STATE OF MINNESOTA

IN SUPREME COURT

A19-1850

Court of Appeals

McKeig, J.
Concurring in part, dissenting in part,
Thissen, Anderson, JJ.

Vaundell Duwayne Kingbird,

Appellant/Cross-Respondent,

vs.

Filed: May 4, 2022
Office of Appellate Courts

State of Minnesota,

Respondent/Cross-Appellant.

Robert J. Shane, Minneapolis, Minnesota, for appellant/cross-respondent.

Keith Ellison, Attorney General, Saint Paul, Minnesota;

Matti R. Adam, Itasca County Attorney, Grand Rapids, Minnesota; and

Adam E. Petras, Special Assistant Itasca County Attorney, Minneapolis, Minnesota, for respondent/cross-appellant.

S Y L L A B U S

1. The 2-year limitations period in Minn. Stat. § 590.11, subd. 2 (2020), governing petitions for an order declaring eligibility for compensation based on exoneration, is not a jurisdictional bar to review.

2. Because Kingbird did not demonstrate that he was exonerated on "grounds consistent with innocence," which requires a showing of "any evidence of factual

innocence," Minn. Stat. § 590.11, subd. 1(b)(1), 1(c)(2) (2020), he is not eligible for compensation based on exoneration.

Affirmed.

O P I N I O N

MCKEIG, Justice.

At issue in this case is whether appellant/cross-respondent Vaundell Duwayne Kingbird was exonerated for purposes of the statute used to determine if a person whose conviction has been reversed, vacated, or set aside is eligible for compensation based on exoneration, Minn. Stat. § 590.11 (2020) (the eligibility-for-exoneration-compensation-statute). The applicable definition of "exonerated" requires Kingbird to establish "any evidence of factual innocence." *Id.*, subd. 1(b)(1), 1(c)(2). We must therefore determine whether Kingbird has established any evidence of factual innocence.

Kingbird was convicted in 2010 of violating Minn. Stat. § 609.165, subd. 1b(a) (2014), which makes it a crime for certain convicted felons to possess a firearm. After we held in *State v. Haywood*, 886 N.W.2d 485, 487 (Minn. 2016), that an air-compressed BB gun is not a "firearm" under this statute, Kingbird's conviction was vacated. Kingbird then filed a petition for an order determining that he was eligible for compensation based on exoneration. The district court denied the petition, and the court of appeals affirmed. We conclude that Kingbird has not provided any evidence of factual innocence. Therefore, we affirm the decision of the court of appeals.

FACTS

In May 2010, a caller reported to law enforcement that a man, later identified as Kingbird, had a handgun and was holding a woman against her will at his residence. When the officers responded to the call, they noticed Kingbird walking outside the house with his hands in his pockets. The officers drew their weapons and ordered Kingbird to show them his hands and to get on the ground; he did not comply. One of the officers used a taser on Kingbird and the officers then placed him under arrest. After the arrest, the officers found a black air-compressed BB gun behind the house.

The next day, the State charged Kingbird with one count of ineligible-person-in possession of a firearm, Minn. Stat. § 609.165, subd. 1b(a);[1] two counts of misdemeanor domestic assault, Minn. Stat. § 609.2242, subd. 1(2) (2020); and one count of misdemeanor obstructing legal process, Minn. Stat. § 609.50, subd. 1(2) (2020). At that time, courts had stated that the term "firearm," as used in several criminal statutes, included an air-compressed BB gun. *See State v. Seifert*, 256 N.W.2d 87, 88 (Minn. 1977) (stating in dicta that the term "firearm," as used in Minn. Stat. § 609.02, subd. 6 (1992), "should be defined broadly to include guns using newer types of projectile propellants and should not be restricted in meaning to guns using gunpowder."); *State v. Newman*, 538 N.W.2d 476, 477–78 (Minn. App. 1995) (holding that a BB gun is a firearm within the meaning of the drive-

[1] Kingbird was prohibited from possessing a firearm based on a 2006 felony conviction of first-degree aggravated robbery. This conviction was classified as a "crime of violence" under the law which prohibited him from possessing any firearm or ammunition. Minn. Stat. §§ 624.712, subd. 5, 624.713, subd. 1(2)(2020).

by shooting statute), *rev. denied* (Minn. Nov. 30, 1995). One of these cases involved another statute, which like Minn. Stat. § 609.165, subd. 1b, makes it a crime for a person convicted of a crime of violence to possess a firearm.[2] *State v. Fleming*, 724 N.W.2d 537, 538, 541 (Minn. App. 2006) (holding that a BB gun is a firearm under Minn. Stat. § 624.713, subd. 1(b) (2006)).

