Circuit Court for Charles County
Case No. 08-K-86-000423

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0408

September Term, 2019

JERRY LEE JENKINS

v.

STATE OF MARYLAND

Fader, C.J.,
Meredith,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 5, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Jerry Lee Jenkins petitioned the Circuit Court for Charles County pursuant to Section 8-301 of the Criminal Procedure Article seeking a writ of actual innocence. The circuit court denied Jenkins' petition, noting his conviction was previously vacated pursuant to Section 8-201 of the Criminal Procedure Article, and concluding there was no further relief that could be granted by the court. Jenkins filed the instant appeal to challenge that determination, presenting one question for our review:

> Did the circuit court commit legal error in denying [Jenkins'] petition for writ of actual innocence?

Finding no error with the judgment of the circuit court, we affirm.

BACKGROUND

The peculiarities of our legal system can, at times, give rise to peculiar outcomes. This is one such case. Jerry Lee Jenkins, the subject of the instant appeal, is an exoneree who served an extended sentence after being wrongly convicted. Ironically, for Mr. Jenkins, the dismissal of his charges and the subsequent vacation of his conviction have undoubtedly been the source of both tremendous relief and tremendous frustration. That is because Mr. Jenkins finds himself in the unique position of being one who has been simultaneously vindicated and excluded through a statutory scheme that was developed to benefit individuals precisely like himself. We explain.

In 1988, Mr. Jenkins was convicted in the Circuit Court for Charles County of rape and sex offense, both in the first degree. New developments arose nearly two decades later in 2004 when Norman Bruce Derr, a serial-rapist then serving multiple life terms in a Virginia prison, was found to be a cold case DNA match in the rape of another Charles

County woman in 1984. The facts in this separate incident were consistent with those of the rape for which Mr. Jenkins was convicted. Seven years later, in 2011, DNA evidence was discovered in the Charles County Sheriff's Office's evidentiary storage area. That DNA evidence was tested at Mr. Jenkins' request pursuant to Section 8-201 of the Criminal Procedure Article ("CP"). The results of the DNA testing definitively excluded Mr. Jenkins as the perpetrator of the 1986 rape and indicated that Norman Bruce Derr could not be excluded.

Mr. Jenkins subsequently filed a motion for new trial, again pursuant to CP § 8-201. On June 7, 2013, a hearing on that motion was held. The parties filed a joint order requesting the circuit court to vacate Mr. Jenkins' conviction. The State also submitted that, rather than proceeding to a new trial, it would be dismissing the case. After a brief presentation from both parties, the court ruled as follows:

> I am very happy to [sign the parties' joint order]. Mr. Jenkins' conviction will be vacated. His status as a sex offender shall be revoked, and his name shall be expunged from the Maryland Sex Offender Registry. Conditions of Mr. Jenkins' probation shall be modified to eliminate any conditions that have been imposed as a result of his rape conviction and former status as a sex offender.

The court's order was signed the same day.

Later, in 2017, there was some legislative action with particular implications for exonerees like Mr. Jenkins. Up to that point, Section 10-501 of the State Finance and Procurement Article ("SFP") allowed compensation from the Board of Public Works only to individuals who had received a Governor's Pardon for their convictions. However, pursuant to a new enactment, the provision was amended, extending that possibility to

those who had received a writ of actual innocence and certification of conviction in error under CP § 8-301. After being forestalled in his efforts to receive a Governor's pardon for his conviction, Mr. Jenkins petitioned the court to receive a writ of actual innocence from the court under CP § 8-301, despite his prior exoneration.

Noting that Mr. Jenkins' conviction had already been vacated, the circuit court determined that there was no basis upon which relief could be granted and summarily dismissed the petition. Mr. Jenkins timely filed an appeal of that decision with this Court.

DISCUSSION

The instant appeal calls on this Court to address the scope of a particular statute and ultimately turns upon our construal of a single phrase. Mr. Jenkins frames the matter broadly, asking us to contend with a seeming incongruity between three statutory provisions in the Maryland Code: Sections of 8-201 and 8-301 of the Criminal Procedure Article, and Section 10-501 of the State Finance and Procurement Article. The three provisions together form a constellation of legal authority with particular implications for the wrongly convicted. Sections 8-201 and 8-301 broadly address methods and remedies available to convicted persons seeking to overturn their convictions. Section 10-501 affords some remediation—financial awards from the State—if particular standards are met. Though this appeal generally concerns the interrelation of these three statutes, as a matter of law, the only question that truly lies before this Court is the breadth of certain language within CP § 8-301.

