not just the ones for which they were convicted and incarcerated. Although other subsections of the statute use different language, such subsections do not specify the pleading and burden requirements for obtaining a certificate of innocence.

¶ 25 We also believe *Warner*'s analysis is consistent with the purposes of the statute and avoids absurd results. In the statutory declaration of intent, the legislature recognized 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." 735 ILCS 5/2-702(a) (West Supp. 2021). The legislature determined that "such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief through a petition in the Court of Claims." 735 ILCS 5/2-702(a) (West Supp. 2021). A certificate of innocence entitles a wrongfully incarcerated person to both compensation (see 705 ILCS 505/8(c) (West 2020)) and benefits (see 20 ILCS 1015/2 (West 2020)). Where a defendant secures dismissal of charges through a plea agreement, it is consistent with the legislative intent to condition a certificate of innocence on the defendant being innocent of all valid charged offenses. We doubt the legislature envisioned compensating people who could have been lawfully imprisoned for more serious offenses but who happened to plead guilty to a lesser offense that was later recognized to be void *ab initio*. We note that both defendants here obtained dismissal of a Class X charge in exchange for their guilty pleas to the lesser felony of AUUW.

¶ 26 In arguing against our interpretation of the statute, defendants rely heavily on *People v. McClinton*, 2018 IL App (3d) 160648. The State responds that we should "decline to follow" *McClinton*. *McClinton* is distinguishable because, unlike our case and *Warner*, it did not involve a defendant who pleaded guilty to AUUW in exchange for the dismissal of other valid charges. Instead, the defendant in *McClinton* was found guilty of AUUW after a bench trial. *McClinton*, 2018 IL App (3d) 160648, ¶¶ 3, 5. The Third District's opinion makes no mention of the disposition of the other charges the defendant faced, other than noting that the State nol-prossed them after the AUUW conviction was vacated as void *ab initio*. *McClinton*, 2018 IL App (3d) 160648, ¶ 6. Aside from these factual distinctions, the disputed issue on appeal in *McClinton* concerned statutory element four: whether McClinton brought about her own conviction. *McClinton*, 2018 IL App (3d) 160648, ¶¶ 18, 20. That issue is distinct from our analysis of element three. Thus, we do not find *McClinton* instructive as to whether defendants here must prove their innocence of charges that were nol-prossed as part of their plea agreements.

¶ 27 Defendants insist the State is not "entitled to a 'second bite of the apple' " just because it had " 'bad luck' " in choosing which counts to dismiss as part of the plea agreements. Without citing any authority, defendants assert it would violate double jeopardy to try them now on the charges that were previously dismissed. Defendants further contend that the statute of limitations would prevent the State from reinstating the dismissed charges.

¶ 28 These arguments do not change our interpretation of the statute. There is no double jeopardy impediment here, as jeopardy never attached to the nol-prossed charges. See *People v. McCutcheon*, 68 Ill. 2d 101, 106 (1977) (jeopardy attaches only to the counts to which a defendant pleads guilty). With that said, the State agrees the statute of limitations has run on the dismissed charges. However, that is irrelevant to section 2-702(g)(3) of the Code, as that subsection does not provide an exception for charges that once were timely but then were dismissed pursuant to a negotiated plea agreement. Instead, according to the plain language of the statute, a petitioner must prove by a preponderance of the evidence that he or she is "innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State." 735 ILCS 5/2-702(g)(3) (West Supp. 2021). We must enforce the statute as written. If the legislature did not express any exceptions or limitations, we may not read them

into the statute. *Warner*, 2022 IL App (1st) 210260, ¶ 13. Moreover, we assume the legislature did not intend the absurd result of certifying criminal defendants as "innocent" just because the State no longer can prosecute them.

¶ 29 Accordingly, we hold that defendants here were required to demonstrate their innocence of all charged offenses, including the ones the State nol-prossed as part of the negotiated plea agreements. Because defendants made no attempt to demonstrate their innocence of all charged offenses, the trial court properly denied their petitions for certificates of innocence.

