# Pleading guilty when innocent: How the Australian criminal justice system contributes to, recognises, and responds to guilty plea wrongful convictions


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## Published

2023-05-10

## Thesis Type

Thesis (PhD Doctorate)

## School

School of Crim & Crim Justice

## DOI

10.25904/1912/4877

# Pleading guilty when innocent: How the Australian criminal justice system contributes to, recognises, and responds to guilty plea wrongful convictions

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Submitted in fulfilment of the requirements of the degree of Doctor of Philosophy

February 2023

**Abstract**

Most of our knowledge on wrongful convictions is based upon the more serious cases that follow a contested trial. This does not reflect contemporary criminal justice systems where most criminal cases are resolved by a guilty plea. Despite increasing recognition that both guilty and innocent persons face significant pressures to plead guilty, the occurrence of wrongful convictions stemming from a guilty plea is a surprisingly under-researched area, particularly within Australia. This thesis addresses this knowledge gap and examines how the Australian criminal justice system contributes to, recognises, and responds to guilty plea wrongful convictions. Driven by a systems and organisational perspective, the thesis explores the structural and organisational features of the Australian criminal justice system that can systematically contribute to guilty plea wrongful convictions. It further considers how errors and false guilty pleas proceed through the criminal justice process without being detected, prevented, or remedied.

The research presented in this thesis comprises three distinct studies. Study 1 (Chapter 4) represents the first empirical research to investigate wrongful convictions resulting from a guilty plea in Australia and aimed to provide insights into the *immediate* factors contributing to erroneous guilty plea convictions. Through a quantitative content analysis of Australian appellate court judgements in which a guilty plea conviction was overturned ($n$ = 139), this paper examined the types of errors contributing to guilty plea wrongful convictions and the stage of the criminal justice process in which they occurred. This study found that errors contributing to guilty plea wrongful convictions occurred during the police investigation, pretrial preparations, and formal court procedures, with the most frequent errors involving incorrect or inappropriate charges, inadequate legal representation, and the courts erroneously

accepting a guilty plea. This underscored the lack of safeguards in the guilty plea system, with our current reliance on defence lawyers and the courts to protect against inappropriate guilty pleas shown to be insufficient.

The second study (Chapter 5) supplemented the quantitative data with qualitative methods. This involved semi-structured interviews with legal professionals working within the Queensland criminal justice system ($n$ = 27). Utilising a thematic analysis, this paper examined the *underlying* structural and organisational conditions of the criminal justice system that may systematically contribute to the occurrence of guilty plea wrongful convictions. This revealed the efficiency-driven pressures criminal justice actors can be under to quickly resolve cases, with limited resources and practical constraints impacting their ability to ensure guilty pleas are appropriate and accurately entered. There was also a general acceptance of false guilty pleas through pleas of convenience, justified on the basis that defendants are autonomous actors making a free choice. This raised concerns over the current validity of a guilty plea as they are not always a reliable indication of actual guilt.

The third and final study (Chapter 6) examined the post-conviction process, exploring how Australian appellate courts may *recognise* and *remedy* a guilty plea wrongful conviction. This quantitively compared successful appeals where the appeal was allowed and the guilty plea conviction was overturned ($n$ = 193) with unsuccessful appeals where the appeal was dismissed and the guilty plea conviction remained ($n$ = 375). Key differences between the two samples and the salient factors predicting the outcome of the appeal were revealed. Independent of other case characteristics, this study found that significant predictors of a successful appeal included having legal representation on appeal and support from other legal actors, while significant predictors of an unsuccessful appeal included male defendants, defendants who received

a term of imprisonment, and those who argued they were unduly pressured to plead guilty. This underscored the restrictive access to appeal and the difficulties defendants can face in having their guilty plea conviction set aside. It also illustrated how Australian appellate courts disregard inherent pressures that can put innocent persons at risk of pleading guilty, likely overlooking the context in which many false guilty pleas are being made.