As part of a plea agreement, Kingbird admitted that he possessed an air-compressed BB gun and pleaded guilty to being an ineligible person in possession of a firearm, Minn. Stat. § 609.165, subd. 1b(a); in return, the State dismissed the other charges. The district court stayed execution of the presumptive 60-month prison sentence and placed Kingbird on probation for 10 years. In August 2011, Kingbird violated the terms of his probation by committing a domestic assault. The district court revoked his probation and executed the stayed 60-month sentence.

In 2016, we held that an air-compressed BB gun is not a "firearm" under Minn. Stat. § 609.165. *Haywood*, 886 N.W.2d at 487. Soon after this decision, the State moved to vacate Kingbird's conviction pursuant to *Haywood*. The district court agreed, and on January 5, 2017, Kingbird's conviction was vacated.

On September 25, 2017, Kingbird filed a petition for an order declaring him eligible for exoneration compensation, contending that he was "exonerated" as defined by Minn.

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[2] In 2008, subdivision 1 of section 624.713 was renumbered and subdivision 1(b) became subdivision 1(2). *Compare* Minn. Stat. § 624.713, subd. 1(2) (2008), *with* Minn. Stat. § 624.713, subd. 1(b) (2006).

Stat. § 590.11, subd. 1(1)(i) (2018).[3] But 2 days later, in *Back v. State*, 902 N.W.2d 23, 28–30 (Minn. 2017), we held that the definition of exoneration on which Kingbird relied was unconstitutional. We severed that portion of the statute, which meant that a person could be exonerated only if they satisfied the definition found in Minn. Stat. § 590.11, subd. 1(1)(ii) (2018).[4] *Back*, 902 N.W.2d at 30–33. On October 5, 2017, in light of our decision in *Back,* Kingbird voluntarily dismissed his petition without prejudice.

In 2019, the Minnesota Legislature amended the eligibility-for-exoneration-compensation statute. The Legislature adopted a new definition of "exonerated," added new language to explain the meaning of "on grounds consistent with innocence," and established a special deadline for some people impacted by our decision in *Back* to bring a petition. Act of May 30, 2019, ch. 5, art. 2, § 13, 2019 Minn. Laws 1st Spec. Sess. 965, 965–66 (codified at Minn. Stat. § 590.11, subds. 1(b)(1)(i), 1(c)(1)–(2), 2 (2020)). On July 15, 2019, Kingbird filed a second petition to be declared eligible for exoneration compensation based on his vacated conviction, asserting that his claim was timely under the amended and extended limitations period.

On October 3, 2019, the district court denied Kingbird's second petition, concluding that he did not meet the definition of "exonerated." Specifically, the court noted that

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[3] Defining "exonerated" to mean: "a court of this state . . . vacated or reversed a judgment of conviction on grounds consistent with innocence and the prosecutor dismissed the charges." Minn. Stat. § 590.11, subd. 1(1)(i) (2018).

[4] Defining "exonerated" to mean: "a court of this state . . . ordered a new trial on grounds consistent with innocence and the prosecutor dismissed the charges or the petitioner was found not guilty at the new trial." Minn. Stat. § 590.11, subd. 1(1)(ii) (2018).

because the statutory phrase "on grounds consistent with innocence" is further defined as meaning "any evidence of factual innocence," Kingbird must show evidence of factual innocence. Further, the district court concluded that Kingbird had "not advanced an argument that he did not commit the act for which he was arrested and convicted. Rather, his conviction was vacated due to a change in the law." The court of appeals affirmed, concluding that Kingbird was not "exonerated" within the meaning of Minn. Stat. § 590.11, subd. 1(c)(2), because his conviction was vacated based on a clarification of the law. *Kingbird v. State*, 949 N.W.2d 744, 750–51 (Minn. App. 2020). We granted Kingbird's petition for review.

ANALYSIS

I.

There are two issues before us. First, we consider whether the district court had jurisdiction to hear Kingbird's petition. This jurisdictional question is a threshold issue that we raise sua sponte. *See Dead Lake Ass'n, Inc. v. Otter Tail Cnty.*, 695 N.W.2d 129, 134 (Minn. 2005) (stating that "lack of subject matter jurisdiction may be raised at any time . . . sua sponte by the court."). We directed the parties to submit supplemental briefing on this issue.

At issue is whether the 2-year statute of limitations in Minn. Stat. § 590.11, subd. 2, is a jurisdictional bar to review if a petition is not timely filed, or if that deadline is subject to waiver. The 2-year time limit found in subdivision 2 of section 590.11 states as follows:

> A petition must be brought within two years, but no less than 60 days after the petitioner is exonerated. If before July 1, 2019, a person did not meet both requirements of Minnesota Statutes 2018, section 590.11, subdivision 1,

> clause (1), item (i), and did not file a petition or the petition was denied, that person may commence an action meeting the requirements under subdivision 1, paragraph (b), clause (1), item (i), on or after July 1, 2019, and before July 1, 2021.

