

STATE OF MINNESOTA

IN SUPREME COURT

A20-1098

Court of Appeals

Moore, III, J.
Dissenting, Gildea, C.J., Anderson, Chutich, JJ.

Danna Rochelle Back,

Appellant/Cross-Respondent,

vs.

Filed: May 24, 2023
Office of Appellate Courts

State of Minnesota,

Respondent/Cross-Appellant.

Joseph A. Gangi, Daniel J. Bellig, Farrish Johnson Law Office, Chtd., Mankato, Minnesota,
for appellant/cross-respondent.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Brittany D. Lawonn, Senior Assistant County
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S Y L L A B U S

When a petitioner’s claim of innocence is not restricted to or based on facts and turns on an issue of legal significance, the petitioner has not established “any evidence of factual innocence,” as required by Minnesota Statutes section 590.11, subdivision 1(c)(2) (2022), and therefore is not eligible for compensation based on exoneration.

Reversed.

OPINION

MOORE, III, Justice.

In this case, we must once again decide whether appellant/cross-respondent Danna Rochelle Back is entitled to an order from the district court declaring her eligible to submit a petition seeking compensation based on exoneration under Minnesota’s Incarceration and Exoneration Remedies Act, Minnesota Statutes sections 611.362 to 611.368 (2022). The central issue in this case is whether Back has established, by a fair preponderance of the evidence, that she is “exonerated” within the meaning of Minnesota Statutes section 590.11 (2022) (the eligibility-for-exoneration-compensation statute). *See* Minn. Stat. § 590.04, subd. 3 (2022). In order to meet that standard, Back must prove that a court “vacated, reversed, or set aside a judgment of conviction on grounds consistent with innocence,” requiring a showing of “any evidence of factual innocence.” Minn. Stat. § 590.11, subd. 1.

After a hearing, the district court found Back was eligible for compensation based on a finding of exoneration. The court of appeals agreed that Back was “exonerated,” but it also concluded that the eligibility-for-exoneration-compensation statute gives a district court the discretion to determine whether those exonerated from their criminal convictions on grounds consistent with innocence are eligible for compensation, even if they meet the other statutory criteria, and that the district court failed to exercise that discretion. *Back v. State*, 964 N.W.2d 159, 165–66 (Minn. App. 2021), *rev. granted* (Minn. Aug. 24, 2021). The court of appeals reversed and remanded to the district court to exercise that discretion, *id.* at 166, and we accepted the parties’ petitions for further review. We conclude that Back has not presented “any evidence of factual innocence,” Minn. Stat. § 590.11, subd. 1(c)(2),

for the reason that her claim turns on an issue of legal significance instead of being restricted to or based on facts. Therefore, we hold that Back is not eligible for compensation based on exoneration, and we reverse the decision of the court of appeals.

FACTS

The facts and circumstances leading to Back’s conviction for second-degree manslaughter are described in detail in *State v. Back (Back I)*, 775 N.W.2d 866 (Minn. 2009), and are summarized here. On January 1, 2007, Back asked Nicholas Super, one of her former boyfriends, to drive her to the house of Daniel Holliday, another of her former boyfriends. *Id.* at 867. Back was aware of tensions between Super and Holliday and that Super had threatened Holliday with a gun several times. *Id.* After arriving, Back entered the house while Super remained outside. *Id.* at 868. Back and Holliday began arguing, Back caused commotion inside the house, Holliday asked her to leave, and their argument continued as they left the house. *Id.* Super intervened and fatally shot Holliday. *Id.* Following a trial, a jury found Back guilty of second-degree manslaughter, Minn. Stat. § 609.205(1) (2022), which requires a person to cause the death of another by “culpable negligence.”

On direct appeal, we reversed Back’s conviction. *Back I*, 775 N.W.2d at 867. Specifically, we explained that “[a] defendant cannot be negligent, culpably or otherwise, unless the defendant has a duty that he or she breached.” *Id.* at 869. The State was trying “to hold Back criminally responsible for the criminal action of a third party” and as a result, the State had to “prove that Back had a special relationship with either [the shooter] or with [the victim] that gave rise to a duty to control [the shooter] or to a duty to protect [the

victim] against the actions of [the shooter].” *Id.* at 871. Because the State presented no evidence to support the existence of a special relationship with either the shooter or the victim, we held that the evidence was not sufficient to prove that Back committed second-degree manslaughter. *Id.* at 872.