¶ 30 B. Element Four

¶ 31 The parties also dispute whether defendants satisfied element four. See 735 ILCS 5/2-702(g)(4) (West Supp. 2021) ("[T]he petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction."). Given our conclusion with respect to element three, we need not address element four.

¶ 32 We note that in *People v. Washington*, 2021 IL App (1st) 163024, ¶ 25, the First District held that a petitioner cannot meet element four if he or she pleaded guilty. Here, the parties disagree as to whether we should extend *Washington*'s holding to a conviction that was vacated as void *ab initio*. Our supreme court granted leave to appeal in *Washington*, and that case is pending. *People v. Washington*, No. 127952 (Ill. Mar. 30, 2022) (leave to appeal allowed). This is an additional reason why we will not consider whether defendants here satisfied element four.

¶ 33 C. Request for Attorney Fees

¶ 34 Defendants request attorney fees, presumably as a sanction against the State for advancing a frivolous legal position. Having held that defendants are not entitled to certificates of innocence, we deny defendants' requests for attorney fees. Neither side litigated this case in bad faith.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial courts' judgments.

¶ 37 Affirmed.

¶ 38 JUSTICE DOHERTY, specially concurring:

¶ 39 This appeal is the fourth of four cases over the course of approximately a year and a half in which the judicial branch has struggled to discern the legislature's intent with respect to section 2-702, often without achieving unanimity. See *People v. Palmer*, 2021 IL 125621, ¶¶ 82-122 (Burke, J., specially concurring, joined by Garman and Overstreet, JJ.) (refusing to join majority's statutory construction analysis); *People v. Washington*, 2021 IL App (1st) 163024, ¶¶ 34-51 (Walker, J., dissenting) (finding defendant committed no culpable conduct and did not cause or bring about his arrest or conviction by pleading guilty); *People v. Warner*, 2022 IL App (1st) 210260, ¶¶ 48-58 (Martin, J., specially concurring) (finding that in order to reach a just result, nol-prossed charges should not be considered in some cases as innocence is not limited to the immaculate). The legislature's concern is clear: it perceives that "innocent persons who have been wrongly convicted *** and subsequently imprisoned have been

frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law." 735 ILCS 5/2-702(a) (West Supp. 2021). The legislature declared that it created section 2-702 to give innocent persons "an available avenue to obtain a finding of innocence." *Id.* But the devil, as they say, is in the details.

¶ 40 Despite twice declaring that section 2-702 is intended to aid any person who is "innocent of all offenses for which he or she was incarcerated" (*id.* § 2-702(b)), the legislature spelled out a requirement for persons seeking this relief to prove their innocence not just of the claims for which they were incarcerated, but the other "offenses charged in the indictment or information," without regard to conviction or incarceration (*id.* § 2-702(d), (g)(3)). Courts are obligated to glean the meaning of a statute in the first instance by the plain meaning of its words, "the surest and most reliable indicator" of the legislature's intent. *In re Kelan W.*, 2022 IL 128031, ¶ 11. For this reason, I concur with the majority's analysis of the result required in this case, as the plaintiffs have given no indication that they can prove their innocence of the offenses listed in their respective indictments beyond AUUW.

¶ 41 This approach—requiring a defendant to prove innocence not only of the crime for which he seeks a certificate of innocence, but also of the other offenses listed in the indictment but dismissed by the State as part of a plea agreement—may sound to some like another of the "substantive and technical obstacles in the law" that section 2-702 was purportedly designed to eliminate. But "[w]e are not at liberty to enlarge the scope of a plain provision in order to more effectively accomplish the general purpose of the statute." *In re Estate of Ivy*, 2019 IL App (1st) 181691, ¶ 32. The legislature must not only mean what it says; it must say what it means.

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

¶ 43 Whether any of these or similar issues might arise in a future case is, of course, unknowable; they have not arisen here, so it is not our place to address them. The legislature, however, could address most of the potential future issues by simply clarifying two things: (1) the intended charges, other than those on which the defendant seeks a certificate, of which the defendant must prove innocence and (2) operation of these principles in the context of a plea agreement. Absent clarification from the legislature, the judiciary will continue to do its best to interpret the statute as written, as we have done today.