STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: February 7, 2023]

BOGHOS "PAUL" TERZIAN,	:	
Plaintiff/Petitioner,	:	
	:	
v.	:	**C.A. No. PM-2021-07092**
	:	
SETH MAGAZINER, in his capacity as General Treasurer of the State of Rhode Island,	:	
Defendant.	:	

DECISION

GIBNEY, P.J. Petitioner Boghos "Paul" Terzian (Petitioner) has submitted a claim for compensation pursuant to Rhode Island's newly enacted statute permitting Claims for Wrongful Conviction and Imprisonment, G.L. 1956 chapter 33 of title 12. *See generally* Verified Pet. to Present Claim for Comp. for Wrongful Conviction & Imprisonment (Pet.). Now before this Court is the State's Motion for Judgment on the Pleadings, or in the Alternative, Objection to Petition for Compensation (Motion), which argues that Petitioner: 1) has not satisfied the pleading requirements of § 12-33-2; or, in the alternative, 2) cannot prove his entitlement to compensation under § 12-33-4. (Mem. Supp. of Def.'s Mot. for J. on the Pleadings, or in the Alternative, Obj. to Pet. For Comp. (State's Mem.) 1.) The Court's jurisdiction is pursuant to § 12-33-3.

I

Facts and Travel

In 2007, the State charged Petitioner with three felony counts of assault with a deadly weapon, one felony count of carrying a handgun without a license, a misdemeanor count of

firing a weapon in a compact area, and one misdemeanor count of malicious damage to property. (Pet. ¶¶ 7-8.) Petitioner moved to suppress a firearm and other evidence seized from his home during a warrantless search, but his motion was denied, and the matter proceeded to trial where the State presented the firearm in its case-in-chief. *Id.* ¶¶ 9-10; *State v. Terzian*, 162 A.3d 1230, 1244 (R.I. 2017).[1] After a jury trial, Petitioner was convicted on all four felony counts, sentenced to eight years—one to serve, seven years suspended—and incarcerated from May 28, 2008 to November 26, 2008 before being paroled. *Id.* ¶¶ 11-13.

Petitioner then appealed his conviction, and our Supreme Court vacated the judgment of conviction after holding that the trial justice should have suppressed the firearm and other evidence. *Id.* ¶¶ 14, 16-17. In 2018, on remand to the Superior Court for retrial, Petitioner elected to enter a plea of *nolo contendere* to an amended charge on Count 1—reduced from "felony assault" to "simple assault"—for which he received a one year "filing" pursuant to § 12-10-12. *Id.* ¶ 18. The remaining charges were dismissed, and the criminal complaint has since been expunged in accordance with § 12-10-12(c). *Id.* ¶ 19.

[1] The general rule in this jurisdiction is that reference to documents not expressly incorporated in a complaint will convert a motion to dismiss to one for summary judgment. *EDC Investment, LLC v. UTGR, Inc.*, 275 A.3d 537, 543 (R.I. 2022). Nevertheless, there exists "a narrow exception for 'documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint.'" *Id.* at 542-43 (quoting *Mokwenyei v. Rhode Island Hospital*, 198 A.3d 17, 22 (R.I. 2018)). Petitioner's Verified Petition repeatedly refers to this earlier Supreme Court decision and includes a copy of the decision as an exhibit to the petition. (Pet. Ex. A (Supreme Court Decision).) That decision is also essential to Petitioner's claim that his "judgment of conviction was vacated" as required by § 12-33-2(a)(2)(ii). (Pet. ¶¶ 17, 27.) As such, the Court will consider the underlying Criminal Complaint and the Supreme Court decision without converting the instant Motion to one for Summary Judgment.

On November 18, 2021, Petitioner filed a Verified Petition for wrongful conviction compensation pursuant to § 12-33-3.[2] (Docket.) Petitioner maintains that "all of the charges in the accusatory instrument . . . were dismissed," as required by § 12-33-2(a)(2)(iv), notwithstanding his undisputed subsequent "plea to a [m]isdemeanor simple assault." *Id.* ¶ 27. He further maintains that his *nolo contendere* plea and related one-year "filing" was not a conviction. *Id.* ¶ 27.

