IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CASE NO: 592004CF002491A

v.

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Defendant.

____/

CLEMENTE AGUIRRE'S SUPPLEMENTAL BRIEF IN OPPOSITION TO THE STATE'S MOTION TO DISMISS HIS PETITION FOR DETERMINATION OF STATUS AS A WRONGFULLY INCARCERATED PERSON

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Petitioner Clemente Aguirre respectfully submits this supplemental brief—in opposition to the State's motion to dismiss his petition for compensation under the Victims of Wrongful Incarceration Compensation Act ("the Act")—which the Court invited from both parties in open court on April 4, 2019.

I. *Bartek* does not address the question presented here.

The State's motion to dismiss rests principally on *Bartek v. State*, 198 So. 3d 1009 (Fla. 5th DCA 2016), but *Bartek* is distinguishable for all the reasons previously explained. *See, e.g.*, Aguirre Opp. 12–14; April 4, 2019 Hr'g. The State has never responded to those arguments or defended how *Bartek* applies in light of the distinguishable facts here. That is a telling concession. *Bartek* does not control this case because it does not answer the question presented—*i.e.*, whether the Act's timing provision begins to run when a person remains wrongfully incarcerated because the State is continuing its (re-)prosecution even after the conviction has been vacated.[1]

[1] The question presented in *Bartek* was whether the Act's timing provision runs from the issuance of the mandate on the order vacating a conviction or from the State's entry of a *nolle prosequi*. That is not the question presented here—Mr. Aguirre's argument is not that the State's *nolle prosequi* started the time for filing but that, under the plain meaning and plain language of the Act, the 90-day timing provision does not begin to run (because the order vacating the

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II. The 90-day time period for filing a petition must run from the date the petitioner is released from the State's custody because the Act is clear that release from custody is a precondition to application for payment.

The State is right that the language of the Act is clear—it's just that the State is asking the wrong question and myopically focusing on isolated language in the Act rather than the whole. The entire Act is clear, both in concept and on the face of the plain language, that it applies only to those who have been released from the State's custody—*i.e.*, to those who *were previously* wrongfully incarcerated.

The State points solely to the Act's timing provision, arguing that Fla. Stat. § 961.03(1)(b) requires a petitioner to "file the petition with the court[w]ithin 90 days after the order vacating a conviction and sentence becomes final." But the State ignores that the entire Act assumes (and requires) that the petitioner will have been released from custody before he is allowed to apply for compensation for the past period of wrongful incarceration. Accordingly, the order vacating a conviction does not "become[] final" for purposes of compensation under the Act until the wrongfully incarcerated person is released from the State's custody. The State recognizes—by citing cases for the proposition—that "phrases within a statute are not to be read in isolation, but rather should be construed within the context of the entire section." *Lewars v. State*, No. 2D15-3471, 2017 WL 1969691, at *2 (Fla. Dist. Ct. App. May 12, 2017), *approved*, 259 So. 3d 793 (Fla. 2018). But the State's argument flouts that hornbook rule and impermissibly ignores the language used in the rest of the Act. The State has never responded to the point—either in its reply brief or

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conviction does not "become final" for purposes of compensation under the Act) until the person is released from custody. That argument—and the related points discussed below about the absurdity doctrine and equitable tolling—were not presented in *Bartek*. Indeed, *Bartek* presented different facts. There, the petitioner was immediately released from custody within days of the order vacating his conviction, so he could have filed before the end of the 90 days following mandate, and the State also dropped the charges during the 90-day period, so the petitioner knew with certainty that there would be no re-prosecution. Not so here.

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at the April 4 hearing—and the fact that the State is simply burying its head in the sand about the language of the entire Act is a telling concession.

The entire Act emphasizes that it provides a means of compensation for a wrongful incarceration *in the past*. That's not only the clear common-sense reading of the Act, but also the way that the Act is written in plain terms—it applies to a person who "*was [wrongfully] incarcerated*." Several provisions in the Act make this clear.

1. Perhaps most pointedly, the Act sets out certain requirements for filing an application for compensation once the sentencing court (*i.e.*, this Court) has ruled that the petitioner is a wrongfully incarcerated person who is eligible for compensation. One of the necessary components of any application for payment is "[d]ocumentation demonstrating the length of the sentence served, including documentation from the Department of Corrections regarding the person's admission into ***and release from the custody of the Department of Corrections***." Fla. Stat. § 961.05(3)(d) (emphasis added). In other words, a wrongfully incarcerated person *cannot even apply for compensation under the Act* until he is released from the State's custody.

