

IN THE CIRCUIT COURT FOR BALTIMORE CITY

TYRONE JONES,
Petitioner

*

FOR THE JUDICIAL
REVIEW OF THE DECISION
OF THE MARYLAND OFFICE OF
ADMINISTRATIVE HEARINGS

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Case No.: 24C23005168

IN RE: OAH CASE NO.:
BPW-WLA-02-23-14307

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RESPONDENT’S RULE 7-207 ANSWERING MEMORANDUM

The State of Maryland, Respondent, by its attorneys, Anthony G. Brown, Attorney General of Maryland, and Janee A. Fountain, Assistant Attorney General, submits this memorandum, pursuant to Maryland Rule 7-207(a).

STATEMENT OF FACTS

On July 19, 1999, Tyrone Jones was convicted of conspiracy to commit murder. Pet’r’s App.¹ at 4. On August 30, 1999, Tyrone Jones was sentenced to life. Pet’r’s App. at 4. In August 2009, he filed a Petition for Post Conviction Relief. Pet’r’s App. at 4. The Petition was granted, his case was vacated, and the Baltimore City State’s Attorney’s Office entered a nolle prosequi as to Mr. Jones’ charges. Pet’r’s App. at 8. Mr. Jones was released from confinement on May 25, 2010, after almost 10 years in prison. *Id.*

On October 1, 2019, Stacey’s Law was enacted in Maryland. Pet’r’s Ex. 5. Stacey’s Law clarified that a person who solicits another or conspires with another to commit

¹ Pet’r’s App.” refers to the petitioner’s appendix containing the Stipulated Record.

murder in the first degree is guilty of murder in the first degree if the death of another occurs as a result of the solicitation or conspiracy. It also clarified that conspiracy to commit murder is a felony. *Id.*

On July 1, 2021, the Walter Lomax Act became law in Maryland and provided a pathway for compensation and state-issued benefits for individuals wrongfully convicted of a felony. Pet'r's App. at 9.

On May 30, 2023, Mr. Jones filed a petition for compensation under the Walter Lomax Act in the Office of Administrative Hearings. Pet'r's App. at 545. A prehearing conference was scheduled for July 20, 2023. Pet'r's App. at 546. The parties to the case were Mr. Jones, the Office of the Attorney General, and the Baltimore City State's Attorney's Office. *Id.* The parties appeared for a prehearing conference and an Administrative Law Judge ("ALJ") requested briefing on the following question: "[D]oes the Walter Lomax Act contemplate the classification of the crime to be the date of the conviction or the date of the petition for compensation?" *Id.* Based on this request, the Baltimore City State's Attorney's Office filed a Motion for Summary Decision arguing that conspiracy to commit murder was a misdemeanor on the date Mr. Jones was convicted and eligibility for compensation is determined by the classification of the crime at the date of the conviction. *Id.* Mr. Jones opposed Baltimore City State's Attorney's Office's motion and contended conspiracy to commit murder was a felony at the time the Walter Lomax Act became law, that courts interpret a statute based on the meaning of its words at the time of enactment, and Baltimore City State's Attorney's Office's interpretation would

result in an unjust outcome. Pet'r's App. at 552. The Office of the Attorney General did not take a position on eligibility. *Id.*

On November 3, 2023, an Administrative Law Judge granted Baltimore City State's Attorney's Office's motion and ruled that Mr. Jones was ineligible for relief under the Walter Lomax Act because his offense, at the time of conviction, was categorized as a common law misdemeanor under Maryland law. Pet'r's App. at 554.

On November 28, 2023, Mr. Jones filed a Petition for Judicial Review in the Circuit Court for Baltimore City. The Court was notified on December 28, 2023, that the Office of the Attorney General was not taking a position on the Petition for Judicial Review.²

On February 15, 2024, Mr. Jones filed a Memorandum in Support of his Petition for Judicial Review in the Circuit Court for Baltimore City.

On March 13, 2024, the Baltimore City State's Attorney's Office filed an Answering Memorandum.