Collectively, the studies provide a comprehensive understanding of how guilty plea wrongful convictions occur throughout the criminal justice process and how Australian appellate courts are an ineffective mechanism to identify and correct such wrongful convictions. Taken together, the thesis outlines how guilty plea wrongful convictions represent a 'system failure'. Errors and false guilty pleas proceed through the criminal justice system without being identified and corrected due to system-wide pressures and constraints on criminal justice actors. It also reveals how false guilty pleas are considered an acceptable outcome with legal professionals and appellate courts failing to address the inherent pressures on defendants to plead guilty. Rather, they maintain the myth of the defendant's autonomy and choice, with ideals of autonomy valued over the accuracy of the conviction. The thesis raises several policy implications for a criminal justice system in which most criminal cases are resolved by a guilty plea.

**Statement of Originality**

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Signed: 

Caitlin Nash

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**Personal Acknowledgements**

First and foremost, I would like to thank my incredible supervisors Dr Rachel Dioso-Villa and Dr Louise Porter for their continued support, reassurance, and guidance throughout this PhD journey. Having a great supervision team can make all the difference in the ups and downs of completing a thesis, and I feel incredibly lucky to have had such a supportive, encouraging and kind team. While the process was overwhelming at times, I always felt confident and capable in my ability thanks to their words of encouragement and belief in me. This thesis would not be the same without their valuable insights and assistance.

To Dr Rachel Dioso-Villa, you have been a valued mentor for many years now, and I look forward to continuing our work together. You have been the most generous supervisor, and I value your passion, encouragement, and continuous support. I don't think I would have embarked on this journey without your encouragement, and I am forever grateful that you agreed to be my supervisor on my master's thesis. To Dr Louise Porter, I am so glad you joined this supervision team. You consistently provided clear, straightforward, and efficient feedback, which always helped me realise the key points I was really trying to convey. Your advice and feedback greatly improved the quality of my work, and I feel I am a better academic for it. Thank you both so much.

I would also like to thank my family and friends for providing me with unfailing support and continuous encouragement throughout the process of researching and writing this thesis. In particular, I would like to thank my other PhD colleagues who provided me with encouragement, valuable feedback, and positive reinforcement when I desperately needed it. This accomplishment would not have been possible without them. Thank you.

## Acknowledgement of Papers Included in This Dissertation

Section 9.1 of the Griffith University Code for the Responsible Conduct of Research ("Criteria for Authorship"), in accordance with Section 5 of the Australian Code for the Responsible Conduct of Research, states:

To be named as an author, a researcher must have made a substantial scholarly contribution to the creative or scholarly work that constitutes the research output, and be able to take public responsibility for at least that part of the work they contributed. Attribution of authorship depends to some extent on the discipline and publisher policies, but in all cases, authorship must be based on substantial contributions in a combination of one or more of:

- conception and design of the research project
- analysis and interpretation of research data
- drafting or making significant parts of the creative or scholarly work or critically revising it so as to contribute significantly to the final output.

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- accept or decline offers of authorship promptly in writing.
- Include in the list of authors only those who have accepted authorship
- Appoint one author to be the executive author to record authorship and manage correspondence about the work with the publisher and other interested parties.
- Acknowledge all those who have contributed to the research, facilities, or materials but who do not qualify as authors, such as research assistants, technical staff, and advisors on cultural or community knowledge. Obtain written consent to name individuals.

This thesis includes papers in Chapters 4, 5, and 6 that are co-authored with other researchers. My contribution to each co-authored paper is outlined at the front of the relevant chapter. The bibliographic details for these papers including all author, are:

- **Chapter 4:** Nash, C., Dioso-Villa, R., & Porter, L. (2021). Factors Contributing to Guilty Plea Wrongful Convictions: A Quantitative Analysis of Australian Appellate Court Judgements. *Crime & Delinquency*. Advanced online publication. https://doi.org/10.1177/00111287211054723

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- **Chapter 5:** Nash, C., Dioso-Villa, R., & Porter, L. (Submitted). Efficiency over Justice?: Exploring Front-Line Practitioners' Experiences and Opinions on the "Guilty Plea System". *Social and Legal Studies.*

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- **Chapter 6:** Nash, C., Dioso-Villa, R., & Porter, L. (Accepted). Identifying a "Miscarriage of Justice": Factors Influencing a Successful Appeal Against a Guilty Plea Conviction in Australia. *Criminal Justice Policy Review*.

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Appropriate acknowledgements of those who contributed to the research but did not qualify as authors are included in each paper.