Minn. Stat. § 590.11, subd. 2. The first sentence provides a general requirement that a petition be filed within 2 years of the date a person is exonerated. The second sentence, added in 2019, however, creates an exception to this general requirement and provides an expanded window for some people impacted by our decision in *Back* to file a petition.

In their supplemental briefs, Kingbird and the State agreed that Kingbird's 2019 petition was timely. Moreover, they agreed that the State waived any statute of limitation defense by failing to assert it below. This agreement by the parties, however, does not end the matter. The waiver by the State is only conclusive if the time bar is in fact a waivable statute of limitations rather than a jurisdictional requirement. If it is the latter, it cannot be waived by the parties, and we must still independently confirm jurisdiction and determine whether the petition was timely. *See Dead Lake Ass'n, Inc*., 695 N.W.2d at 134 (noting that "lack of subject matter jurisdiction . . . cannot be waived by the parties.").

We thus consider whether the 2-year limitations period in the eligibility-for-exoneration-compensation statute is a jurisdictional bar to review if a petition is not timely filed,[5] or if that deadline is a statute of limitations subject to waiver. In *Carlton v. State*,

[5] In doing so, we assume without deciding that Kingbird's second petition was untimely. It is undisputed, and we agree, that the petition was not timely under the first sentence; it was filed more than 2 years after the date of Kingbird's alleged exoneration on January 5, 2017, when the district court vacated his conviction. *See* Minn. Stat § 590.11, subd. 2. The parties contend, however, that the second petition was timely under the second sentence. We do not decide this issue, but instead assume that Kingbird's second petition was untimely under the second sentence. We note, however, that Kingbird's counsel took

816 N.W.2d 590, 600–02 (Minn. 2012), we explained the distinction between a waivable limitations period and a limitations period that serves as a jurisdictional bar to hearing the claim. It is "well established" that a statute of limitations "may be waived by a defendant who fails to assert it." *See id*. at 600 (citation omitted) (internal quotation marks omitted). When, however, a "statute gives a new right of action, not existing at common law, a statutory time limit constitutes an element in the right itself, such that failure to comply with the time limit will deprive the court of jurisdiction to hear the claim." *Id*. at 601 (citation omitted) (internal quotations marks omitted). But even if a new statutory cause of action is involved, we will consider "the statute's language, history, and structure to evaluate whether the Legislature intended the time limit . . . to be a waivable statute of limitations, or a jurisdictional bar." *Id.* at 602; *see also Carlson v. Indep. Sch. Dist. No. 623*, 392 N.W.2d 216, 220–22 (Minn. 1986) (examining the statute's language, purpose, structure, and legislative history to determine whether the 6-month filing requirement in the Minnesota Human Rights Act was a jurisdictional bar).

As an initial matter, the State concedes that a petition for a determination of eligibility for exoneration compensation does not create a new statutory cause of action, but instead is simply a type of postconviction claim. *See Carlton*, 816 N.W.2d at 601–02 (explaining that the postconviction statutes, chapter 590, "did not create an entirely new

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the ethical course of action by voluntarily dismissing his petition because otherwise it would have been a frivolous claim, violating the Rules of Professional Conduct. Minn. R. Prof. Conduct 3.1 (prohibiting a lawyer from bringing or asserting a claim "unless there is a basis in law and fact for doing so that is not frivolous").

cause of action unknown at common law" but "merely codified or replaced preexisting remedies . . . .").[6] But we need not decide this question because "even if we were to determine that the postconviction statute created a new cause of action," the statute's language, legislative history, and structure show that the Legislature intended the 2-year time limit to be a waivable statute of limitations. *See id.* at 602.

We begin by looking to the language of the statute, Minn. Stat § 590.11, subd. 2. Subdivision 2 is titled "Procedure" and "does not reference the jurisdiction of the [district] court in any way." *Carlton*, 816 N.W.2d at 603 (relying on both a subdivision's title as well as its language when concluding the provision was a waivable statute of limitations). Additionally, the first sentence of the limitations period says that "[a] petition must be brought within two years . . . after the petitioner is exonerated." Minn. Stat. § 590.11, subd. 2. We have held that similar language is not a jurisdictional bar. *See Carlton*, 816 N.W.2d at 603–07 (concluding the statutory language that a petition "must be filed within two years" was a waivable statute of limitations and not a jurisdictional bar). And the second sentence—added in 2019—simply states that a petitioner who was impacted by our decision in *Back* "may commence an action" during a specific 2-year period. Minn. Stat. § 590.11, subd. 2. In short, no language in subdivision 2 shows that a district court lacks the authority to decide a petition brought outside of the 2-year limitations period.