QUESTION PRESENTED

Did the ALJ err in ruling that Tyrone Jones, after serving almost a decade of a life sentence, was not entitled to apply for compensation under the Walter Lomax Act despite

² The Walter Lomax Act provides that, the "parties" to the proceeding before the administrative law judge are: "the State's Attorney of the county where the crime was committed, or the State's Attorney's designee" and "the State, represented by the Attorney General, or the Attorney General's designee." State Fin. & Proc. § 10-501(b)(4). The Office of the Attorney General's role in Walter Lomax Act cases is to provide compensation and benefits to exonerees. In accordance with our practice, the Office of the Attorney General refrains from taking a position on factual innocence. However, regarding legal issues, we have occasionally adopted specific positions. In light of the grave implications of the ALJ's ruling, the Office of the Attorney General has reconsidered its position on the legal issue at hand.

the enactment of Stacey's Law in 2019 clarifying the classification of conspiracy to commit murder, as a felony?

STANDARD OF REVIEW

When reviewing an agency's conclusions of law, a court reviews the correctness of those decisions using the de novo standard. *Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 534, 554 (2005). Unlike agency findings of fact or an exercise of discretion, courts owe less deference to an agency's legal conclusions. A court reviews an agency's conclusions of the law de novo for correctness. *Schwartz*, 385 Md. at 554.

The reviewing court may substitute its ruling of law for that of the agency. *Liberty Nursing Ctr., Inc. v. Dep't of Health & Mental Hygiene*, 330 Md. 433, 624 A.2d 946 (1993). A reviewing court is under no constraint to reverse an administrative decision which is premised solely on an erroneous conclusion of law. *Younkers v. Prince George's County*, 333 Md. 14,19, 633 A.2d 861, 863 (1993). Thus, a reviewing court must decide on the legality of the decision and whether there was substantial evidence on the record to support the decision. *Hoyle v. Board of Liquor License Comm'rs*, 115 Md. App. 124, 129, 692 A.2d 1, 3 (1997).

ARGUMENT

- I. **DESPITE CONSPIRACY TO COMMIT MURDER BEING A FELONY AT THE TIME THE WALTER LOMAX ACT WAS ENACTED, THE ALJ ERRED IN RULING CONSPIRACY TO COMMIT MURDER WAS NOT A FELONY FOR PURPOSES OF THE WALTER LOMAX ACT.**

At the time the Walter Lomax Act was enacted, conspiracy to commit murder was undoubtedly a felony. In Maryland, courts should interpret words of a statute with their

ordinary meaning at the time of enactment. *Shepherd v. Burson*, 427 Md. 541, 550 (2012) (“In the absence of a statutory definition or cross-reference, it is reasonable to conclude that the Legislature contemplated a meaning consistent with the commonly understood meanings of the phrase . . . *at the time* it enacted the statute.”) (emphasis added).

In 2019, the General Assembly confirmed the status of conspiracy to commit murder as a felony, through the enactment of Stacey’s Law. Stacey’s law clarified in the code that a person who solicits another or conspires with another to commit murder in the first degree is guilty of murdering in the first degree if the death of another occurs as a result of the solicitation or conspiracy. Md. Code Ann., Crim. Law § 2-201(c).³ A person who commits a murder in the first degree is guilty of a felony. Id. § 2-201(b)(1).

The Walter Lomax Act was enacted in 2021 and it was designed to provide compensation for individuals who had decades of their lives unjustly ripped away from them by a flawed criminal justice system. Pet’r’s Ex. 1. The Walter Lomax Act was named after exoneree Walter Lomax who spent 39 years in prison for a crime he did not commit and has championed criminal justice reform since his exoneration. Monique L. Dixon, Tracy Velázquez, Walter Lomax, Parole Reform in Maryland, Md. B.J., November/December 2011, at 50, 57.

In 2021, upon enacting the Walter Lomax Act, it was presumed that the Legislature knew the felony classification of conspiracy to commit murder. The General Assembly is presumed to have had and acted with respect to full knowledge and information as to prior

³ See, Bill synopsis, H.B. 0493, 2019 Leg., 440th Sess. at 1 (Md. 2019).

and existing law and legislation on the subject of the statute and the policy of the prior law. *Bd. of Educ. of Garrett Cnty. v. Lendo*, 295 Md. 55, 63, 453 A.2d 1185, 1189 (1982). Considering the significance of Stacey's Law and its direct relevance to the Walter Lomax Act regarding crime classification, it can be inferred that the Legislature was aware of the classification when it enacted the Walter Lomax Act.