On April 21, 2022, the State filed the instant Motion, in which it advances two alternative arguments. First, the State maintains that Petitioner has failed to present documentary evidence of an actionable claim for compensation because the accusatory instrument, specifically Count 1, was not dismissed as required by § 12-33-2(a)(2)(iv). (State's Mem. 6-7.) Second, even assuming that Petitioner could state an actionable claim under § 12-33-2, the State argues in the alternative that his Petition should be dismissed as a matter of law because his *nolo contendere* plea to the amended charge of simple assault is fatal to any claim that he "did not commit any of the crimes charged in the accusatory instrument" as required by § 12-33-4(a)(2). (State's Mem. 1-2, 10.)

II

Standard of Review

Section 12-33-2 of the Claims for Wrongful Conviction and Imprisonment statute requires a verified petition accompanied by documentary evidence establishing the enumerated elements of an actionable claim for compensation. *See* § 12-33-2(a)-(b). "If the court determines after an examination of the claim that the claimant has not alleged sufficient facts to

[2] "All claims of wrongful conviction and imprisonment under this chapter shall be presented to and heard by the presiding justice of the superior court." Section 12-33-3.

succeed at trial it shall dismiss the claim, either on its own motion or on the state's motion." *See* § 12-33-2(c).

Further, "[p]ursuant to Rule 12(c) of the Superior Court Rules of Civil Procedure, a hearing justice may 'dispos[e] of a case early in the litigation process when the material facts are not in dispute after the pleadings have been closed and only questions of law remain to be decided.'" *Houle v. Liberty Insurance Corporation*, 271 A.3d 591, 593 (R.I. 2022) (quoting *Premier Home Restoration, LLC v. Federal National Mortgage Association*, 245 A.3d 745, 748 (R.I. 2021)). A court considers a motion for judgment on the pleadings pursuant to Rule 12(c) by utilizing the Rule 12(b)(6) motion-to-dismiss test. *Nugent v. State Public Defender's Office*, 184 A.3d 703, 706 (R.I. 2018).

"As such, 'a judgment on the pleadings may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim.'" *Houle*, 271 A.3d at 593-94 (quoting *Premier Home Restoration, LLC*, 245 A.3d at 748) (internal quotations omitted). "'[T]he trial justice must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff's favor.'" *EDC Investment, LLC*, 275 A.3d at 542 (quoting *Pontarelli v. Rhode Island Department of Elementary and Secondary Education*, 176 A.3d 472, 476 (R.I. 2018)).

III

Analysis

A

"Filing" of Complaints

The "filing" of a criminal complaint after a *nolo contendere* plea is essentially a stay of sentencing conditioned upon the defendant's good behavior, payment of costs and fines, and any other requirements as may be imposed at the discretion of the court. *See* § 12-10-12; *State ex rel. Coventry Police Department v. Charlwood*, 224 A.3d 467, 472 n.3 (R.I. 2020). "In the event the complaint was originally filed under this section subsequent to the defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have been a violation but does not impose a sanction, may sentence the defendant." *See* § 12-10-12(c). Otherwise, if no action is taken on the complaint for a period of one year following the filing, the complaint shall be automatically expunged. *Id.*

B

The Wrongful Conviction and Imprisonment Compensation Statute

The federal government, thirty-eight states, and the District of Columbia have enacted legislation to permit compensation for the wrongfully convicted and incarcerated. *See Compensating the Wrongly Convicted*, Innocence Project, https://innocenceproject.org/compensating-wrongly-convicted/. The various compensation statutes adopted across the nation differ from one another in various aspects, but all are broadly designed as limited waivers of sovereign immunity to allow civil claims for compensation in recognition of the "long-standing and near-universal understanding that . . . '[e]xcept when an innocent defendant is executed, we hardly can conceive of a worse miscarriage of justice.'" Jeffrey S. Gutman, *An Empirical*

Reexamination of State Statutory Compensation for the Wrongly Convicted, 82 Mo. L. Rev. 369, 370 (2017) (quoting *Halsey v. Pfeiffer*, 750 F.3d 273, 278 (3d Cir. 2014)); *id.* (noting "remarkably dissimilar existing state laws"); *Rhoades v. State*, 880 N.W.2d 431, 441 (Iowa 2016) (summarizing various distinctions in state compensation schemes); *Abu-Shawish v. United States*, 898 F.3d 726, 733 (7th Cir. 2018) (stating that federal compensation statute "waives the government's sovereign immunity); *Ricks v. State*, 968 N.W.2d 428, 431 (Mich. 2021) (observing that compensation statutes waive sovereign immunity).