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[6] *Carlton* involved a petition for postconviction relief, filed under Minn. Stat. § 590.01 (2020), to have a conviction vacated. *Carlton*, 816 N.W.2d at 599–600. The specific statute at issue in this case, Minn. Stat. § 590.11, was enacted in 2014, 2 years after our decision in *Carlton*. *See* Act of May 16, 2014, ch. 269, § 1, 2014 Minn. Laws 1020, 1020–25 (codified as amended at Minn. Stat. § 590.11 (2020)).

We next consider the statute's legislative history. When the eligibility-for-exoneration-compensation statute was originally enacted in 2014, *see* Act of May 16, 2014, ch. 269, § 1, 2014 Minn. Laws. 1020, 1020–25 (codified as amended at Minn. Stat. § 590.11 (2020)), the Legislature intended to establish a compensation process for people who had been exonerated. *See* 68 Journal of the House of Representatives 6951 (88th Minn. Leg. Mar. 10, 2014). As initially enacted, it required a person to file a petition seeking an order declaring their eligibility for exoneration compensation within 2 years of the date that the person was "exonerated" as defined by the statute.[7] *See* Minn. Stat. § 590.11, subd. 2 (2014).

As previously stated, in *Back* we held that one of the two alternative requirements contained in the definition of "exonerated" in Minn. Stat. § 590.11, subd. 1(1) (2016), was unconstitutional. 902 N.W.2d at 30–31, 31 n.4. We severed that requirement from the statute, leaving a single definition of "exonerated." *Id.* The Legislature responded in 2019 by adding back a second definition of exoneration based on having a conviction reversed. The Legislature also added language authorizing some people whose claims had been impacted by our decision in *Back* to now be able to file a petition, so long as they met the new definition of "exonerated." *See* Hearing on H.F. 707, H. Pub. Safety. & Crim. Just. Comm., 91st Minn. Leg., Feb. 7, 2019 (noting that the amendments were made to "fix" the

[7] As originally enacted, the statute also contained an exception that required a person who was "released from custody after being exonerated before July 1, 2014, . . . [to] commence an action under this section within two years of July 1, 2014." Minn. Stat. § 590.11, subd. 2 (2014). This language was struck from the statute in 2019. *See* Act of May 30, 2019, ch. 5, art. 2, § 13, 2019 Minn. Laws 1st Spec. Sess. 965–66.

circumstances arising from *Back*) (video) (statement of Rep. Lesch, House author of the bill). The legislative history is clear: the purpose of the extended limitations period was meant to *restore* eligibility to those who would have been eligible under the previous version of the statute but whose "petition was denied," or whose exoneration claim was impacted by our decision in *Back*.

The legislative history related to the general requirement that a petition be filed within 2 years of a person being exonerated further supports our conclusion that the limitations period was not intended to be a jurisdictional bar.[8] When the Legislature enacted the general 2-year limitations period in 2014, we had already decided in *Carlton*, 816 N.W.2d at 606, that another provision in the postconviction statutes, Minn. Stat. § 590.01, subd. 4(c) (2020), was a waivable statute of limitations, and not a jurisdictional bar. The language the Legislature chose for the general limitations period is very similar to the language at issue in *Carlton.* *Compare* Minn. Stat. § 590.01, subd. 4(c) (stating "[a]ny petition . . . must be filed within two years of the date the claim arises"), *with* Minn. Stat. § 590.11, subd. 2 ("A petition must be brought within two years . . . after the petitioner is exonerated."). In ascertaining legislative intent, there is a presumption that if we have already construed language of a Minnesota statute, then later laws using that same language

[8] We note that the expanded time provision enacted in 2019 is an exception to the general 2-year limitations period. It allows some people whose petitions would otherwise be untimely under the general 2-year limitations period to file a petition if it is filed within a specific 2-year time period. *See* Minn. Stat. § 590.11, subd. 2. If an exception to a limitations period was intended to be a waivable statute of limitations, and not a jurisdictional bar, it is hard to see how the general limitations period could be intended as a jurisdictional bar.

within the same subject matter are bound to that construction of the language. *See* Minn. Stat. § 645.17(4) (2020); *see also Comm'r of Rev. v. Dahmes Stainless, Inc.*, 884 N.W.2d 648, 656 (Minn. 2016) (stating that "we presume that the Legislature acts with full knowledge of existing law."). Because the Legislature used language substantially similar to another provision in the postconviction statutes that we had previously concluded was not a jurisdictional bar, we conclude that the Legislature was expressing its intent that the general requirement was a waivable statute of limitations, not a jurisdictional bar.