Mr. Jenkins' peculiar attempt to avail himself of a statute directed toward the

exoneration of the wrongly convicted after having already received that precise relief under a different provision of the Maryland Code is the product of a perceived inequity in the scope of SFP § 10-501. In relevant part, the statute provides:

> (b) An individual is eligible for a grant under subsection (a) of this section if:
>
> > (1) the individual has received from the Governor a full pardon stating that the individual's conviction has been shown conclusively to be in error; or
> >
> > (2) *The State's Attorney certifies that the individual's conviction was in error under § 8-301 of the Criminal Procedure Article.*

Id. (emphasis added). Where either of the two noted qualifications are met, an erroneously convicted person becomes eligible for payment in "an amount commensurate with the actual damages sustained by the individual[,]" as well as "a reasonable amount for any financial or other appropriate counseling for the individual, due to confinement" from the Board of Public Works. *Id.* § (a)(1). What is plain from the language of SFP § 10-501 is that, aside from receiving a Governor's pardon, the only recognized avenue for eligibility is through CP § 8-301—to the exclusion of those exonerated under CP § 8-201.

That differentiation may be viewed as problematic because, in practicality, it is likely to amount to a distinction without a difference. Both provisions are capable of reaching an overlapping class of individuals, however small that class may be. After all, one pursuing exoneration through exculpatory DNA evidence—contemplated by CP § 8-201—will in some instances *be* a person seeking exoneration through the introduction of newly discovered evidence—as contemplated by CP § 8-301. Thus, SFP § 10-501

excludes those who, as a matter of common logic, might otherwise be thought to fall within its purview.

Mindful of this statutory context, the parties' arguments largely turn on issues of scope. Jenkins generally notes that the distinction between CP §§ 8-201 and 8-301 is superficial, and the mere fact that Jenkins received his relief under the former rather than the latter provision should not deprive him of the opportunity to avail himself of SFP § 10-501. Jenkins then emphasizes that CP § 8-301 affords one previously charged and convicted of a crime triable in the circuit court with the ability to seek relief under that provision "at any time." As such, he maintains that his having already received relief under § 8-201 is immaterial given his capacity to meet the statute's other qualifications, and that he may properly avail himself of § 8-301. The State, conversely, argues for a more constrained reading, averring that because Jenkins previously received relief under § 8-201, none of the remedies specifically provided for under § 8-301 were available to him. Consequently, his claim should be considered moot. The State does recognize Jenkins' precarious position, acknowledging that "[t]here does not appear to be a logical reason for excluding defendants exonerated via § 8-201 from compensation eligibility[,]" but nonetheless asserts that he is simply "complaining to the wrong branch of government."

I. "AT ANY TIME" IN THE CONTEXT OF CP § 8-301

Despite this matter presenting a latent inconsistency between three provisions, this Court's decision ultimately concerns only one. Our interpretation of CP § 8-301 is dispositive. The pertinent language of the provision reads as follows:

Claims of newly discovered evidence

(a) A person charged by indictment or criminal information with a crime triable in the circuit court and convicted of that crime may, *at any time*, file a petition for writ of actual innocence in the circuit court for the count in which the conviction was imposed if the person claims that there is newly discovered evidence that:

(1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; or

(ii) if the conviction resulted from a guilty plea, an Alford plea, or a plea of nolo contendere, establishes by clear and convincing evidence the petitioner's actual innocence of the offense or offenses that are the subject of the motion; and

(2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

* * *

Hearing

(e)(1) Except as provided in paragraph (2) of this subsection, the court shall hold a hearing on a petition filed under this section if the petition satisfies the requirements of subsection (b) of this section and a hearing was requested.

(2) *The court may dismiss a petition without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted.*

Power of court to set aside verdict, resentence, grant a new trial or correct sentence

(f)(1) *If the conviction resulted from a trial, in ruling on a petition filed under this section, the court may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate*.