Rhode Island's Wrongful Conviction and Imprisonment Compensation statute (the Compensation Statute) is patterned after model legislation suggested by the Innocence Project. *Compare* § 12-33-2, *with An Act Concerning Claims for Wrongful Conviction and Imprisonment* § 2, Innocence Project, http://web.archive.org/web/20160222000219/http://www.innocenceproject.org/free-innocent/improve-the-law/CompensationModelBill2015.pdf (Dec. 2014). In enacting Rhode Island's specific compensation scheme, our General Assembly's express intent was to recognize "that innocent persons who have been wrongfully convicted of crimes through no fault of their own have been uniquely victimized[ ] and are deserving of consideration and remuneration for this miscarriage of justice." Section 12-33-1(a).

Additionally, the Compensation Statute abrogates several common law tort rules that previously prevented exonerated individuals from recovering incarceration-related damages. *See, e.g.*, *Polanco v. Lombardi*, 231 A.3d 139, 147 (R.I. 2020) (statute of limitations forecloses tort claim of negligence by formerly-incarcerated individual who waited until his conviction was vacated to file a civil suit); *Bainum v. Coventry Police Department*, 156 A.3d 418, 421 (R.I. 2017) (malicious prosecution requires "clear proof of malice and lack of probable cause") (internal quotations omitted); *Beaudoin v. Levesque*, 697 A.2d 1065, 1067 (R.I. 1997) ("Probable

cause in our law is a necessary element in false arrest, false imprisonment, and malicious prosecution claims.").

Section 12-33-2 establishes the gatekeeping requirements to present an actionable claim for compensation. *See* § 12-33-2; *see also Ricks*, 968 N.W.2d at 432 (noting a similar distinction in Michigan's Wrongful Imprisonment Compensation Act between the "eligibility step and . . . the compensation step"); *Renaud v. Commonwealth*, 28 N.E.3d 478, 481 (Mass. 2015) ("the eligibility requirement is separate and distinct from the merits of the claim of relief that a claimant must establish at trial") (internal quotations omitted). For purposes of the present action, § 12-33-2 provides in pertinent part as follows:

> "In order to present an actionable claim pursuant to this chapter, the claimant must establish by documentary evidence that:
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> "(1) Claimant has been convicted of one or more crimes and, as a result of the conviction, was sentenced to a term of imprisonment and has served all or part of said sentence; and
>
> "(2) On grounds not inconsistent with innocence:
>
> . . .
>
> "(ii) The judgment of conviction was vacated for reasons other than the ineffective assistance of counsel; . . . and
>
> "(iv) The accusatory instrument was dismissed; and
>
> "(3) The claim is not time-barred by the provisions of this chapter." Section 12-33-2(a) (emphasis added).

A claimant seeking relief under the Compensation Statute must therefore accompany a verified petition with documentary evidence establishing six required elements: 1) conviction; 2) sentence of imprisonment exceeding one year; 3) actual imprisonment; 4) vacatur of conviction for reasons other than ineffective assistance and "on grounds not inconsistent with innocence"; 5) dismissal of the accusatory instrument "on grounds not inconsistent with

innocence"; and 6) filing of the claim within the time limitations of § 12-33-7. *See* § 12-33-2. Here, the State challenges only Petitioner's claim as to the fifth requirement. (State's Mem. 6-7.)

After a claimant has cleared the eligibility hurdle of § 12-33-2, he may proceed to trial and obtain a favorable judgment only after establishing by a preponderance of the evidence that:

> "(1) Claimant was convicted of one or more crimes, and subsequently sentenced to a term of imprisonment for more than one year, and has served all or any part of the sentence; and
>
> . . .
>
> "(ii) Claimant's judgment of conviction was . . . vacated for reasons other than the ineffective assistance of counsel and the accusatory instrument was dismissed; and
>
> "(2) Claimant did not commit any of the crimes charged in the accusatory instrument; and
>
> "(3) Claimant did not commit or suborn perjury, or fabricate evidence, to cause or bring about claimant's own conviction." Section 12-33-4(a) (emphasis added).