2. The Act's operative provision, section 961.03(1)(a), has three requirements: that the petitioner has previously been convicted, that a court has vacated that conviction, and that the petitioner has been released from custody. This final requirement—release from custody—is part and parcel of the obligation to present "a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person ***was incarcerated***." *Id.* § 961.03(1)(a) (emphasis added). The State's argument reads out the phrase "for which the person was incarcerated," making that language superfluous. But that is a statutory interpretation no-no—every word in a statute must be given some effect. *See, e.g.*, *Fla. Police Benev. Ass'n, Inc. v. Dep't*

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of Agric. & Consumer Servs., 574 So. 2d 120, 122 (Fla. 1991) ("[A]ll words in a statute should be construed so as to give them some effect, not so as to render them meaningless surplusage."). The words "was incarcerated" must have some meaning, and they can only mean that a petitioner's obligations under the Act begin only once his wrongful incarceration has ended.

3. It's not just the operative provision of the Act that uses the past tense. The Act uses the past tense throughout when referring to the petitioner's period of wrongful incarceration:

- Section 961.02(7) defines a "wrongfully incarcerated person" as someone who, among other things, "is the subject of an order issued by the original sentencing court pursuant to [section] 961.03 finding that the person did not commit the act or offense ***that served as the basis for the conviction and incarceration***." Fla. Stat. § 961.02 (7) (emphasis added). The differences in the tenses used—with "the incarceration," like "the conviction," both in the past tense—is intentional and important.

- Section 961.04 is the Act's "unclean hands" provision. That provision doesn't apply in this case, but it also illustrates the point. It disqualifies a person if "***[b]efore the person's wrongful conviction*** and incarceration, the person ***was convicted of***" certain felonies, *id.* § 961.04(1)–(2), but also if "***[d]uring the person's wrongful incarceration***, the person ***was convicted of***" certain felonies, *id.* § 961.04(3)–(5). On its face, the use of the past tense "*was convicted*" when referring to both convictions "before" and "during" the wrongful incarceration necessarily suggests that the wrongful incarceration must have ended before a petitioner files. Otherwise, on the State's reading, subsections (3)–(4) would say "during . . . , the person *is convicted*" or "*has been convicted*."

* * *

Here, Mr. Aguirre was never released from custody until November 5, 2018, when this Court ordered the Department of Corrections to release him.[2] Before that day, Mr. Aguirre had been continually in the State's custody since he was first charged with the murders of Cheryl Williams and Carol Bareis. And before this Court's November 5, 2018 order to release him, Mr.

[2] *See* Nov. 5, 2018 Order of Dismissal and Release of Defendant (attached hereto as Exhibit A); *see also* Fla. Dep't of Corr. Inmate Release Information Detail (attached hereto as Exhibit B) (showing November 5, 2018 as the "Release Date" and "Date Out-Custody").

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Aguirre did not even have a meaningful petition to file because, as just explained, he did not have everything necessary to apply for compensation under section 961.05. The State seems to recognize this fact when it argues that Mr. Aguirre should have filed his petition in November 2016, after the Supreme Court issued its mandate, "in anticipation of *one day in the future making a claim* for unlawful incarceration compensation." State's Reply at 6 (emphasis added).[3] But there was no meaningful claim that Mr. Aguirre could have made for compensation under the Act in November 2016 because he was still in the State's custody—his wrongful incarceration *was ongoing*. Because Mr. Aguirre was still incarcerated until November 5, 2018, and he filed his petition within 90 days of the day he was first released from the State's custody, his petition is timely, and this Court must deny the State's motion to dismiss.

III. The State's proposed interpretation violates the absurdity doctrine.

Even if the State is correct about the plain text meaning of the Act's timing provision—*i.e.*, that Mr. Aguirre had to file within 90 days from the Supreme Court's mandate, without regard to his continued incarceration, which lasted for another two-plus years due to the State's immediate decision to re-prosecute him—that would lead to an impermissible absurd result.