Id. (emphasis added).

Though Jenkins emphasizes his compliance with CP § 8-301(a)'s two subsidiary

prongs, that point is largely immaterial. We are concerned, rather, with the three words highlighted in paragraph (a)—"at any time." As this case turns on our interpretation of the breadth of the language in § 8-301, our task is to determine the appropriate statutory construction. In conjunction, we note that when reviewing the legal sufficiency of a petition for writ of actual innocence, our review is conducted *de novo*. *State v. Hunt*, 443 Md. 238, 247 (2015).

The canons of statutory construction are well-established, and there are certain baseline principles that guide courts in this process. Chief among those principles is the "cardinal rule" of statutory interpretation: "ascertain and effectuate the intent of the legislature." *Mayor & City Council of Oakland v. Mayor & City Council of Mountain Lake Park*, 392 Md. 301, 316 (2006). *See also Neal v. Baltimore City Board of School Commissioners*, No. 21, Sept. 2019, slip op. at 14 (Md. 2020); *Andrews & Lawrence Professional Services, LLC v. Mills*, 467 Md. 126, 149 (2020); *Goshen Run Homeowners Association, Inc. v. Cisneros*, 467 Md. 74, 107 (2020).

The Court of Appeals has offered guidance as to how our analysis of a statute should be performed. In *Ray v. State*, the Court explained:

> We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the statute is clear and unambiguous, we need not look beyond the statute's provisions and our analysis ends. Occasionally we see fit to examine extrinsic sources of legislative intent merely as a check of our reading of a statute's plain language. In such instances, we may find useful the context of a statute, the overall statutory scheme, and archival legislative history of relevant enactments.

> If, however, the language is subject to more than one interpretation, it is ambiguous and we endeavor to resolve that ambiguity by looking to the statute's legislative history, case law, statutory purpose, as well as the structure of the statute. When the statute is part of a larger statutory scheme, it is axiomatic that the language of a provision is not interpreted in isolation; rather, we analyze the statutory scheme as a whole considering the purpose, aim or policy of the enacting body and attempt to harmonize provisions dealing with the same subject so that each may be given effect.

410 Md. 384, 404-05 (2009) (internal quotations and citations omitted). Thus, our analysis consists first in an interpretation of the plain meaning of the statutory language and then, if necessary, a consideration of contextual information that may inform the intended construction.

In looking at CP § 8-301(a), a literal reading of portions of the statute might be thought to extend it to an individual like Mr. Jenkins. He, after all, was charged with a crime, tried in circuit court, and convicted of that crime. Likewise, the phrase "at any time," read literally, does not on its face indicate any temporal limitation on when a party may proceed under the statute. By that logic, Jenkins concludes that he may utilize the statute, prior exoneration notwithstanding. To counter this literal reading, the State highlights other portions of the statute to indicate its intended limitations. In particular, it notes that "there was no remedy available to Jenkins"—because he already had his convictions vacated, he could not take advantage of the remedies explicitly provided for in the statute: "set[ting] aside the verdict, resentenc[ing], grant[ing] a new trial, or correct[ing] the sentence[.]" CP § 8-301(f)(1).

The statutory language cited by the State lends important context. All of the remedies provided for under CP § 8-301 implicitly contemplate one who has yet to have

their charges dismissed or their sentence vacated. Indeed, for individuals who *have* seen their charges dismissed and their sentence vacated, the statute affords no relief—the practical benefit of the remedies described in the statute has already been achieved. In the absence of its ability to implement one of these remedies, there is no action for a court to take. Noting that we must "read[] the statute as a whole," *Ray*, 410 Md. at 404, we cannot accept the reading offered by Jenkins, because it effectively asks us to read the language regarding its qualifications apart from the language concerning what parties are being qualified for. *See, e.g.*, *State v. Johnson*, 415 Md. 413, 421 (2010) ("We . . . do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather the plain language must be viewed . . . considering the purpose, aim, or policy of the Legislature in enacting the statute."). The remedies explicitly stated in the statute provide a direct indication of what it was intended to accomplish and, more particularly here, whom it was meant to serve. That, at a minimum, must be those who can actually take advantage of the remedies it provides. Thus, while Jenkins' literal reading of the statute is superficially consistent with its plain language, it renders that portion of the statute prescribing remedies for the court nugatory. *See Kranz v. State*, 459 Md. 456, 475 (2018) (noting that a proffered reading of a statute "perhaps conforming, at least superficially, to its plain language" may not "ignore[] the requirement that statutory construction must be reasonable and consistent with the overall legislative scheme and must not render any other provision of the scheme meaningless or nugatory").