At this "compensation step," a claimant must therefore establish seven elements by a preponderance of the evidence: 1) conviction; 2) sentence of imprisonment exceeding one year; 3) actual imprisonment; 4) reversal or vacatur of the conviction for reasons other than ineffective assistance of counsel; 5) dismissal of the accusatory instrument; 6) that the claimant did not commit any of the crimes charged in the accusatory instrument; and 7) that the claimant did not commit or suborn perjury, or fabricate evidence, to cause or bring about his own conviction. *Id.*

Notwithstanding that a claimant may have adequately pleaded an actionable claim pursuant to § 12-33-2, if this Court "determines after an examination of the claim" that a claimant has not alleged sufficient facts in the petition for compensation to satisfy the requirements of § 12-33-4, then the Court shall dismiss the claim. *See* § 12-33-2(c). Therefore, the State argues in the alternative that, even if the Verified Petition satisfies § 12-33-2, it should

nevertheless be dismissed at the pleading stage because Petitioner's undisputed plea to a lesser-included offense of simple assault means that he cannot establish that he "did not commit any of the crimes charged in the accusatory instrument" as required by § 12-33-4(a)(2). (State's Mem. 1-2, 10.)

In sum, although § 12-33-2 and § 12-33-4 share certain language and elements, the key distinction relevant here is that § 12-33-2 requires pleading and documentary evidence showing "legal innocence" not inconsistent with "factual innocence," while § 12-33-4 places the burden on the claimant to affirmatively prove both "legal innocence" (pursuant to § 12-33-4(a)(1)) and "factual innocence" (pursuant to § 12-33-4(a)(2)) by a preponderance of the evidence at trial. *Compare* § 12-33-2(a)(2)(iv) *with* § 12-33-4(a)(2).

C

Discussion

The core issue implicated by the State's Motion is, at bottom, what the Legislature intended the terms "dismissed" and "crimes charged" to mean in the context of the legal and factual innocence requirements of the Compensation Statute. (State's Mem. 1-2.) Framed in the context of Petitioner's specific claim, the issue is whether an accusatory instrument should be treated as "dismissed"—as required by § 12-33-2(a)(1)(iv) and § 12-33-4(a)(1)(ii)—when a defendant pleads *nolo contendere* to a lesser-included offense and receives a "filing." *Id.* at 6-10. In addition, the State's position raises a separate, but related issue—i.e., whether the language "crimes charged in the accusatory instrument" includes lesser-included offenses not specifically enumerated in said instrument. *Id.* at 8-9.

In resolving these questions of statutory construction, the Court is mindful that, if "'the statutory language is clear and unambiguous, then we give the words their plain and ordinary

meaning' and apply the statute as written." *Charlwood*, 224 A.3d at 470 (quoting *5750 Post Road Medical Offices, LLC v. East Greenwich Fire District*, 138 A.3d 163, 167 (R.I. 2016)). "This is particularly true where the Legislature has not defined or qualified the words used within the statute." *Markham v. Allstate Insurance Co.*, 116 R.I. 152, 156, 352 A.2d 651, 654 (1976). In giving words their plain meaning, however, our Supreme Court has "note[d] that this 'approach is not the equivalent of myopic literalism.'" *Ryan v. City of Providence*, 11 A.3d 68, 71 (R.I. 2011) (quoting *In re Brown*, 903 A.2d 147, 150 (R.I. 2006)). "When we determine the true import of statutory language, it is entirely proper for us to look to 'the sense and meaning fairly deducible from the context.'" *Id.* (quoting *In re Roche's Estate*, 109 A.2d 655, 659 (N.J. 1954)). "[O]ur ultimate goal is to give effect to the purpose of the act as intended by the Legislature." *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001).