Finally, the structure of Minn. Stat. § 590.11 also supports our conclusion. In *Carlton*, we similarly held that the structure of the postconviction statutes supported finding that the time limitation was a waivable statute of limitations. 816 N.W.2d at 604–05. There, we relied in part on Minn. Stat. § 590.04, subd. 3 (2020), which provides that "[t]he court may inquire into and decide any grounds for relief, even though not raised by the petitioner." *Carlton*, 816 N.W.2d at 604–05 (quoting Minn. Stat. § 590.04, subd. 3). We took that to mean that the postconviction statute calls for the exercise of judicial discretion over mandating strict adherence to the statute's technical requirements. Here, the eligibility-for-exoneration-compensation statute expressly incorporates Minn. Stat. § 590.04, subd. 3. Minn. Stat. § 590.11, subd. 3(b) (stating that when a prosecutor does not agree the petitioner is eligible for exoneration compensation, "[t]he petitioner's burden of proof and the procedures set forth in section 590.04, subdivision 3, apply to this proceeding."). Moreover, the eligibility-for-exoneration-compensation statute states that if the prosecutor "agree[s] to compensation based on the interests of justice," then "the court shall issue an order . . . granting petitioner's eligibility for compensation." Minn.

Stat. § 590.11, subd. 3(a). "These provisions indicate that strict compliance with the technical requirements in the [eligibility-for-exoneration-compensation] statute is not necessary for the court to exercise jurisdiction." *Carlton*, 816 N.W.2d at 605.

In conclusion, the language of the statute, its legislative history, structure, and purpose all make clear that Minn. Stat. § 590.11, subd. 2, is not a jurisdictional bar to review. Rather, it is a statute of limitations subject to waiver. Here, because the State failed to assert that Kingbird's petition was untimely under the 2-year statute of limitations in Minn. Stat. § 590.11, subd. 2, the State has waived this defense.

II.

We now turn to the merits of this appeal: whether Kingbird has been "exonerated" within the meaning of Minn. Stat. § 590.11, subd. 1(c)(2). In 2017, Kingbird's conviction for felon-in-possession of a firearm was vacated based on our decision in *Haywood*, 886 N.W.2d 485. Here, the specific legal issue we must address is whether Kingbird's conviction was vacated on "grounds consistent with innocence," as the statute requires.

"[W]hether an individual has been 'exonerated' " is "[t]he threshold determination" under the eligibility-for-exoneration-compensation statute. *Back*, 902 N.W.2d at 26. As relevant here, a person is exonerated if a court "vacate[s]" a conviction "on grounds consistent with innocence." Minn. Stat. § 590.11, subd. 1(b)(1)(i). "[G]rounds consistent with innocence" is defined to mean either:

> (1) exonerated, through a pardon or sentence commutation, based on *factual innocence*; or
>
> (2) exonerated because the judgment of conviction was vacated or reversed, or a new trial was ordered, and there is *any evidence of factual innocence*

> whether it was available at the time of investigation or trial or is newly discovered evidence.

Minn. Stat. § 590.11, subd. 1(c) (emphasis added). Consequently, in addition to showing that he is eligible for compensation because his conviction has been "vacated," Kingbird must also show that there is "any evidence of factual innocence," whether that evidence was available at the time of trial or is newly discovered. What it means to meet this definition of "factual innocence," is a question of statutory interpretation that we review de novo. *Back*, 902 N.W.2d at 27.

Kingbird contends that he meets the eligibility standard set out in Minn. Stat. § 590.11, subd. 1(c)(2). He asserts that his conviction was vacated "on grounds consistent with innocence" based on our holding in *Haywood*. But Kingbird only considers one element: his vacated conviction. To be considered "exonerated" under Minn. Stat. § 590.11, subd. 1(c), he must also show "factual innocence."

If a statutory phrase is unambiguous, we apply the statute's plain meaning. *State v. Defatte*, 928 N.W.2d 338, 340 (Minn. 2019). When a statute does not define a word or a phrase, we often determine plain meaning by looking to dictionary definitions and applying them in the context of the statute. *Haywood*, 886 N.W.2d at 488. We also interpret the statute as a whole to give effect to all of its parts. *State v. Riggs*, 865 N.W.2d 679, 683 (Minn. 2015).