II. THE ALJ ERRED IN RULING THAT THE TERM FELONY WAS UNAMBIGUOUS AND FAILED TO CONSIDER THE REMEDIAL NATURE OF THE WALTER LOMAX ACT AND LIBERALLY CONSTRUE IT TO ACHIEVE THE LEGISLATIVE INTENT.

"[W]here a statute is plainly susceptible [to] more than one meaning and thus contains an ambiguity, courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives and purpose of the enactment." *Kaczorowski v. Mayor & City Council of Baltimore*, 309 Md. 505, 513, 525 A.2d 628 (1987) (internal citations omitted). To the extent that the fact that conspiracy to commit murder was a felony at the time that the Walter Lomax Act was passed is not dispositive, the meaning of the term "felony" is unclear and ambiguous. The Court must look to the legislative purpose to interpret the meaning of felony within the Act.

1. If the term "felony" is not given the meaning in the law at the time of the Walter Lomax Act, then its meaning is ambiguous.

In *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 74-75, 517 A.2d 730, 731-32 (1986), the Supreme Court of Maryland explained that ambiguity is often derived from context:

That a term may be free from ambiguity when used in one context but of doubtful application in another context is well settled... We ... recognize the rule that where a statute is plainly

susceptible of more than one meaning and thus contains an ambiguity, courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives and purpose of the enactment..... The court ... may consider the consequences resulting from one meaning rather than another and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.

The ALJ created ambiguity when they noted that they were required to interpret the term “felony” based on the meaning at the time of conviction rather than when the Walter Lomax Act was enacted. Pet’r’s App. at 551. However, 25 years ago when Mr. Jones was convicted, the term “felony” was open to interpretation. Case law and common law offer various definitions of “felony,” further complicating its interpretation.

In *Director of Finance for Prince George's County v. Cole*, 296 Md. 607, 617 (1983), the Supreme Court of Maryland⁴ stated that, at common law, felonies and treason were punished by death and/or by forfeiture of land. While in *Fisher v. State*, 367 Md. 218, 250-260 (2001), the Supreme Court of Maryland stated that crimes that are dangerous to life are generally felonies.

By contrast, in *Johnson v. State*, 362 Md. 525, 530, 766 A.2d 93, 95 (2001), held that “conspiracy is a common law inchoate offense and a misdemeanor” even if the underlying offense is murder. The Court reached this conclusion without analysis and cited as its exclusive authority a 1924 case involving fraud. *Archer v. State*, 145 Md. 128 (Md. 1924). The *Archer* Court did state “Conspiracy is a common law offense and is a

⁴ The Supreme Court of Maryland was previously named the Court of Appeals.

misdemeanor.” But also went on to opine: “Common-law misdemeanors are not “punished by confinement in the penitentiary.” *Id.* 747.

The decisions in *Archer* and *Johnson* do not control whether conspiracy to commit murder was a felony for the purposes of the Walter Lomax Act for three reasons:

First, the Walter Lomax Act must be interpreted consistent with the law at the time of its enactment;

Second, at common law those who aided in the commission of a murder were considered to have committed a felony; and

Third, the legislature intended the statute to serve a broad remedial purpose and the exclusion of conspiracy to commit murder, which could carry a sentence of life in prison is contrary to legislative intent and would create an unjust result.

2. Conspiracy to Commit Murder was a Felony at Common Law

The synopsis of House Bill 0493, Stacey’s Law, stated that it was aimed at “clarifying” the classification of conspiracy to commit murder as a felony. H.B. 0493, 2019 Leg., 440th Sess. at 1 (Md. 2019). The choice of the term “clarifying” implied an intent to affirm the existing classification under common law rather than alter it substantively. This linguistic precision suggests an intention to underscore the long-standing recognition of conspiracy to commit murder as a felony offence, rather than introduce a new classification.

Moreover, the decisions in *Johnson* and *Archer* are at tension with a long line of common law cases. In *Bowser v. State*, 136 Md. 342, 110 A. 854 (1920), the Maryland Supreme Court made clear that a crime was a felony if first, it was so designated by statute,

or second, it was a felony at common law. *Id.* at 855. (citing *Dutton v. State*, 123 Md. 373, 91 A. 417, 419–20 (1914)).