The implications of our findings are threefold. First, we hold that the language of the statute is unambiguous—a plain reading of the statute as a whole indicates the legislature's intent to make CP § 8-301 available only to those with standing convictions, and minimally to those who could actually take advantage of the remedies it provides. Second, by extension, we conclude that Jenkins' reading was erroneous, as it would extend the qualifications of the statute to persons it was not meant to reach. Third, we must look favorably upon the State's argument concerning the mootness of Jenkins' claim. Prior to his attempt to avail himself of CP § 8-301, Jenkins had all charges against him dismissed and his conviction vacated. As a result, in considering Jenkins' petition for writ of actual innocence the circuit court had no effective remedy under the statute that it could provide, and, as a matter of law, the issue before the court was no longer 'live' so as to warrant judicial action. *See, e.g.*, *D.L. v. Sheppard Pratt Health System, Inc.*, 465 Md. 339, 351-52 (2019) ("Generally, a case is moot if no controversy exists between the parties or when the court can no longer fashion an effective remedy." (internal quotation omitted)); *Kranz v. State*, 459 Md. 456, 472 (2018) ("Ordinarily, a case becomes moot when the issues presented are no longer 'live' or the parties lack a cognizable interest in the outcome." (quoting *McMannis v. State*, 311 Md. 534, 538 (1988)). Thus, Jenkins' claim was properly rendered moot.

This holding, we think, aligns with analogous Maryland jurisprudence. Mr. Jenkins' circumstance is unique, and there is no robust body of case law addressing the issue that he presents. However, our primary point of reference here is the Court of Appeals' decision

in *Barnes v. State*, 423 Md. 75 (2011). In *Barnes*, the Court of Appeals dismissed appellant Kenneth Barnes' case as moot after he attempted to avail himself of Maryland Rule 4-345(a), which allows a person to challenge an illegal sentence, even though his sentence had already been served. Notably, Rule 4-345(a) provides that "[t]he court may correct an illegal sentence *at any time*." (Emphasis added).

In *Barnes*, the Court was presented with a somewhat convoluted procedural and factual background. To review, in 1998, Mr. Barnes pled guilty to third-degree sexual offense. Following his conviction, the court imposed a ten-year suspended sentence with a four-year period of supervised visitation. Though the court did not expressly order Barnes to register as a sex offender, the Maryland Division of Parole and Probation provided him with a form stipulating that he was, in fact, obligated to do so. After the end of his probationary period, Barnes moved to a new address but failed to notify his supervising authority pursuant to statutory requirement. Consequently, he was charged by the State for failing to provide the requisite notice, and received a new three-year suspended sentence with three-year supervisory probation, along with a requirement that he live with his mother. Shortly thereafter, it was determined that Barnes was maintaining a separate residence in violation of his probation. He was subsequently convicted of violating his probation and ordered to serve the remainder of his three-year sentence. Barnes completed his term and was released.

Following his release, Barnes filed a Motion to Correct an Illegal Sentence pursuant to Rule 4-345(a), making the tangential argument that the circuit court lacked the power to

make him register as a sex offender. The Circuit Court denied the Motion and, on appeal, the State challenged on preservation grounds, arguing that the registration was not a "sentence" that could be challenged under Rule 4-345(a). This Court rejected the State's preservation argument, but affirmed the circuit court's denial on the grounds that Barnes was subject to the State's registration statute. The Court of Appeals granted certiorari to review the decision.