Contrary to the language of § 12-33-2(a)(2)(iv) and § 12-33-4(a)(1)(ii), which require that Petitioner show that "[t]he *accusatory instrument* was dismissed," the Verified Petition in this matter instead states that "[t]he *crimes charged* in the accusatory instrument . . . were all subsequently dismissed." (Pet. ¶ 30 (emphasis added).) Petitioner clarifies in his memorandum in opposition to the State's Motion that "the accusatory instrument was . . . dismissed after [his] 'filing' expired." (Mem. Supp. of Pl./Pet'r's Opp'n to Def.'s Mot. for J. on the Pleadings (Pet'r's Mem.) 2.) He reasons, without citation to legal authority, that "the 'filing' to an amended charge was clearly dismissed and sealed, which is a 'dismissal' of the accusatory instrument." *Id.*[3]

[3] Although Petitioner interchangeably uses the terms "dismiss," "seal," and "expunge," they are in fact "very different procedural mechanisms" governed by different statutes. *State v. Poulin*, 66 A.3d 419, 424 (R.I. 2013). "A motion to seal properly is made with respect to an acquittal and in cases that have been dismissed in circumstances amounting to an exoneration, while a motion for expungement relates to a criminal disposition—including a case in which probation

To the contrary, by its plain language, § 12-10-12(c) does not provide for the *dismissal* of an accusatory instrument after a *nolo contendere* plea and "filing." *See generally* § 12-10-12(c). Instead, it states that "[i]f no action is taken on the complaint for a period of one year following the filing, the complaint shall be automatically *expunged*." *Id.* (emphasis added). An expunction is a "remov[al] from a record" while a dismissal is the "termination of an action, claim, or charge . . . [especially] a judge's decision to stop a court case through the entry of an order or judgment that imposes no . . . criminal liability." *Compare* Black's Law Dictionary, 727 (11th ed. 2019) ("expunge"), *with id.* at 589 ("dismissal").

Here, the underlying Criminal Complaint was not terminated prior to judgment; Petitioner does not dispute that he entered a *nolo contendere* plea to an amended charge of simple assault. *See* Pet. ¶ 18; *see also id.* Ex. D (Req. to Enter Plea of *Nolo Contendere* or Guilty); State's Mem. Ex. A (District Ct. Criminal Compl.). In further contrast to the definition of a "dismissal," § 12-10-12(c) expressly provides that Petitioner was subject to criminal liability in the form of subsequent sentencing. *See* § 12-10-12(c) ("[S]ubsequent to the defendant's plea of guilty or *nolo contendere* to the charges, the court, if it finds there to have been a violation but does not impose a sanction, may sentence the defendant."). It is therefore clear from the face of the Verified Petition that Petitioner's criminal liability was adjudicated, notwithstanding that § 12-10-12(c) permitted a stay of sentencing and expunction.[4] *Id.* The fact that Petitioner's

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or a deferred sentence has been imposed—and is available only to first offenders." *Id.* The Verified Petition in this matter clearly alleges that Petitioner's record has been "expunged." (Pet. ¶ 19.)

[4] It is possible that a "filing" and expunction could occur without adjudication of liability for the underlying criminal acts. *See* § 12-10-12(c) ("In the event the court filed the complaint under this section while the defendant maintained a plea of not guilty, if the court finds there to have been a violation but does not impose a sanction, it may proceed to the further disposition of the complaint according to law."); *see also Hall v. State*, 187 So.3d 133, 137-38 (Miss. 2016) (passing criminal complaint to inactive files without adjudicating liability due to double-jeopardy

criminal record associated with this matter was expunged does not transform the final disposition into a dismissal. *Cf. Jefferson v. State*, 95 So.3d 709, 713-14 (Miss. Ct. App. 2012) (resentencing on remand for a lesser-included crime "does not fit within the plain language" of statutory pleading requirement that "either the accusatory instrument was dismissed or *nol prossed*") (citing Miss. Code Ann. § 11-44-3(1)(c) (West 2022)).

This conclusion is supported by our Supreme Court's assessment of various analogous claims by individuals who have sought expunction after successfully completing deferred sentences or probation following pleas of *nolo contendere*. *See, e.g.*, *State v. Briggs*, 934 A.2d 811, 814-18 (R.I. 2007); *State v. Alejo*, 723 A.2d 762, 765 n.2 (R.I. 1999); *State v. Gobern*, 423 A.2d 1177, 1179 (R.I. 1981).