Contrary to the erroneous ruling in Mr. Jones' case, conspiracy to commit murder has historically been recognized as a felony offense, even under common law principles. Legal doctrines such as aiding and abetting further reinforce the felony status of conspiracy to commit murder, as individuals involved in the planning or commission of such heinous acts are deemed equally culpable under the law. *Kohler v. State*, 203 Md. App. 110, 119, 36 A.3d 1013, 1018 (2012).

At common law, in felony cases, parties to a crime were divided into four distinct categories: (1) principals in the first degree who actually perpetrated the offense; (2) principals in the second degree who were actually or constructively present at the scene of the crime and aided or abetted its commission; (3) accessories before the fact who aided or abetted the crime, but were not present at its commission; and (4) accessories after the fact who rendered assistance after the crime was complete. See W. LaFare & A. Scott, *Criminal Law* § 63 (1972); 4 W. Blackstone, *Commentaries*; Perkins, *Parties to Crime*, 89 *U.Pa.L.Rev.* 581 (1941).

By contrast, misdemeanor cases “d [id] not admit of an accessories either before or after the fact,” *United States v. Hartwell*, 26 F.Cas. No. 15, 318, pp. 196, 199 (CC Mass.1869); instead, all parties to a misdemeanor, whatever their roles, were principals. *United States v. Dotterweich*, 320 U.S. 277, 281, 64 S.Ct. 134, 136, 88 L.Ed. 48 (1943); 1 C. Torcia, *Wharton's Criminal Law* § 33 (14th ed. 1978).

Because at early common law all parties to a felony received the death penalty, certain procedural rules developed tending to shield accessories from punishment. See LaFave & Scott, *supra*, at 499. Among them was one of special relevance to this case: the rule that an accessory could not be convicted without the prior conviction of the principal offender. See 1 M. Hale, *Pleas of the Crown* 623–624 (1847). Under this rule, the principal's flight, death, or acquittal barred prosecution of the accessory. And if the principal were pardoned or his conviction reversed on appeal, the accessory's conviction could not stand. In every way “an accessory follow [ed], like a shadow, his principal.” 1 J. Bishop, *Criminal Law* § 666 (8th ed. 1892).” The theory of accessories following the principal strengthens the argument of shared culpability of those involved in conspiracy crimes, irrespective of their individual roles.

3. The Walter Lomax Act has a remedial purpose and should be construed liberally to satisfy that purpose.

The Walter Lomax Act is a remedial statute that allows exonerated individuals to obtain relief for the injustice of being wrongfully stripped of their liberty. A basic canon of statutory construction is that remedial statutes “must be liberally construed ... in order to effectuate [the statute's] broad remedial purpose.” *Pak v. Hoang*, 378 Md. 315, 326, 835 A.2d 1185, 1191 (2003); see *Tcherepin v. Knight*, 389 U.S. 332, 336 (1967) (“[R]emedial legislation should be construed broadly to effectuate its purposes”); *Marsheck v. Bd. of Tr. of Fire & Police Employees Ret. Sys. of the City of Baltimore*, 358 Md. 393, 404, 749 A.2d 774, 779 (2000) (“Remedial legislation ... must be construed liberally in favor of injured employees in order to effectuate the legislation's remedial purpose.”); see also Karl M.

Llewellyn, *The Common Law Tradition: Deciding Appeals*, 522-32 (1960) (“[R]emedial statutes are to be liberally construed....”).

The legislative history demonstrates that conspiracy to commit murder should be an eligible crime under the Walter Lomax Act. Remedial statutes should be liberally construed in line with their purpose. *Bolling v. Bay Country Consumer Fin., Inc.*, 251 Md. App. 575, 589 (2021). “[W]here a statute is plainly susceptible [to] more than one meaning and thus contains an ambiguity, courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives and purpose of the enactment.” *Kaczorowski v. Mayor & City Council of Baltimore*, 309 Md. 505, 513, 525 A.2d 628 (1987) (internal citations omitted). Where, as here, there appears to be ambiguity or “uncertain meaning” in a statute, this Court “may and often must consider other ‘external manifestations’ or ‘persuasive evidence,’ including a bill’s title and function paragraphs ... its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal....” *Kaczorowski*, 309 Md. at 515, 525 A.2d 628. Courts are not limited “to the words of the statute as they are printed in the Annotated Code.” *Id.* at 514–15, 525 A.2d 628. This process allows courts to discern “that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.” *Id.*