In July 2019, Back filed a petition for an order declaring her eligible for compensation based on exoneration.¹ The district court granted Back’s petition, determined that she was exonerated, and held that she is eligible to file a claim for exoneration compensation. But in coming to this conclusion, the district court noted that two subdivisions of the eligibility-for-exoneration-compensation statute were “at odds in this case.” The district court made a “specific finding” that if it were allowed “to balance [Back’s] acts and the other considerations” referenced in section 590.11, subdivision 4, against Back’s showing of exoneration in subdivision 3 (based on the definition in subdivision 1), then Back “would not be entitled to compensation for any period before the conviction was reversed.” However, the district court ultimately concluded that the statute

¹ This was the second exoneration-compensation petition that Back filed after we reversed her conviction for second-degree manslaughter. The district court denied Back’s first petition, determining Back did not meet the statutory definition of “exonerated” in effect at the time. *See* Minn. Stat. § 590.11, subd. 1(1)(i) (2018). The court of appeals determined that Back was exonerated, reversed the district court, and remanded for consideration of other eligibility requirements. *Back v. State*, 883 N.W.2d 614, 624 n.1, 628 (Minn. App. 2016), *rev. granted* (Minn. Sept. 28, 2016). We reversed the court of appeals. *Back v. State*, 902 N.W.2d 23, 25 (Minn. 2017). We held unconstitutional the statute’s definition of “exonerated” that Back relied on for a remedy. 902 N.W.2d at 30–33. Following this decision, the Legislature amended the definition of “exonerated.” Act of May 30, 2019, ch. 5, art. 2, § 13, 2019 Minn. Laws 1st Spec. Sess. 947, 965–66.

did not afford it discretion to weigh those factors and instead held that “the actual wording of the statute . . . requires an order finding [Back] is eligible for compensation.”

The State appealed. The court of appeals held that because our decision reversing Back’s conviction was not a clarification of the law, and instead “an application of existing law,” Back was exonerated within the meaning of the eligibility-for-exoneration-compensation statute. *Back v. State*, 964 N.W.2d 159, 164 (Minn. App. 2021). However, the court of appeals also determined that “the legislature unambiguously granted the district court discretion to consider the evidence” referred to in subdivision 4 of section 590.11 when determining “whether an exonerated petitioner is eligible for compensation.” 964 N.W.2d at 165. The court of appeals held that the district court abused its discretion by failing to exercise this discretion, and as a result, the court of appeals reversed and remanded to the district court to exercise its discretion. *Id.*

Back petitioned for review and the State filed a conditional cross-petition. We granted both petitions and stayed the case pending final disposition in *Kingbird v. State*, 973 N.W.2d 633 (Minn. 2022). After we decided *Kingbird*, we lifted the stay and ordered the appeal to proceed.

ANALYSIS

The State argues that the court of appeals erred in determining that Back is “exonerated” within the meaning of the eligibility-for-exoneration-compensation statute, Minn. Stat. § 590.11. Back argues that the court of appeals erred by holding that the statute affords the district court discretion to deny a petition to an otherwise exonerated petitioner.

For the reasons articulated below, we conclude that Back is not exonerated. Because this determination disposes of the appeal, we need not address Back’s argument.

Minnesota’s Incarceration and Exoneration Remedies Act allows formerly convicted people to obtain compensation after exoneration if they meet specified criteria. Minn. Stat. §§ 611.362–.368. The Act establishes a multistep process for receiving compensation, but only the first step, petitioning the district court, is at issue here. Under that first step, a petitioner must obtain a district court order “under section 590.11 determining that the person is entitled to compensation based on exoneration.” Minn. Stat. § 611.362, subd. 1.