In its review, the Court of Appeals declined to reach the merits of Barnes' argument. Rather, it focused on whether he had a legitimate basis for an appellate challenge under Rule 4-345(a), given that the Rule allows for a challenge to an illegal sentence and Barnes' sentence had already been served. Noting that "Barnes filed His Motion to Correct an Illegal sentence on March 26, 2009" but that "Barnes's incarceration for his 2005 conviction had ended almost a year earlier, on May 29, 2008," the Court discussed the limitations of Rule 4-345(a). *Barnes*, 423 Md. at 87. The Court explained that because the Rule "simply permits a court to revise an illegal sentence, rather than to modify or overturn the underlying conviction, it follows that a court can no longer provide relief under that rule once a defendant has completed his or her sentence." *Id.* at 86. In articulating its holding, the Court stated:

> As we explained above, a Rule 4-345(a) motion is not specifically or exclusively designed to challenge the 'validity' of incarceration. The Rule simply grants the trial court limited continuing authority in the criminal case to revise the sentence. *In other words, there must be a sentence to revise. Here, because Barnes served his full sentence, there is no "sentence" for us to revise, meaning that we can no longer fashion a remedy. Accordingly, we dismiss Barnes' case as moot.*

Id. at 88 (internal quotations and citations omitted) (emphasis added).

We think the issue presented in this case parallels the issue in *Barnes*. In both instances, the words "at any time" are included without qualification. However, as the *Barnes* court acknowledged, those words must be read in the context of the whole provision and with reference to the remedy it allows a court to effectuate. Where, as here, a statute specifically contemplates a remedy that may be conferred by the court, there must be some predicate for the conferral of that remedy to justify judicial action under the statute. The absence of that object of judicial action leaves the court unable to fashion an effective remedy, and thus renders the issue moot.[1]

[1] In fairness, we acknowledge that Jenkins' argument in this case is not frivolous. The Court of Appeals' plurality decision in *Barnes* included one judge concurring in judgment only, and three dissenting. In particular, Judge Eldridge challenged the plurality's reading, noting three primary objections:

> [*First*,] the plurality's decision cannot be squared with the plain language of Rule 4-345(a). In a few clear, unqualified words, the Rule states (emphasis added): "The court may correct an illegal sentence *at any time*." The plurality would insert into the Rule the words "before expiration of the sentence," or similar language, as a limitation or qualification of the phrase "at any time." In so doing, the opinion violates the principle that a court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the enactment. . . .
>
> [*Second*,] when the framers of Rule 4-345 and this Court intended a qualification of the phrase "at any time," they did so expressly, Thus paragraph (d) of Rule 4-345, relating to a court's authority over sentences for certain types of offenses, begins as follows (emphasis added): "At any time *before expiration of the sentence* in a case involving," etc. Paragraph (a) of the Rule, however, does not include the qualification "before expiration of the sentence. . . ."

II. LEGISLATIVE CONTEXT

Our holding that the language of the statute is unambiguous is dispositive of this appeal in its own right. However, we would note, consistent with our "occasional" desire to "examine extrinsic sources of legislative intent" as a means of "check[ing] . . . our reading of a statute's plain language[,]" that our holding is also consistent with a review of apposite legislative context.

Most pertinently, we would look to legislation presently being considered by the

> [*Third*,] the plurality's theory is that, "once a defendant has completed his or her sentence * * *, there is no longer a sentence to correct and a court should dismiss the sentence as moot . . . ." The sentence, however, still exists. It has not been expunged. A countless number of situations occur where a prison sentence has collateral consequences. . . . Nevertheless, he may in the future be subject to consequences resulting from the conviction and sentence.

Barnes, 423 Md. at 89 (some internal citations and quotations omitted) (Eldridge, J., dissenting).

Recognizing the significance of those grievances raised by Judge Eldridge, we nonetheless find a review of the circumstances in Jenkins' case to warrant a reading more akin to that of the plurality in *Barnes* than the dissent. That is due primarily to the fact that none of the issues Judge Eldridge identified in the quoted language above are applicable to the case at bar. CP § 8-301, unlike Rule 4-345, contains no separate, qualified use of the term "at any time" that would otherwise support the inference that it was intended to be read literally. Also, we do not consider our construction to inappropriately 'read in' language or meaning that was not intended, because we believe it to be consistent with the understanding of the language by the legislature. *See infra*, Discussion – Part II. Lastly, whereas the sentence and conviction may still have been said to 'exist' in *Barnes* so as to serve as a predicate for judicial action, that is not the case for Mr. Jenkins. The charges against him were dismissed, and his conviction vacated. Thus, this matter may be differentiated from one where the underlying record and conviction had yet to be expunged. And, to the extent Mr. Jenkins' inability to receive compensation under a separate but related statute qualifies as a collateral consequence, it is clear that such consequence would result from an omission in the statutory scheme rather than from the already vacated conviction that Jenkins would make the target of his CP § 8-301 challenge.