The State argues that the absurdity doctrine does not apply because, it says, the plain language of the Act's timing provision is clear. But that is incorrect, as the cases cited by the State expressly state. The absurdity doctrine allows a court to "depart from applying a statute's plain meaning when adherence to 'a sterile literal interpretation . . . would lead to absurd results.'" *Lewars*, 2017 WL 1969691, at *5 (citations omitted, alteration in original) (cited in State's Reply

[3] Section 961.05 also refutes the State's argument that "Aguirre's [a]ttorneys had all the information necessary (or should have) to file an action . . . when the Supreme Court's mandate[] issued on November 17, 2016." State's Reply at 9. Section 961.05(3)(d) and Exhibits A & B attached hereto plainly show that Mr. Aguirre didn't have "all the information necessary" to make a meaningful claim until November 5, 2018—before that date, he couldn't have even applied for compensation because he could not state the "length of sentence served" or the date of his "release from the custody of the Department of Corrections," Fla. Stat. § 961.05(3)(d), both of which were still ongoing at that time.

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at 2–4).[4] Moreover, the fact that Mr. Aguirre has proposed a competing reasonable interpretation of the timing provision based on the context of the rest of the Act, which must be taken into account when interpreting any provision of the Act (*see supra*), means that the Act is at worst (for Mr. Aguirre) ambiguous. *See Fla. Dep't of Transp. v. Clipper Bay Invs., LLC*, 160 So. 3d 858, 862 (Fla. 2015) ("Ambiguity suggests that reasonable persons can find different meanings in the same language."). Either way—whether the Court finds the Act is ambiguous or unambiguous—the absurdity doctrine clearly has room to operate here.

The State's interpretation of the Act's timing provision would lead to results that would be "truly absurd or patently unreasonable."[5] In addition to the most obvious absurd and patently unreasonable result—*i.e.*, that someone still incarcerated (and still defending against an active prosecution) must file a petition seeking compensation for his (ongoing) period of wrongful incarceration—the State's interpretation would lead to several fundamental problems.

1. As the State concedes, its reading of the timing provision would have required Mr. Aguirre to file a placeholder petition before he had a viable claim, simply "in anticipation of one day in the future making a claim for unlawful incarceration compensation." State's Reply at 6. The solution, the State says, would have been for Mr. Aguirre (or the State) to ask the court to hold the petition in abeyance until the period of incarceration (and the prosecution) had ended, at which point the State says that Mr. Aguirre could have moved to amend his petition. This proposed solution has several glaring problems:

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[4] *See also Maddox v. State*, 923 So. 2d 442, 452 (Fla. 2006) (Cantero, J., dissenting) (cited in State's Reply at 4–5) ("As the majority notes, and I agree, we will deviate from a statute's plain language when necessary to avoid an absurd result."); *id.* at 452 (noting that the doctrine "has guided this Court's jurisprudence from the very beginning," to prevent "'palpable injustice, contradiction, and absurdity'" (quoting *White v. Camp*, 1 Fla. 94, 109 (Fla. 1846) (Baltzell, J., dissenting))).

[5] *Maddox*, 923 So. 2d at 452 (Cantero, J., dissenting) (cited in State's Reply at 4–5) ("[T]o prevent the appearance that we are merely substituting our own judgment for the Legislature's, we must invoke the exception only when absolutely necessary—that is, when otherwise the result truly would be absurd or patently unreasonable.").

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- The State's proposal finds no support in the Act—there is no provision for asking for a stay or abeyance, and there is no provision for amending a petition. It is reasonable to assume that if the Legislature had contemplated filings by presently incarcerated inmates, it would have made such provisions. It didn't.

- The idea that the Legislature intended to clog trial courts' dockets with placeholder petitions that would not ripen until other, later events is absurd.

- The State's proposal also assumes that courts would grant a motion to stay or a motion to amend, but that of course isn't certain either, not only because there is no provision in the Act for such motions but also because of judicial discretion. Accordingly, it would be reasonable for a petitioner (and this Court, for purposes of assessing the State's motion to dismiss) to assume that such a request would be denied. It certainly wouldn't be granted as of right. And it cannot be the case that both move forward—that Mr. Aguirre must defend his life while also proving his actual innocence, and that the same judge must entertain both proceedings at the same time.[6]

2. The denial of a stay with regard to a placeholder petition would create other serious problems for a still-wrongfully-incarcerated petitioner:

- The State acknowledges that additional evidence supporting a petitioner's actual innocence could—and did in this case—arise when the State is continuing a prosecution. The State assumes that a court would later grant a motion to amend the petition, but (as just mentioned) there is no allowance in the Act for amended petitions. So, the State's proposed process could deprive a petitioner of critical new evidence that supports not only his actual innocence, but also his petition under the Act.