“[W]hether an individual has been ‘exonerated’ ” is the “threshold determination” under the eligibility-for-exoneration-compensation statute. *Back v. State*, 902 N.W.2d 23, 26 (Minn. 2017). As relevant here, a petitioner is exonerated if a court reverses a “conviction on grounds consistent with innocence.” Minn. Stat. § 590.11, subd. 1(b)(1)(i). “On grounds consistent with innocence,” for purposes of this appeal, means that a petitioner is exonerated because a court reversed their conviction “and there is *any evidence of factual innocence* whether it was available at the time of investigation or trial or is newly discovered evidence.” *Id.*, subd. 1(c)(2) (emphasis added).

“We review issues of statutory interpretation de novo.” *State v. Miller*, 977 N.W.2d 592, 597 (Minn. 2022). Since Back’s second petition for exoneration compensation was decided by the court of appeals in 2021, we interpreted the phrase “any evidence of factual

innocence” in *Kingbird v. State*, 973 N.W.2d 633 (Minn. 2022).² Because that interpretation applies to Back’s case, a review of *Kingbird* is essential before turning to Back’s exoneration-compensation claim.

Vaundell Duwayne Kingbird was initially convicted in 2010 of the illegal possession of a firearm as a felon in violation of Minnesota Statutes section 609.165, subdivision 1b(a) (2014), because he possessed a BB gun after he had been convicted of a qualifying offense. *Kingbird*, 973 N.W.2d at 635–36. But after Kingbird’s conviction had become final, we held in *State v. Haywood* that an “air-powered BB gun is not a firearm, and thus [the] possession of it did not violate section 609.165.” 886 N.W.2d 485, 490 (Minn. 2016). Based on *Haywood*, the district court vacated Kingbird’s conviction. *Kingbird*, 973 N.W.2d at 636. Kingbird then filed a petition asking the district court to order him eligible for compensation based on exoneration. *Id.* Kingbird argued that he met the eligibility standard set out in section 590.11, subdivision 1(c)(2), because the vacation of his conviction, based on *Haywood*, was “on grounds consistent with innocence.” *Kingbird*, 973 N.W.2d at 641.

We rejected Kingbird’s argument because it was based on only one element of the definition of “on grounds consistent with innocence” in section 590.11, subdivision 1(c)—a vacated conviction—and failed to establish the second element of that definition—evidence of factual innocence. *Kingbird*, 973 N.W.2d at 641–43. We held that “ ‘factual

² We recognize that the district court and the court of appeals did not have the benefit of our opinion in *Kingbird* when they made their decisions in this case.

innocence’ is the state of being not guilty of a crime (innocence) but only when the reason is restricted to or based on facts (factual).” *Id.* at 642. We determined that Kingbird’s “claim of innocence is not restricted to or based on facts, because without *Haywood*, Kingbird would not be deemed innocent.” *Kingbird*, 973 N.W.2d at 642. Because Kingbird’s case turned on an issue of legal significance, the meaning of the statutory term “firearm”—rather than a claim of innocence restricted to or based on facts—Kingbird’s claim did not squarely fit within the definition of factual innocence. *Id.* Stated differently, the district court vacated Kingbird’s conviction because the State did not have a “*legal* basis” to charge him and not because the facts of his case changed. *Id.* As such, Kingbird did not show “any evidence of factual innocence” and was not “exonerated” under section 590.11. 973 N.W.2d at 642.

In interpreting “factual innocence” under section 590.11, we described the type of petitioner whose case involves “any evidence of factual innocence,” and in that description, we explained the difference between “*actual* innocence” and “*factual* innocence.” *Kingbird*, 973 N.W.2d at 642 n.9. First, factual innocence includes a petitioner whose conviction was overturned “because the *facts* of his case have changed.” *Id.* Some examples of this, we noted, are when “there is evidence that law enforcement and prosecutors ‘got the wrong guy’ or that there was another cause for the death that led to a homicide or murder conviction.”³ *Id.*

³ Two of the cases we discussed are cases that the Legislature considered before passing the eligibility-for-exoneration-compensation statute. First is the case of Koua Fong Lee. Lee “was wrongfully convicted of criminal vehicular homicide after his Toyota Camry accelerated out of his control into another vehicle.” *Kingbird*, 973 N.W.2d at