Here, the Legislature used a very specific form of "innocence" to ascribe meaning to "grounds consistent with innocence": "any evidence of *factual* innocence." Minn. Stat. § 590.11, subd. 1(c)(2) (emphasis added). The word "innocence" means "the state of being

not chargeable for or guilty of a particular crime or offense." *See Innocence, Webster's Third New International Dictionary of the English Language Unabridged* (2002); *see also Innocence, The American Heritage Dictionary of the English Language* (5th ed. 2018) (defining "innocence" in part as "[g]uiltlessness of a specific legal crime or offense"). "Factual," of course, refers to "of or relating to facts" and "restricted to or based on fact." *Factual, Merriam-Webster's Collegiate Dictionary* (11th ed. 2014). Fact, in turn, means "a thing done" or "an actual occurrence." *Fact, Merriam-Webster's Collegiate Dictionary*; *see also Fact, The American Heritage Dictionary* (defining fact as "a real occurrence; an event" or "a thing that has been done").

Because the adjective "factual" modifies the noun "innocence," the common and ordinary meaning of the phrase "factual 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). Kingbird argues that because a BB gun is not a firearm under *Haywood*, his actions were not against the law and therefore he is innocent. But this claim of innocence is not restricted to or based on facts, because without *Haywood,* Kingbird would not be deemed innocent. And because Kingbird's case turns on a legal significance, the statutory meaning of the term firearm—not facts alone—Kingbird's claim does not squarely fit within the definition of "factual innocence."

In other words, the facts of Kingbird's case did not change. The facts of the offense on which Kingbird was convicted are undisputed: he admitted as part of his plea agreement that he possessed a BB gun at a time when he was ineligible to possess certain firearms. His conviction was vacated based on our decision in *Haywood*—a decision that concluded

the State did not have a *legal* basis to bring an ineligible-person-in-possession-of-a-firearm charge based on an air-powered BB gun. Because Kingbird has not shown evidence of "factual innocence,"[9] he has not demonstrated that he was exonerated on "grounds

[9] The dissent recognizes that the qualifying adjective "factual" reflects the Legislature's intent to provide some limitation on which people later found to be innocent qualify to seek exoneration compensation; thus, the dissent concludes that those who are *legally* innocent (for example due to prejudicial evidence being improperly admitted or erroneous jury instructions being given) are ineligible for exoneration compensation. But the dissent goes too far in maintaining that *factual* innocence would extend to any circumstance in which, as here, the State did not prove a fact necessary to the conviction (here, that Kingbird possessed a firearm within the meaning of the statute). To be sure, such a circumstance is an example of "*actual* innocence," which is a well-defined term meaning "[t]he absence of facts that are prerequisites for the sentence given to a defendant." *Innocence, actual innocence*, *Black's Law Dictionary* (11th ed. 2019); *see also innocence, legal innocence*, *Black's Law Dictionary* (11th ed. 2019) (observing that "legal innocence is often contrasted with actual innocence"). But the Legislature did not use the term *actual* innocence; it instead used the distinct qualifier of *factual* innocence, which must correspondingly have its own distinct meaning.

Furthermore, the dissent's concern—that "[i]f the vacation of Kingbird's conviction for a possession of a firearm because he did not possess a firearm does not make him eligible, who can be?"—leads to many readily available answers; namely, any person whose conviction was vacated, reversed, or set aside because the *facts* of his case have changed. This would include circumstances where 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. The authors of the original exoneration bills specifically gave the examples of "Koua Fong Lee, who was wrongfully convicted of criminal vehicular homicide after his Toyota Camry accelerated out of his control into another vehicle, and Michael Ray Hansen, who was wrongfully convicted of second-degree murder for killing his infant daughter who actually died of positional asphyxia." *Back v. State*, 883 N.W.2d 614, 621 (Minn. App. 2016) (citing Hearing on H.F. 2925 Before the H. Comm. on Judiciary Fin. and Pol'y (Mar. 26, 2014) (statement of Rep. Lesch); Hearing on S.F. 2480 Before the S. Comm. on the Judiciary (Mar. 13, 2014) (statement of Sen. Latz)), *rev'd on other grounds in* 902 N.W.2d 23 (Minn. 2017). Both of those examples would fall cleanly within our interpretation of "factual innocence." And under Minn. Stat. § 590.11, subd. 1(c)(2), it makes no difference whether such a change in facts is based on evidence that "was available at the time of investigation or trial or is newly discovered evidence." What the Legislature's use of the term "factual innocence" precludes is eligibility for exoneration compensation when the *legal* meaning of a statutory element of

consistent with innocence," as the statute requires. As a result, we hold that Kingbird is not exonerated under Minn. Stat. § 590.11, subd. 1.[10]

CONCLUSION

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

Affirmed.

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a crime has been clarified by a court such that the unchanged facts can no longer sustain the conviction.

[10] We need not address the State's conditional cross-petition for review based on ambiguity because we make our conclusion based on the statute's plain language.