- Filing even a placeholder petition would trigger the numerous other timing provisions in the Act—for the State to respond, for an administrative law judge to hold a hearing, to issue a recommendation and decision, etc. *See, e.g.*, Fla. Stat. § 961.03(2), (6). Critically, completion of those provisions would trigger the timing provision in section 961.05, which requires an application for compensation to be filed within two years of the order from the sentencing court finding that the petitioner is a wrongfully incarcerated person who is eligible for compensation.[7] That could be disastrous for a still-wrongfully-incarcerated person because, as already explained, section

[6] The State has said that the petitioner in such a situation could "simpl[y] . . . file a motion to disqualify that judge" for purposes of the petition (State's Reply at 7), but—again—the Act contemplates no such thing. There is no provision in the Act for parallel proceedings (*i.e.*, a proceeding on a petition filed under the Act moving forward at the same time as a criminal proceeding related to the same facts), much less for different judges to handle those two parallel proceedings. Indeed, the Act contemplates a single judge would handle the underlying, now-overturned conviction and the petition for compensation. *See, e.g.*, Fla. Stat. § 961.03(1)(a) (requiring that the petition be filed "with the original sentencing court").

[7] Notably, that two-year timing provision does not include the "becomes final" language that is in the section 961.03(1)(b) timing provision at issue here. That is an important distinction because it shows yet again that the use of "becomes final" must mean *final for purposes of compensation*, which necessarily means that the person must have been released from custody.

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961.05(3)(d) requires an application for compensation to include "[d]ocumentation demonstrating the length of the sentence served, including documentation from the Department of Corrections regarding the person's admission into ***and release from the custody of the Department of Corrections***." There is no guarantee that, if a placeholder petition is not stayed, the new criminal trial will be resolved—and the petitioner released from custody—within two years of the order granting the petition, especially in light of the efficient timeline for resolution of eligibility for compensation prescribed by section 961.03.

- It would be the height of absurdity for a person to be found eligible for wrongful incarceration compensation because he has proved his actual innocence by clear and convincing evidence, but for him nonetheless to be deprived of compensation under the Act because two years after that finding the State is still holding him in custody as part of its ongoing re-prosecution. But the State's argument necessarily countenances that result.

3. Moreover, the State's proposed solution would threaten the petitioner/defendant's new trial—and violate his constitutional rights—in at least two ways:

- *First*, requiring a person who is still incarcerated because he is being re-prosecuted to file a placeholder petition introduces a significant risk (indeed, a real likelihood) that the petitioner would have to put on his evidence of actual innocence to satisfy his burden of proof under the Act *before* the State re-tries him. (Indeed, that is what would have happened here.) That would give the State an unfair and unconstitutional preview into his criminal defense.

- *Second*, a criminal defendant has a constitutional right to a fair trial and not to put on a defense. *See, e.g.*, *Olson v. Blasco*, 676 So. 2d 481, 482 (Fla. 4th DCA 1996). In light of that constitutional concern, being forced to prove actual innocence to receive the benefits due him under the Act while a criminal prosecution remains ongoing would require the petitioner to choose between his due process right to statutory compensation and his constitutional right to a fair criminal trial and whether to present a defense. *See id.* (holding that disclosure of certain evidence under Fla. R. Crim. P. 3.220(d)(1) "would place too high a cost on the petitioner's decision to preserve his ability to invoke his constitutional rights in the criminal case").

- That Hobson's Choice—between a still-wrongfully-incarcerated person's right to statutory compensation at the cost of revealing his entire defense strategy, or foregoing compensation (even though he is due it under the Act) so that he protects his criminal-defense rights—is no choice at all. The Act cannot be read in a way that would force a petitioner to choose between two competing constitutional rights—that would violate "the unconstitutional conditions doctrine[, which] forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606 (2013).

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- The State's interpretation of the Act's timing provision to require placeholder petitions from presently incarcerated people would violate these constitutional doctrines by conditioning the benefits available under the Act on burdening the still-wrongfully-incarcerated person's right to a fair trial and not to put on a defense in his separate, on-going criminal proceeding.

* * *

Thus, even if this Court is inclined to read the Act's timing provision in isolation—without reference to the other provisions in the Act that assume (or in some instances mandate) that the wrongful incarceration has ended—and to agree with the State that the timing provision must be read to require filing within 90 days of mandate on an order vacating the petitioner's conviction irrespective of whether that person is still in custody, the Court should find that such a reading of the Act cannot apply to these facts because it would lead to absurd consequences.