Second, we reasoned that the Legislature’s use of “*factual* innocence” instead of “*actual* innocence” is informative. *Kingbird*, 973 N.W.2d at 642 n.9. “Actual innocence” is a “well-defined term.” *Id.* Therefore, the Legislature’s use of “the distinct qualifier of *factual* innocence . . . must correspondingly have its own distinct meaning” and does not “extend to any circumstance in which . . . the State did not prove a fact necessary to the conviction” because that is an example of “*actual* innocence.” *Id.*

Applying our interpretation of “factual innocence” from *Kingbird* to Back’s case, we conclude that Back has not presented “any evidence of factual innocence” within the meaning of section 590.11, subdivision 1(c)(2). Just like in *Kingbird*, Back’s claim of innocence is not restricted to or based on facts, and instead turns on an issue of legal significance—the meaning of the statutory term “culpable negligence,” Minn. Stat. § 609.205(1), and the requirement that the State prove that she had a “legal duty” that made her “criminally responsible for the criminal action of a third party.” *Back I*, 775 N.W.2d at 871. And just like in *Kingbird*, Back’s conviction was not reversed because the facts of her case changed. *See* 775 N.W.2d at 871–72. This case does not involve the prototypical examples of persons that we referenced in *Kingbird*, whose convictions were vacated, reversed, or set aside because the facts of their cases changed. *See* 973 N.W.2d at 642 n.9.

642 n.9 (citations omitted) (internal quotation marks omitted). Second is the case of Michael Ray Hansen. Hansen “was wrongfully convicted of second-degree murder for killing his infant daughter who actually died of positional asphyxia.” *Id.* (citations omitted) (internal quotation marks omitted). We said that “[b]oth of those examples would fall cleanly within our interpretation of ‘factual innocence.’ ” *Id.* In each case, the facts changed due to changed or discredited expert testimony on what happened factually. *See id.* (citing the legislative history of the eligibility-for-exoneration-compensation statute). That is not the case here.

Back tries to distinguish her case from *Kingbird* in two ways. First, Back draws a distinction between *Kingbird*, which she claims involves a later clarification of law, and *Back I*, which she contends involves the application of well-established law to her case. Back argues that this is material for our “factual innocence” determination because Kingbird’s conduct was widely viewed as criminal at the time he committed the conduct whereas her conduct has never been viewed as criminal under the law.

We are not persuaded that Back’s distinction is legally significant. In *Haywood*, the case that led to the district court vacating Kingbird’s conviction, we interpreted the illegal-possession-of-a-firearm statute to exclude Kingbird’s conduct. *See* 886 N.W.2d at 490. When we interpret a statute, we are declaring what the language of the statute has meant since it was enacted. If that were not the case, then Kingbird’s conviction could not have been vacated based on the application of *Haywood*, which was decided after Kingbird was convicted. *Cf. Danforth v. Minnesota*, 552 U.S. 264, 271 (2008) (explaining that when the Supreme Court announces a “new rule” of constitutional criminal procedure, “the source of a ‘new rule’ is the Constitution itself, not any judicial power to create new rules of law,” and as a result, “the underlying right necessarily pre-exists our articulation of the new rule”). Therefore, neither Back’s nor Kingbird’s conduct was criminal at the time it was committed.

Second, Back attempts to draw a distinction from *Kingbird* based on our holding in *Back I* that there was insufficient evidence to support her conviction. *Back I*, 775 N.W.2d at 872. According to Back, our direct review of her case was “restricted to or based on facts” because “ ‘insufficient evidence’ is an analysis of the *facts* of a case.” The dissent

makes a similar argument, contending Kingbird’s conviction was reversed based on a legal determination, but Back’s conviction was reversed based on the factual record.