C O N C U R R E N C E & D I S S E N T

THISSEN, J., (concurring in part, dissenting in part).

I agree with the court that the 2-year limitations period in Minn. Stat. § 590.11, subd. 2 (2020), governing petitions for an order declaring eligibility for compensation based on exoneration is not a jurisdictional bar to review. I disagree with the court's interpretation of Minn. Stat. § 590.11, subd. 1 (2020).

This case turns on the meaning of the phrase "factual innocence" in Minn. Stat. § 590.11. Innocence is "the state of being not chargeable for or guilty of a particular crime or offense." *See Innocence, Webster's Third New International Dictionary of the English Language Unabridged* (2002); *see also Innocence, The American Heritage Dictionary of the English Language* (5th ed. 2018) (defining "innocence" in part as "[g]uiltlessness of a specific legal crime or offense."). By adding the qualifying adjective "factual," the Legislature wanted to make sure that not every person who was convicted and later found free from legal guilt would qualify to seek exoneration damages under the statute. Certainly, the modifier "factual" means that a person whose conviction was vacated because of a legal error with the trial (prejudicial evidence was improperly admitted; an erroneous jury instruction was given) does not qualify to seek exoneration damages. But that is not this case. Vaundell Kingbird's conviction for being a felon in possession of a firearm under Minn. Stat. § 609.165, subds. 1a–1b (2014), was not vacated for such a legal technicality.

Kingbird's conviction was vacated because he did not possess a firearm. Possession of a firearm is an essential element of the crime of illegally possessing a firearm; a person

cannot be convicted of the crime if he did not possess a firearm. Kingbird possessed an air-compressed BB gun which is not a firearm. *See State v. Haywood*, 886 N.W.2d 485, 487 (Minn. 2016) (holding that the term "firearm" in section 609.165 does not include—and never has included—an air-compressed BB gun). Stated another way, the State did not prove a fact—that Kingbird possessed a firearm—necessary to his conviction. It is hard to avoid the common-sense conclusion that Kingbird was "factually innocent" of the crime.

The majority observes that the ordinary meaning of "fact" included in dictionary definitions is "a thing done" or "an actual occurrence." It then states that Kingbird's "claim of innocence is not restricted to or based on facts . . ." (i.e., on a thing done or an actual occurrence). That is a somewhat startling conclusion. The thing Kingbird did was possess a BB gun and not a firearm. What actually occurred was that Kingbird possessed a BB gun and not a firearm. Kingbird was convicted of being a felon in possession of a firearm, which does not include a BB gun. Kingbird is factually innocent of the crime of being a felon in possession of a firearm under any ordinary understanding of those words.

I am unclear what rule of law defendants, lawyers, and judges can take from this decision.[1] If the vacation of Kingbird's conviction for a possession of a firearm because

[1] The court asserts that factual innocence is limited to situations where "the *facts* of [the defendant's] case have changed" and uses as an example a situation where the police "got the wrong guy." This category is distinguished from cases where the facts are the same (it's not the wrong guy) but the legal meaning of the facts have changed. While perhaps providing helpful guidance to judges, lawyers and exonerated persons in future cases, the court's distinction is troubling for a few reasons. First, the legal meaning of the facts in Kingbird's case did not change. When we decided *Haywood*, we were not changing the law; we were saying what the meaning of firearm was since the moment the Legislature

he did not possess a firearm does not make him eligible, who can be? One possibility is that to be eligible for exoneration damages, a person's conviction must be vacated based on newly discovered evidence not known at the time of trial. But the text of the statute refutes such a limited scope since it defines "on grounds consistent with innocence" as "exonerated because the judgment of conviction was vacated or reversed . . . and there is any evidence of factual innocence *whether it was available at the time of investigation or trial or is newly discovered evidence*." Minn. Stat. § 590.11, subd. 1(c)(2) (emphasis added). I fear that the majority's decision will sow more confusion into a statutory scheme that is already challenging for courts and litigants.

I am not wholly unsympathetic to the majority's conclusion that the Legislature did not intend persons in Kingbird's situation—a person whose conviction for illegal possession of a firearm was vacated following our decision in *Haywood*—to be eligible for exoneration damages. The legislative history provides some clues that may be the case.