General Assembly.[2] House Bill 985 for the 2020 legislative session, co-filed with Senate Bill 797, directly addresses the issue of compensatory awards for exonerees. The bill includes a comprehensive package of statutory amendments all centered on the standards, methods and processes by which people may seek exoneration and, upon such exoneration, pursue compensation. The revised Fiscal and Policy Note describes the bill as follows:

> This bill makes several changes to existing provisions pertaining to payments by the Board of Public Works (BPW) to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. Among other things, the bill modifies the procedures and criteria for eligibility, including requiring an Administrative Law Judge (ALJ) in the Office of Administrative Hearings (OAH) to make specified findings related to eligibility and compensation. The bill applies retroactively to any application for compensation or benefits pending on or after the bill's effective date and must be construed to allow a person to apply for modification of any compensation awarded by BPW between January 1, 1984 and June 30, 2019, inclusive.

Fiscal and Policy Note, H.B. 985, 2020 Leg., 441st Sess. at 2 (Md. 2020) (revised March 18, 2020).

The initial version of the bill contemplated revisions only to the State Finance and Procurement Article and the State Government Article of the Maryland Code. H.B. 985, 2020 Leg., 441st Sess. at 2 (Md. 2020) (as introduced by House, Feb. 5, 2020). However, after undergoing significant revision within the House chamber, the scope of the bill was broadened. By the time the bill reached its third reading and was passed along to the Senate, language had been incorporated that would directly address the existing distinction

[2] We duly note that, out of concern for circumstances surrounding the novel coronavirus and COVID-19 pandemic, the General Assembly adjourned the legislative session early, *sine die*, on March 18, 2020.

between CP §§ 8-201 and 8-301 as they relate to SFP § 10-501. H.B. 985, 2020 Leg., 441st Sess. (Md. 2020) (as passed by House, March 16, 2020). The revised bill aimed to amend § 8-201 to include a provision allowing the State's Attorney to certify that a conviction was in error—precisely the power conferred under the current version of § 8-301. *Id.* at 4. Consistent with that, it further proposed making those with a certification of error under either 8-201 or 8-301 eligible to receive compensation under SFP § 10-501 pursuant to the findings of an administrative law judge. *Id.* at 5-7.

Proposed revisions in the Senate were substantial but remained consistent in eliminating the distinction between those exonerated under § 8-201 and § 8-301 for purposes of pursuing compensation. Rather than amending CP § 8-201, the Senate instead proffered the creation of a new provision under Title 8 of the Criminal Procedure Article, a proposed Subtitle 8-110, which would allow any "individual whose judgment of conviction was reversed or vacated" to seek a certification from the State's Attorney. S. Jud. Proc. Comm., Amend. 968576/1, H.B. 985, 2020 Leg., 441st Sess. (Md. 2020) (adopted, March 18, 2020). These individuals would then be brought within the purview of SFP § 10-501 and potentially be eligible for compensation. *Id.*

Though of relatively little persuasive value, we would also note that testimony offered before the House Judiciary Committee further indicated the legislature's cognizance of the distinction between §§ 8-201 and 8-301. During a February 26, 2020 hearing, members of the House heard testimony from a panel including, among others, bill sponsor Del. Kathleen Dumais and Ms. Michelle Feldman. Ms. Feldman, currently State

Campaigns Director at the Innocence Project,[3] offered the following testimony:

> This legislation is the result of a meeting that [Baltimore County State's Attorney] Scott Shellenberger and Delegate Dumais and Senator Kelley and the Innocence Project had in the fall. This is the language that we all developed together and it's based on laws that we passed in Kansas and Nevada, so it aligns Maryland's law with the way it works in most other states. . . .
>
> The . . . important thing that it does is that—*right now you can only get compensated if you get a writ of actual innocence that is certified by the State's Attorney or a Governor pardon* which—both of which are nearly impossible. *So there's DNA exonerees who are not eligible. Demetrius Smith, who you'll hear from—the actual perpetrator is in prison but [Smith] didn't get exonerated under the writ of actual innocence so he is not eligible.* So this allows people who get a finding from an administrative law judge that they did not commit the crime to be eligible for compensation, because there's many different ways to overturn a wrongful conviction in Maryland and the, the bottom line is, you should get it if you can prove your innocence. It shouldn't matter how it was overturned.