In *State v. Gobern*, our Supreme Court addressed arguments nearly identical to Petitioner's. *See Gobern*, 423 A.2d at 1178. The claimant in *Gobern* sought destruction of his identifying information from criminal information databases after pleading *nolo contendere* and successfully completing a nine-month probation. *Id.* On appeal from a denial of his motion to destroy said records, the *Gobern* claimant "present[ed] two contentions: his *nolo* plea cannot be considered as a conviction, and assuming it is, his successful completion of the nine-month probationary term prescribed amounts to exoneration." *Id.* at 1179. The Court squarely denied both contentions. *Id.* After reiterating that a *nolo contendere* plea "is as much a conviction as a jury-returned guilty verdict," the Court went on to compare meaning of "exoneration" and "probation." *Id.* The Court noted that to "exonerate" means "'to relieve from a charge, obligation, or hardship: clear from accusation or blame,'" while "probation is a substitute for incarceration rather than a synonym for exculpation." *Id.* (quoting Webster's Third New

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concerns was, in effect, a dismissal). This Decision does not address whether expungement of such a record would constitute a dismissal for the purposes of the Compensation Statute.

International Dictionary). Thus, the Court held that "[p]ersons on probation are not absolved of the charges that led to their status as probationers." *Id.* Rather, "[t]hey are merely enjoying conditional liberty that may be revoked if they violate the terms of the probation agreement." *Id.*

The Court subsequently extended its reasoning from *Gobern* beyond probation to the similar context of a "filing." *See State v. Olink*, 507 A.2d 443, 445-46 (R.I. 1986). The *Olink* Court described the "filing" of a criminal complaint as a mere "disposition tool"—not a dismissal—"that, in appropriate cases, affords defendants the opportunity to make a new beginning without carrying forth the weight of a criminal record the rest of their lives." *Id.* at 446. In line with this interpretation, the claimant in *Olink* was not entitled to "destruction of records of persons acquitted . . . or otherwise exonerated." *Id.* at 445.

Statutory mechanisms, like a "filing" or an expunction, therefore, assist convicted individuals to avoid ongoing, unjust collateral consequences of their convictions. *See* Brian M. Murray, *A New Era for Expungement Law Reform? Recent Developments at the State and Federal Levels*, 10 Harv. L. & Pol'y Rev. 361, 362 (2016) (highlighting the broad availability of criminal record information through modern technology as a catalyst for expungement or sealing remedies). Nevertheless, "[t]he fact that a complaint was filed after the plea [of *nolo contendere*] was made does not transform it into an exoneration[.]" *Olink*, 507 A.2d at 446. Our Compensation Statute is not designed to recompense "all procedural winners," but only those "innocent persons" who have suffered the "miscarriage of justice" of wrongful conviction and imprisonment. *See* § 12-33-1; *see also* Jeffrey S. Gutman, *Are Federal Exonerees Paid?: Lessons for the Drafting and Interpretation of Wrongful Conviction Compensation Statutes*, 69 Clev. St. L. Rev. 219, 241-42 (2021) (discussing history of federal compensation statute and

Congress's concern with compensating the "'few' who are factually innocent" and not all "procedural winners").[5]

This conclusion aligns with the federal courts' treatment of *nolo contendere* pleas in the context of 42 U.S.C. § 1983 claims. *See, e.g.*, *Taylor v. County of Pima*, 913 F.3d 930, 936 (9th Cir. 2019); *Poventud v. City of New York*, 750 F.3d 121 (2d Cir. 2014); *Olsen v. Correiro*, 189 F.3d 52 (1st Cir. 1999). In *Olsen v. Correiro*, for example, the First Circuit held that a claimant whose murder conviction was vacated, but who subsequently pleaded *nolo contendere* to the lesser-included offense of manslaughter with a sentence of "time served," was not entitled to incarceration-related damages. 189 F.3d at 67. The *Olsen* Court observed that:

> "Allowing the incarceration-related damages Olsen seeks would undermine the availability of *nolo* pleas. Although *nolo* pleas represent a compromise on the question of guilt, society accepts them because they produce convictions and sentences that are final. Faced with the prospect of continuing litigation and a possible damages award, prosecutors will not agree to *nolo* pleas, making such pleas less available to defendants. As is demonstrated in this case, *nolo* pleas are of benefit to defendants: Olsen avoided a trial, a possible conviction, and the potential for additional imprisonment. Ensuring the continuing availability of *nolo* pleas requires that we not allow Olsen to avoid the full force and effect of his plea.
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> "These policies of finality and the prevention of collateral attack on criminal convictions dictate against permitting Olsen to recover damages for his imprisonment. Olsen is not free to question the finality of his valid imprisonment by an action for incarceration-based damages. Olsen's valid manslaughter

[5] The Court's use of the phrase "procedural winner" reflects only the grounds upon which Petitioner prevailed in his prior appeal and the benefit that expunction can provide following a plea of guilty or *nolo contendere*. *See Terzian*, 162 A.3d at 1234 (excluding evidence of a firearm and a pepper-spray cannister recovered from Petitioner's home during an unjustified warrantless search). Violation of one's Fourth Amendment rights is also a "miscarriage of justice," and an individual who suffers such a violation is not a "winner" by any sense of the word, but the legal remedy for such a violation is the exclusionary rule. *See Ornelas v. United States*, 517 U.S. 690, 704 (1996) ("[T]he issue in these probable-cause and reasonable-suspicion cases is not innocence but deterrence of unlawful police conduct.").

> conviction and sentence are the sole legal cause of his incarceration." *Id.* at 69-70; *see also id.* at 67 n.17 (citing *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)) (noting that § 1983 remedies need not "always and everywhere be available").

This Court acknowledges that the reasoning in *Olsen* relied heavily on the fact that the claimant's sentence following his plea was "time served," thereby providing an independent and not "wrongful" justification for his prior incarceration. *See id.* at 70; *see also Poventud*, 750 F.3d at 135 (summarizing the *Olsen* Court's reasoning as permitting "Olsen to collect a considerable sum in 'incarceration-based damages' would have impugned the validity of his later manslaughter conviction, as Olsen did not serve a day in prison over his *lawful sentence* for manslaughter, despite his initial murder conviction.") (emphasis added)); *Ricks*, 968 N.W.2d at 434 (noting that an undisturbed conviction provides "an adequate and independent basis for the claimant's incarceration"). Here, however, Petitioner's sentence following his plea to simple assault did not include "time served," or any term of incarceration for that matter, only a "filing." (Pet. Ex. D (Req. to Enter Plea of *Nolo Contendere* or Guilty) 2.)

Further, recent academic articles and advocates in the innocence movement have noted the potential shortcomings of civil remedies that do not account for situations where factually innocent claimants cannot make a showing of legal innocence. *See, e.g.*, John H. Blume & Rebecca K. Helm, *The Unexonerated: Factually Innocent Defendants Who Plead Guilty*, 100 Cornell L. Rev. 157 (2014); *Why Do Innocent People Plead Guilty to Crimes They Don't Commit?*, Guilty Plea Problem, https://guiltypleaproblem.org/; *see also* Caroline H. Reinwald, Note, *A Deal with the Devil: Reevaluating Plea Bargains Offered to the Wrongfully Convicted*, 99 N.C. L. Rev. Forum 139 (2021) (discussing challenges in the context of § 1983 claims). These articles include numerous anecdotal accounts of factually innocent individuals who nevertheless elected to plead to their offenses after vacatur and years of wrongful incarceration in

order to secure immediate release from prison. *See* Blume & Helm, *supra*, at 172-80; Reinwald, *supra*, at 147-53.