We disagree. Our statutory interpretation of the term “firearm” in *Haywood* was a legal determination. 886 N.W.2d at 490. However, the district court vacated Kingbird’s conviction based on the factual record because there was no evidence that Kingbird possessed a “firearm.” See *Kingbird*, 973 N.W.2d at 636. Similarly, in *Back I* we made a legal determination when we interpreted the term “culpable negligence” in the relevant statute to require the State to prove the existence of a special relationship between the defendant and the victim of a crime or a special relationship that gave rise to a duty to control the shooter in order for the defendant to have a legal duty to protect the victim from the criminal actions of a third person. 775 N.W.2d at 869 (“Whether a person has a duty of care ‘is an issue for the court to determine as a matter of law.’ ” (quoting *Larson v. Larson*, 373 N.W.2d 287, 289 (Minn. 1985))). After articulating the legal standard, we ultimately reversed Back’s conviction because the State had not introduced any evidence to support the existence of a special relationship between Back and the victim or between Back and the shooter. *Id.* at 871–72. Back’s case is not materially different from Kingbird’s in this sense.

In summary, Back has not established any evidence of factual innocence because her claim of innocence is not restricted to or based on facts and instead turns on an issue of legal significance—the meaning of the statutory term “culpable negligence” in section 609.205(1) and the requirement to prove the defendant had a legal duty. Without a showing of factual innocence, Back has not proven that she is “exonerated” under section

590.11, subdivision 1. As a result, we hold that Back is not entitled to an order declaring her eligible for compensation based on exoneration.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.

DISSENT

GILDEA, Chief Justice (dissenting).

The majority concludes that Danna Rochelle Back was not exonerated. I disagree.

We reversed Back’s conviction because the evidence was not sufficient to support her conviction for second-degree manslaughter. *State v. Back (Back I)*, 775 N.W.2d 866, 872 (Minn. 2009). After we reversed her conviction, Back sought exoneration compensation for her wrongful conviction. The district court determined that Back was exonerated under Minn. Stat. § 590.11 (2022) and that Back was eligible for compensation because, under the court’s reading of the statute, such a finding is mandatory when the petitioner was exonerated and did not personally commit the crime. The court of appeals agreed that Back was exonerated but held that whether Back was eligible for compensation, even though she was exonerated, was a matter for the district court’s discretion. *Back v. State*, 964 N.W.2d 159, 165 (Minn. App. 2021). Accordingly, the court of appeals remanded the case to the district court. *Id.* at 166. We granted the State’s conditional cross-petition on the question of whether Back was exonerated and Back’s petition on the question of whether the district court has discretion to decide that she is not eligible for compensation even though she was exonerated. I would affirm the court of appeals on both issues.

I.

In my view, Back was exonerated under the statute. A person has been “exonerated” under the statute if their conviction was “reversed . . . on grounds consistent with innocence.” Minn. Stat. § 590.11, subd. 1(b)(1)(i). And “on grounds consistent with

innocence” means that the conviction was reversed “and there is any evidence of factual innocence whether it was available at the time of investigation or is newly discovered.” *Id.*, subd. 1(c)(2). Back fits that definition.

We reversed Back’s conviction because there was no evidence that she owed a duty of care to the shooter or the victim, which is necessary to support her conviction for culpable-negligence manslaughter. *Back I*, 775 N.W.2d at 871–72. Under Minnesota law, a person can be liable for the criminal acts of third parties if the person has a special relationship with either the perpetrator or the victim such that the person would be in a position to control the perpetrator or safeguard the victim. *Id.* at 870. Because the State did not offer any evidence that Back had the requisite special relationship, we held that the evidence was not sufficient to support her conviction. *Id.* at 872. In other words, Back was factually innocent of the charged crime, and she was exonerated under section 590.11.

The majority comes out differently based on our decision in *Kingbird v. State*, 973 N.W.2d 633 (Minn. 2022). The defendant there possessed a BB gun and was prosecuted for being an ineligible person in possession of a firearm. *Id.* at 636. Kingbird pled guilty and admitted to possessing a BB gun and to being an ineligible person in possession of a firearm. *Id.* Several years after his plea, we held that a BB gun is not a firearm under the statute governing ineligible persons in possession of a firearm. *State v. Haywood*, 886 N.W.2d 485, 487 (Minn. 2016). Kingbird’s conviction was vacated after our decision in *Haywood*, and Kingbird sought exoneration compensation. 973 N.W.2d at 636. We ultimately held that Kingbird was not entitled to exoneration compensation. Because we reversed Kingbird’s conviction based on the legal determination that a BB gun

is not a firearm, we held that he was not exonerated under Minn. Stat. § 590.11. 973 N.W.2d at 642–43.