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Primary Supervisor: Rachel Dioso-Villa

# Chapter 1. Introduction

## 1.1. Introduction

The legitimacy of the criminal justice system depends on its accuracy and ability to convict the guilty whilst acquitting the innocent. However, since the first DNA exoneration in the United States in 1989, we know beyond a doubt that wrongful convictions occur, with growing numbers of exonerations demonstrating that criminal justice systems around the world have convicted innocent persons (Dioso-Villa, 2015; Huang, 2012; Huff & Killias, 2008; Leuschner et al., 2020; Schapiro, 2020). Wrongful convictions can have devasting and long-lasting consequences for the wrongfully convicted individual (Brooks & Greenberg, 2021; Campbell & Denov, 2004; Grounds, 2004; Westervelt & Cook, 2014), as well as their families, communities, and original crime victims (Cook, 2016; Jackson et al., 2022; Jenkins, 2013; Williamson et al., 2016). They can also have negative effects on the legal actors involved in the wrongful conviction and undermine public confidence in the criminal justice system (Norris & Mullinix, 2019). Knowledge of wrongful convictions is therefore of critical importance to address deficiencies in the criminal justice process and help ensure such injustices are not repeated.

While the problem of wrongful convictions has garnered substantial recognition and attention over the last few decades, most of our knowledge about wrongful convictions is derived from known exonerations that typically involve more serious offences resulting from a contested trial (Acker, 2016; Gross, 2017; Zalman & Norris, 2021). These cases represent only a small proportion of offences prosecuted in adversarial criminal justice systems. Instead, the vast majority of criminal cases are resolved by defendants pleading guilty, and it has been suggested that the number of wrongful convictions among guilty plea convictions is likely to be much higher than

those following a trial (Acker, 2016; Alschuler, 2016; Blume & Helm, 2014; Gross & Shaffer, 2012; Redlich, 2010a; Sherrin, 2011). Guilty pleas account for over 97% of all federal criminal convictions in the United States (United States Sentencing Commission, 2022), 74% of all Crown Court cases in the United Kingdom (Ministry of Justice, 2022), and over 80% of criminal cases adjudicated in Australian higher courts (Australian Bureau of Statistics, 2012). Even if a very small percentage of these are false guilty pleas, it would result in large numbers of wrongful convictions due to their sheer volume within the criminal justice system. As stated by Covey (2013) in the United States, "[e]ven if the rate of false guilty pleas is low, the far-greater size of the guilty plea pool ensures that it adds up to a quantitatively large problem" (p. 1162).

While it may seem difficult to comprehend that innocent persons would plead guilty, research and exoneration data in other common law jurisdictions demonstrate that it does occur (Blume & Helm, 2014; Brockman, 2010; Redlich et al., 2010; Roach, forthcoming; Sherrin, 2011). Indeed, there has been growing recognition that defendants can face several structural and systematic pressures to plead guilty that put innocent persons at risk of pleading guilty (Helm, 2019a; Rakoff, 2014; Roach, forthcoming; Webster, 2022). Though legal and psychological scholars have begun to examine the reasons why innocent persons are pleading guilty (Henderson & Levett, 2018; Redlich, 2010a; Zimmerman & Hunter, 2018; Zottoli et al., 2016), this issue is rarely examined within wrongful conviction scholarship. As a result, we have a limited understanding of how guilty plea wrongful convictions may occur throughout the criminal justice process and the role that various criminal justice actors may play in producing false guilty pleas. This issue is particularly overlooked within an Australian context. To date, no Australian research has empirically investigated the occurrence of false guilty pleas or guilty plea wrongful convictions, making the extent and nature of the problem

unknown. With most criminal cases being resolved by a guilty plea, and the pressures criminal defendants can be under to plead guilty, increased research attention towards wrongful convictions resulting from a guilty plea is of critical social importance.