The purpose of the Walter Lomax Act was to give those wrongfully convicted the compensation and benefits needed to help restore the years of life taken away. Testimony offered before the Senate further indicated the purpose of the Walter Lomax Act. Senator Delores G. Kelley offered the following written testimony:

SB0014 removes total discretion of politicians, including governors, to make non-standardized awards, unfettered by legal timelines and budgetary line items. A wrongfully convicted and incarcerated person who has been exonerated has many urgent needs...35 states, the federal government and the District of Columbia have laws which recognize the moral imparity to expeditiously and systematically provide compensation that is standardized and reasonable for wrongly convicted and incarcerated persons who are later exonerated. Maryland should do no less for these fellow human beings, who have wrongfully suffered the loss of their freedom, their family relations, standard healthcare, secondary and higher education opportunities and credentials, Social Security benefits, any other substantial pension benefits, their personal autonomy and even their right to vote. The time is now for Maryland to do what is systematic, humane, and just. It is well past time for Maryland to join the majority of states... Finally, an exoneree needs to be treated like all other human beings in Maryland, and they need to be treated fairly, as fairly as can be after what has transpired in their lives.

Compensation to Individual Erroneously Convicted, Sentenced, and Confined (The Walter Lomax Act): Hearing on S.B. 0014⁵ Before the S. Judicial Proceedings Comm., 2021 Leg., 443rd Sess. (Md. 2021) (Statement of Delegate Delores G. Kelley, S.B. 0014 sponsor).

Moreover, the legislature intended to expand eligibility for those wrongfully convicted, not narrow it. Pet'r's Memorandum at 18-19. In the Department of Legislative Services' Fiscal Note, it calculates the likely expenditures the State would incur in compensating additional exonerees under the Act. *Id.*

Additionally, prior to 2021, State Fin. & Proc. § 10-501 only provided compensation to individuals who received a pardon from the Governor or a certificate from a State's Attorney. H.B. 742 expanded eligibility for not just individuals who had a pardon or certificate by a State's Attorney but for anyone who is able to affirmatively prove

⁵ SB0014 was cross-filed with HB0742.

innocence. *Compensation to Individual Erroneously Convicted, Sentenced, and Confined (The Walter Lomax Act): Hearing on H.B. 742 Before the H. Jud. Comm., 2021 Leg., 443rd Sess. (Md. 2021) (Statement of Delegate Kathleen Dumais, H.B 742 sponsor).*

Interpreting the statute to make someone who was sentenced to life and served a decade in prison, does not further the Legislature's remedial purpose. The ALJ's ruling ran counter to the legislative intent to broaden eligibility and was inconsistent with the remedial nature of the Walter Lomax Act.

4. Failing to consider the remedial purpose resulted in an absurd and unjust result.

Maryland courts have striven without exception to avoid absurd consequences in statutory construction. *D & Y, Inc. v. Winston*, 320 Md. 534, 538, 578 A.2d 1177 (1990)(construction of a statute which is unreasonable, illogical, unjust, or inconsistent with common sense should be avoided); *Schweitzer v. Brewer*, 280 Md. 430, 374 A.2d 347 (1977)(results that are unreasonable, illogical or inconsistent with common sense are to be avoided); *MVA v. Chamberlain*, 326 Md. 306, 315, 604 A.2d 919 (1992); *Price v. State*, 111 Md. App. 487, 496, 681 A.2d 1206 (1996)(common sensical approach that avoids absurd results is favored over technical perspective).

The ALJ construing the statute to render Mr. Jones ineligible to file for relief under the Walter Lomax Act, despite his spending more than a decade in prison, does not further the Legislature's remedial purpose and creates an absurd result.

Additionally, there have been Walter Lomax Act exonerees who were sentenced to far fewer years that received compensation under the Walter Lomax Act. In the *Grant Jones*

matter, Mr. Jones was sentenced to 7 years and served less than 4 for a crime he did not commit. *In the Matter of the Wrongful Conviction of Grant Lee Jones*, OAH No. BPW-WLA-02-23-23464, Decision at 6 (December 1, 2023). Surely, the legislature intended to compensate individuals with much longer sentences, as well.