Kingbird does not compel reversal here. We did not reverse Back’s conviction based on a legal determination as happened in *Kingbird*; we reversed Back’s conviction based on the factual record. Specifically, we reversed Back’s conviction because the State did not prove as a factual matter that she had the required special relationship with either the perpetrator or the victim of the shooting. *Back I*, 775 N.W.2d at 871–72.

Given that we reversed Back’s conviction based on evidence of her factual innocence, I agree with the lower courts and would hold that she was “exonerated” under Minn. Stat. § 590.11, subd. 1(b)(1)(i), (c)(2).

II.

Because I would conclude that Back was exonerated under the statute, I must then analyze the second issue on which we granted review and decide whether the district court may still find as a matter of discretion that Back is not eligible for compensation even though she was exonerated. I agree with the court of appeals that the district court had the discretion to reject Back’s petition. *Back v. State*, 964 N.W.2d 159, 165 (Minn. App. 2021).

Section 590.11 sets out a multistep process in which the petitioner must first establish that she was exonerated. As explained above, I would hold that Back was exonerated.

The statute, however, also requires the district court to determine eligibility for compensation. Back argues that once she has been exonerated, she is automatically entitled to compensation. I disagree.¹

The statute provides for automatic compensation if the State agrees and joins the petition. *See* Minn. Stat. § 590.11, subd. 3(a) (“Upon receipt of prosecutor’s joinder and agreement, the court *shall* issue an order . . . granting petitioner’s eligibility for compensation” (emphasis added)). But if the prosecutor does not join, the statute requires that the court determine “*if* an individual who is exonerated is eligible for compensation.” *Id.*, subd. 3(b) (emphasis added). The burden of proof is on the petitioner, *id.* (noting that burden of proof set forth in Minn. Stat. § 590.04, subd. 3 (2022), applies), and the statute sets out the type of evidence the court may consider in making its determination, Minn. Stat. § 590.11, subd. 4. Specifically, “[t]he court may consider acts by the petitioner that may have contributed to bringing about the conviction and any other offenses that may have been committed by the petitioner in the same behavioral incident.” Minn. Stat. § 590.11, subd. 4. The victim also “has a right to submit an oral or written statement before the court issues its order,” and the victim may include a “recommendation on whether the petition should be granted or denied.” *Id.* If, as Back argues, the district court must find the petitioner eligible for compensation once the petitioner is deemed

¹ Back argues in her brief that we should reverse the court of appeals without reaching the merits of the issue because the parties did not argue to the court of appeals that the district court had discretion to deny eligibility to an exonerated person. Rather, Back argues, the court of appeals raised this issue on its own. Because Back petitioned for further review on the merits of the question, and we granted her petition on the issue, I would decide the merits of the question.

exonerated, there is no import to the evidentiary process the statute sets out. Our obligation, however, is to give effect to all provisions in the statute. *See State v. Miller*, 977 N.W.2d 592, 599 (Minn. 2022).

Subdivision 7 removes any doubt about the discretionary nature of the district court's determination on eligibility. Under subdivision 7, “[i]f, after considering all the files and records admitted and any evidence admitted at a hearing held pursuant to subdivision 4, the court determines that the petitioner is eligible for compensation,” the court is required to issue an order explaining its decision. Minn. Stat. § 590.11, subd. 7 (emphasis added). In other words, the decision on eligibility is not mandatory but is up to the district court's discretion after the court considers the record and all the evidence.

In short, I agree with the court of appeals on this issue; the district court had discretion to reject Back's petition based on its consideration of Back's culpability, the evidence of factual innocence, and the other factors in Minn. Stat. § 590.11, subd. 4. I would therefore remand to the district court for this determination.

ANDERSON, Justice (dissenting).

I join in the dissent of Chief Justice Gildea.

CHUTICH, Justice (dissenting).

I join in the dissent of Chief Justice Gildea.