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enacted section 609.165. If that were not the case, there was no reason to vacate Kingbird's conviction in the first place. Second, the distinction drawn by the court is untethered from the plain language of the statute. Nothing in the ordinary meaning of the words "factual innocence" excludes circumstances where the State did not prove a fact necessary to the conviction. That is, in fact, what the words say, which may explain why the court resorts to (fairly non-definitive) legislative history to justify the distinction it draws. Finally, the court's distinction is only sensible if it is limited to situations where new facts are presented after trial that were not presented at trial—how else would "changed" facts manifest themselves in this context? (And that is the fact pattern of the cases cited from the legislative history). But as noted below that interpretation runs directly counter to the text of the statute which states that the evidence of factual innocence includes evidence "available at the time of investigation or trial or is newly discovered evidence." Minn. Stat. § 590.11, subd. 1(c)(2). *See State v. Riggs*, 865 N.W.2d 679, 683 (Minn. 2015) (stating that we interpret the statute as a whole to give effect to all of its parts).

In 2018, the Legislature considered a bill to amend section 590.11 in response to our decision in *Back v. State* (*Back II*), 902 N.W.2d 23, 25 (Minn. 2017), where we struck down as unconstitutional a provision of Minn. Stat. § 590.11. During a Senate committee hearing, a representative of the Minnesota County Attorneys' Association testified and urged the Legislature to define more clearly what it means for a conviction to be vacated on grounds "consistent with innocence." Hearing on S.F. 2778 Before the S. Comm. Judiciary and Pub. Safety Fin. and Pol'y, 90th Minn. Leg., March 12, 2018 (testimony of Robert Small, Minnesota County Attorneys Association). He pointed out that the court of appeals concluded that the phrase "consistent with innocence" in section 590.11 was ambiguous. *Id.*; *see Back v. State* (*Back I*), 883 N.W.2d 614, 620–23 (Minn. App. 2016) (rejecting the argument that the requirement that a conviction be vacated based on grounds "consistent with innocence" means that a person's innocence must be proved by newly discovered evidence), *rev'd on other grounds in* 902 N.W.2d 23 (Minn. 2017). In so doing, he offered an "opportunity for the Legislature to clarify what its intent was, by defining 'consistent with innocence.' " Hearing on S.F. 2778, *supra*, (testimony of Robert Small). He further testified:

> And in that case—the *Haywood* decision—despite 40 years of precedent, held that a BB gun was not a firearm. And there were many people who were convicted of being a felon in possession of a firearm when the firearm was a BB gun. And so those decisions, those convictions were vacated. There were over 80 of those. And under this bill, if that is considered consistent with innocence, that's 12 million dollars. And so, it would seem that the Legislature might want to consider defining the term "consistent with innocence." And we are very willing to talk about what that definition might be. It would be the definition that was in the first and second bills that were introduced in both the House and the Senate.

Id. Following the testimony, the committee amended the bill to provide a definition for "on grounds consistent with innocence" that included the "any evidence of factual innocence" language.

This legislative history provides some support for the conclusion that the Legislature did not intend persons like Kingbird—whose convictions for illegal possession of a firearm were vacated because of our decision in *Back*—to qualify for exoneration damages. But under our court's rules about statutory interpretation, consideration of legislative history is forbidden unless a statute is ambiguous; an approach that sometimes forces the court into the linguistic contortions demonstrated in this case.

Moreover, in this case, the legislative history is far from definitive. The testifier for the Minnesota County Attorneys Association raised two concerns—general problems with an ambiguous statute and specific concerns about the implications of *Haywood.* Further, no legislator specifically addressed the *Haywood* decision. Therefore, we do not know if the Legislature in adopting the amendment to limit "consistent with innocence" to "factual innocence" was responding to the testifier's concern that the phrase "consistent with innocence" was generally ambiguous or if it was responding to the specific concern that the *Haywood* decision potentially exposed the State to millions of dollars in exoneration damages. What we do know is that the Legislature did not choose to limit exoneration damages to situations involving "newly discovered evidence" (the limit proposed by the State in *Back I* before the court of appeals). Further, we know that the Legislature did not choose language excluding cases where a person was convicted consistent with the prevailing understanding of a statute at the time even if that understanding was later

reversed (the situation of Kingbird and other *Haywood* exonerees). Accordingly, it follows that the Legislature chose the words "factual innocence" to resolve the ambiguity the court of appeals perceived in the phrase "consistent with innocence."

It is undoubtedly true that the prosecutors who pursued the case against Kingbird acted in good faith. At the time, the term "firearm" as used in section 609.165 was (wrongly) understood to include BB guns. That historical reality may underlie the majority's decision in this case. But I find nothing in the text of the statute (or otherwise) to suggest that eligibility for exoneration damages turns on the good faith or bad faith of the prosecutors who brought the case. If the Legislature intended that, it could have very clearly said so.

Because Kingbird is factually innocent—because the State did not prove the essential fact that he possessed a firearm—Kingbird qualifies to seek exoneration damages under section 590.11. I would reverse.

ANDERSON, Justice (concurring in part, dissenting in part).

I join in the concurrence and dissent of Justice Thissen.