Moreover, *In the Matter of the Wrongful Conviction of David Morris*, OAH No.: BPW-WLA-02-22-07444, Walter Lomax Act exoneree David Morris was wrongfully convicted of murder in 2005 and sentenced to 50 years. There is no reason to think that the legislature intended for conspiracy to commit murder, that it treated the same and sometimes harsher in the Courts, should have been carved out of the Walter Lomax Act.

In considering the equitable principles underlying the eligibility for compensation under the Walter Lomax Act, it is imperative to recognize the profound injustice suffered by individuals wrongfully convicted of crimes they did not commit. When a person is incorrectly denied the opportunity to seek relief pursuant to the Walter Lomax Act based on misclassification, it perpetuates an additional layer of harm and deprivation. Such errors not only result in profound personal injustices but also undermine the fundamental principles of fairness.

5. An interpretation that gives meaning to the remedial purpose of the statute is consistent with past interpretations of the law.

In Walter Lomax Act cases, the Office of Administrative Hearings has historically construed the text of the Act to avoid absurd results. *In the Matter of the Wrongful Conviction of Kirk Bloodsworth*, OAH No. BPW-WLA-03-21-14970, Decision at 13 (August 30, 2021), an issue arose of whether the Walter Lomax Act precluded exonerees

that were released many years ago from receiving state-issued benefits. The Walter Lomax Act provides housing accommodations and health benefits for 5 years *after the individual's release*. State Fin. & Proc. § 10-501(a)(2). Mr. Bloodsworth was released from prison 28 years before his Walter Lomax Act Decision. Given the obscurity of the statute, the ALJ relied on the remedial nature. The ALJ in the Bloodsworth matter noted, “[t]here is no dispute about the purpose of the Act and the legislative intent based on the language of the act; however, the consequences of different statutory interpretations remain...to preclude benefits from an exoneree seeking supplemental compensation would be an absurd result and thus should be avoided...” *In the Matter of the Wrongful Conviction of Kirk Bloodsworth*, OAH No. BPW-WLA-03-21-14970, Decision at 13 (August 30, 2021).

In the Matter of the Wrongful Conviction of Grant Lee Jones, OAH No. BPW-WLA-02-23-23464, Decision at 43 (December 1, 2023), there was an issue regarding Mr. Grant Jones being outside the window to file a petition for compensation. While relying on the *Bloodsworth* Decision, the ALJ in the *Grant Jones* matter noted:

By requiring individuals who were released before July 1, 2021, to file within two years as opposed to individuals whose conviction was vacated before July 1, 2021, the General Assembly inadvertently excluded a class of wrongfully convicted individuals who completed their sentence prior to July 1, 2021, but whose convictions had not yet been vacated and were therefore ineligible to file for relief – individuals like [Grant Jones], who was released in 1996 – well before July 1, 2021 – but not eligible for compensation until August 1, 2023 – after the June 30, 2023 deadline. The result is patently absurd.

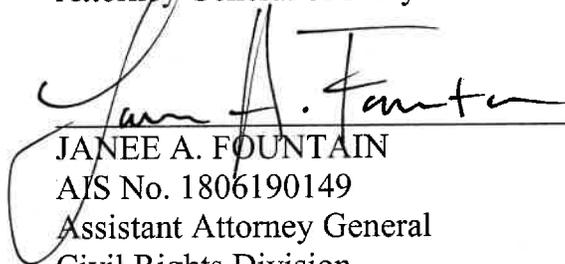
Id.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court reverse the Office of Administrative Hearing's Ruling and remand the case for further proceedings.

Respectfully submitted,

Anthony G. Brown
Attorney General of Maryland

A handwritten signature in black ink, appearing to read "Janee A. Fountain", is written over a horizontal line. The signature is fluid and cursive.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March 2024, a copy of the foregoing

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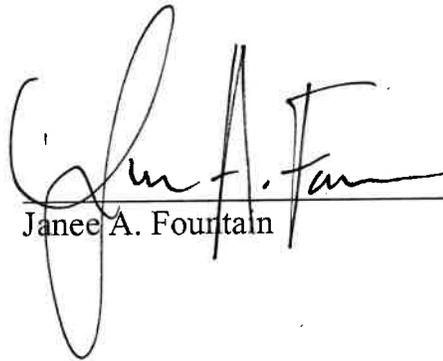
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