Compensation to Individual Erroneously Convicted, Sentenced, and Confined or Whose Conviction or Adjudication is Reversed (The Walter Lomax Act): Hearing on H.B. 985 Before the H. Jud. Comm., 2020 Leg., 441st Sess. (Md. 2020) (Statement of Michelle Feldman, State Campaigns Director, Innocence Project) (emphasis added).[4]

[3] The Innocence Project is a national nonprofit organization working for the benefit of the wrongly convicted. *About*, INNOCENCE PROJECT https://www.innocenceproject.org/about/ (last visited April 17, 2020). It accomplishes its mission through direct representation of those wrongly convicted, strategic litigation, policy advocacy, and providing social support for exonerees post-release. *Id.*

[4] Demetrius Smith, recognized during Ms. Feldman's testimony, was formerly convicted and subsequently exonerated for murder. He explained that "even though the real perpetrators have [since] been convicted, I am still not eligible for compensation. I wasn't exonerated through the writ of actual innocence, so I'm out of luck. There are different ways that people can overturn their wrongful convictions. . . . It's been hard to

Though neither the various legislative machinations nor the testimony recounted above center directly on the "any time" language of § 8-301, they do substantiate some inferences in support of our reading. At the very least, the legislature is aware of the issue confronting Mr. Jenkins and those similarly situated. The proposed H.B. 985 and its numerous amendments illustrate a conscious effort to address the range of individuals considered eligible for compensation from the State. Some of the proposed legislation is directed specifically toward including DNA exonerees, among others, within that class. These acknowledgments run contrary to Jenkins' theory on appeal. In a world in which all exonerees could avail themselves of § 8-301 regardless of the basis or timing of their exoneration, no such legislative effort would be necessary. Individuals like Mr. Jenkins or Mr. Smith, referenced above, could simply move through § 8-301 to make themselves eligible for compensation. But contrary to Jenkins' argument, it appears the understanding within the legislature is that § 8-301 is not so broad as to bring those already exonerated under other provisions within its fold. Rather, the facts adduced above are consistent with our holding that 8-301 should be read to apply only to those seeking prospective relief as specifically described in that statute. Those people may petition the court "at any time"—others may not.

With that said, in addition to providing indicia of legislative intent, the above also serves to highlight how pervasive the influence of the legislature is with regard to this

restart my life without compensation. . . . The bill would give me a fair shot at getting the compensation I deserve, and I hope you will support it."

particular subject. We think it worth noting that all of those rights at issue in this appeal are created by statute and fall within a statutory scheme under active revision. That, for us, is not a trivial fact. Perhaps if the relief sought found its origin in the common law, we would be inclined to extend it as part of this Court's power to fill such interstitial gaps. However, where, as here, the entire field is the product of legislative enactment, we would yield to the General Assembly, the source of all governing authority in this sphere. That deference is particularly warranted in a situation like this one, where the relief for the issue presented is the explicit subject of consideration for forthcoming legislation. The General Assembly may choose to act, and it may not. But it is not our place to supplant a legislature's understanding of the laws that it enacts, or to prospectively address issues that it is already contemplating with intention. We would neither preempt nor undercut its authority in that way.

CONCLUSION

In this case, Mr. Jenkins finds himself on the periphery of a statutory scheme that would be thought to serve individuals precisely like himself. While this Court acknowledges the spirit in which Mr. Jenkins raises his argument on appeal, we cannot accord his position merit under the law. We hold that CP § 8-301 cannot be read so broadly as to be applicable to individuals previously exonerated by other means. To avail themselves of § 8-301, an individual minimally must be able to take advantage of the remedies it prescribes. Because of Mr. Jenkins' prior exoneration, he is not so capable. Consequently, there was no remedy that the circuit court could grant pursuant to CP § 8-

301, and we find no error in its judgment.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.