Nevertheless, Rhode Island provides various mechanisms for claimants to withdraw a prior plea and establish legal innocence. *See* Super. R. Crim. P. 32(d) (allowing withdrawal of a guilty or *nolo* plea "before sentence is imposed or deferred or probation is imposed or imposition of sentence is suspended"); *State v. Williams*, 122 R.I. 32, 37, 404 A.2d 814, 817 (1979) (where Rule 32(d) is unavailable, a claimant can challenge a guilty or *nolo* plea through an application for postconviction relief pursuant to G.L. 1956 § 10-9.1-1). Similar to the First Circuit's reasoning in *Olsen*, inclusion of a legal innocence requirement in the "eligibility step" of § 12-33-2 is designed to prevent claimants from using the Compensation Statute to collaterally attack a valid, undisturbed prior judgment of conviction. *See Olsen*, 189 F.3d at 69-70; § 12-33-2; *see also Sorenson v. Colibri Corp.*, 650 A.2d 125, 128 (R.I.1994) (courts "consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections."). As such, a claimant who has not pleaded legal innocence to satisfy § 12-33-2 and who has not asserted the unavailability of any other avenue to establish his legal innocence despite a claim of factual innocence has not satisfied the pleading requirements of the Compensation Statute, and the claim may be dismissed. *See* § 12-33-2(c).

Here, Petitioner does not assert his factual innocence, nor does he claim that he has sought postconviction relief to establish his legal innocence in accordance with § 12-33-2(a)(2). *See generally* Pet. He claims only that the crime to which he ultimately pled—simple assault—was not "charged" in his original accusatory instrument. (Pet'r's Mem. 2.) Rhode Island law is clear, however, that "[b]y statute, an indictment or information is deemed to charge, and the

accused is deemed to be on notice, of all lesser offenses necessarily included within the charged instrument." *See* John A. MacFadyen & Barbara Hurst, *Rhode Island Criminal Procedure Issue 4* § 7.4, at 62 (1993); *see also* G.L. 1956 § 12-17-14; Super. R. Crim P. 31(c). Simple assault is a lesser but included offense of felony assault with a dangerous weapon, the original crime charged in Count 1 of Petitioner's accusatory instrument. *See State v. Mercier*, 415 A.2d 465, 467 (R.I. 1980). Rather than arguing factual innocence by any standard recognized in law[6] or in the innocence movement,[7] he has argued for a hyper-technical reading of the words "dismissed" and "crimes charged" that is at odds with Rhode Island case law in an attempt to impermissibly collaterally attack his simple assault conviction. *Cf. Olsen*, 189 F.3d at 69-70.

It is well-settled that this Court must avoid "myopic literalism" that would serve to undermine the intent of the Legislature. *See Ryan*, 11 A.3d at 70-71. Moreover, it is clear from a fair reading of §§ 12-33-2 and 12-33-4—and from a review of decades of literature and case law addressing the innocence movement and wrongful conviction compensation statutes—that the Rhode Island legislature intended to compensate individuals who could demonstrate legal and factual innocence of the crimes charged in the accusatory instrument, including any lesser-included offenses. *See Simeone v. Charron*, 762 A.2d 442, 446 (R.I. 2000) ("A well-established tenet of statutory interpretation posits that the Legislature is 'presumed to know the state of existing law when it enacts or amends a statute.'") (quoting *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1138 n.9 (R.I. 1998)). Absent more, Petitioner's *nolo contendere* plea

[6] *See, e.g.*, Keith A. Findley, *Defining Innocence*, 74 Alb. L. Rev. 1157, 1187-1207 (2010-2011) (summarizing multiple, context-dependent standards of "innocence").

[7] *See, e.g.*, Jeffrey S. Gutman & Lingxiao Sun, *Why Is Mississippi the Best State in Which to Be Exonerated: An Empirical Evaluation of State Statutory and Civil Compensation for the Wrongfully Convicted*, 11 Ne. U. L. Rev. 694, 705 (2019) (noting that The National Registry of Exonerations "does not include those cleared of an offense, but who participated in 'a lesser crime that involved the same conduct' . . . [and] excludes any case in which a defendant pled guilty to any charge that is factually related to the original vacated conviction.").

to an amended charge of simple assault precludes his claim for compensation pursuant to § 12-33-2. *See* § 12-33-2(c).

IV

Conclusion

For the reasons set forth herein, this Court grants Defendant's Motion for Judgment on the Pleadings.

Counsel shall prepare the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Boghos "Paul" Terzian v. Seth Magaziner, in his capacity as General Treasurer of the State of Rhode Island**
CASE NO:	**PM-2021-07092**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**February 7, 2023**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
For Plaintiff:	**John Mancini, Esq.**
For Defendant:	**Marissa D. Pizana, Esq.**