IV. Even if the Act's timing provision requires filing within 90 days, the Court should hold that the time period is equitably tolled until the person is released from custody once the State's prosecution is over.

Separately, and in the alternative, the Florida Supreme Court has consistently said that equitable tolling "serves to ameliorate harsh results that sometimes flow from a strict, literalistic construction and application of administrative time limits contained in statutes and rules," where the moving party "has in some extraordinary way been prevented from asserting his rights." *Machules v. Dep't of Admin.*, 523 So. 2d 1132, 1134 (Fla. 1988). That is exactly the case here and what the doctrine would do if applied here. For all the reasons already explained, the State's reading of the Act's timing provision prevents a still-wrongfully-incarcerated person like Mr. Aguirre from effectively asserting his right to compensation under the Act. The State contends that the doctrine should not apply because "[i]t is ridiculous to suggest that the State's continuation of the prosecution was really designed to mislead or lull Aguirre" (State's Reply at 8), but equitable tolling is not contingent on some deception or misconduct—it's an equitable doctrine designed to

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prevent the very sort of harsh result that would result from the State's interpretation of the Act's timing provision here. *See Machules*, 523 So. 2d at 1134.

CONCLUSION

For all these reasons, as well as those stated in Mr. Aguirre's opposition to the State's motion to dismiss and on the record at the Court's April 4, 2019 hearing, this Court should deny the State's motion to dismiss Mr. Aguirre's petition for compensation under the Victims of Wrongful Incarceration Compensation Act.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2019, I promptly filed the foregoing with the Clerk of the Court using the Florida efiling portal and immediately served the same through email on the prosecuting authority in the underlying felony for which Mr. Aguirre was incarcerated.

/s/ Lindsey C Boney IV
OF COUNSEL

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EXHIBIT A

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NOV 05 2018
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COURT VERIFICATION FORM

CASE NUMBER: 2004-CF-002491-A

DEFENDANT'S NAME: CLEMENTE JAVIER AGUIRRE-JARQUIN

TYPE OF ORDER: ORDER OF DISMISSAL AND RELEASE OF DEFENDANT

__[initials]__ **VERIFIED AS LEGITIMATE** ________ **NOT LEGITIMATE***

DATE: NOVEMBER 5, 2018

SIGNATURE: [signature]

JUDGE/DESIGNEE NAME: John D. Galluzzo, Circuit Judge

FOR CLERK'S USE

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Transmitted to Department of Corrections ✓ via e-file

11/5/2018 — Date

L. Gaines — Deputy Clerk

***Upon receipt of a "not legitimate" court verification order form, the Clerk of the Court is directed to immediately notify the Chief Judge. Copy Provided to DOC/Local Detention Facility.**

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EXHIBIT B

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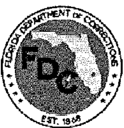 (//www.dc.state.fl.us/index.html)

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Corrections Offender Network

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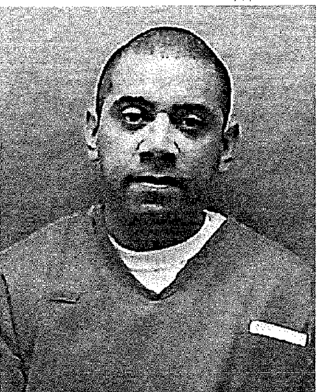
(This information was current as of 11/7/2018)



DC Number:	128074
Name:	AGUIRRE-JARQUIN, CLEMENTE J
Race:	HISPANIC
Sex:	MALE
Birth Date:	05/11/1980
Custody:	MAXIMUM
Release Date:	11/05/2018

Stated Residence Upon Release:

2974 INTERNATIONAL PKWY
LAKE MARY, FL

Aliases:

CLEMENTE JAVIER AGUIRE-JARQUIN, CLEMENTR JAVIER AGUIRRE, CLEMENTE AGUIRRE JARQUAN, CLEMENTE J AGUIRRE-JARQUIN, CLEMENTE JAVIER AGUIRRE-JARQUIN

Note: The offense descriptions are truncated and do not necessarily reflect the crime of conviction. Please refer to the court documents or the Florida Statutes for further information or definition.

Incarceration History:

Date In-Custody	Date Out-Custody
07/03/2006	11/05/2018

First | Previous | Next | Last | Return to List | New Search

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Tallahassee, Fl. 32399-2500

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