This thesis addresses this research void and provides the first empirical research to examine wrongful convictions stemming from a guilty plea in Australia. Specifically, the research presented in this thesis is a series of published (and submitted) peer-reviewed journal articles, exploring how the Australian criminal justice system may contribute to, recognise, and respond to guilty plea wrongful convictions. Examining the problem from a systems and organisational perspective, the thesis focuses on the structural and organisational features of the Australian criminal justice system that may systematically contribute to guilty plea wrongful convictions, exploring how errors and false guilty pleas may proceed throughout the criminal justice process without being detected, prevented, or remedied. This approach is intended to provide a more comprehensive understanding of how guilty plea wrongful convictions may occur, which can, in turn, inform greater reform strategies to prevent or reduce their occurrence.

The remainder of this chapter will set the scene for the research aims that guide the thesis, highlighting why researching guilty plea wrongful convictions is of critical importance. First, the wrongful conviction of Gene Gibson, a young Indigenous Australian who falsely pleaded guilty to manslaughter, will be presented. Although no prior Australian research has documented the extent and nature of guilty plea wrongful convictions, this case demonstrates that innocent persons in Australia have pleaded guilty and how systemic failures throughout the criminal justice process may contribute to this issue. The chapter will then define a “wrongful conviction”, illustrating the more inclusive definition adopted by the thesis. It will then review the data limitations of

current wrongful conviction scholarship, highlighting the predominant focus on the more serious cases following a contested trial. The chapter will then review what is currently known about guilty plea wrongful convictions and false guilty pleas as documented in other common law jurisdictions, illustrating the potential prevalence of this issue. It then highlights calls for wrongful conviction scholarship to move beyond the traditional focus on their immediate and legal causes to instead consider the underlying structural conditions from which erroneous convictions emerge. The chapter will conclude with the aims and research questions of the thesis and an outline of the structure of the thesis and the papers that form the empirical chapters.

## 1.2. Setting the Scene: The Wrongful Conviction of Gene Gibson

On 12 April 2017, the Western Australian Court of Appeal made the unanimous decision to overturn Gene Gibson's conviction for the unlawful killing of Joshua Warneke. The body of 21-year-old Joshua Warneke was found on the side of a Broome highway in the early hours of 26 February 2010. A post-mortem examination concluded that the cause of death was a head injury in a man with acute alcohol intoxication, and expert opinion excluded the possibility that the injury was caused by being struck by a car[1]. Two years following the incident, Gene Gibson, a young Indigenous man from the remote Aboriginal community of Kiwirrkurra, was identified as a person of interest in the police investigation. Gibson was 18 years old at the time of the offence, suffered from significant cognitive impairments, and had a severely limited understanding of English. In August 2012, he was arrested and charged with murder after making contradictory and incriminating statements to the Western Australian police, first stating

[1] Following Gene Gibson's exoneration, and nearly 10-years following the death of Joshua Warneke, a cold case review overruled this conclusion, and found that the death was likely a result of fatal head wounds from being struck by a car's wheel, and not from an "edged weapon" as police initially believed (Bartlett, 2020)

that he struck the deceased with a vehicle, then later saying he assaulted him with a weapon (Tulich et al., 2018). However, the charge was later downgraded to manslaughter after the Supreme Court ruled that the interviews conducted by the police were involuntary and inadmissible, as Gibson had been interviewed for nine hours without a lawyer or an interpreter in his native language of Pintupi present (*State of Western Australia v Gibson*, 2014). Notwithstanding the rejection of this evidence, and despite him having no knowledge of the incident, Gibson pleaded guilty to manslaughter on the advice of his defence lawyer and was sentenced to seven and a half years in prison (*State of Western Australia v Gibson*, 2014).

In 2017, after spending nearly five years in prison, the Western Australian Court of Appeal made the unanimous decision to quash Gibson's conviction and overturned his guilty plea (*Gibson v The State of Western Australia,* 2017). Although he had pleaded guilty to the offence, the Court of Appeal found that Gibson had suffered a miscarriage of justice on the basis that he did not adequately understand the legal process, the case against him, the legal advice regarding the plea, or the nature and implications of his plea of guilty due to his English language difficulties and unidentified cognitive impairments. The Court found that Gibson had an inadequate understanding of English and raised doubts over the adequacy of the interpreter provided given that they were not accredited to interpret between English and Pintupi. The Court also accepted evidence of "significant and pervasive" cognitive impairments that seriously affected his capacity to function in day-to-day life, to make decisions of importance and understand complex information. Consequently, the Court of Appeal found that there was a real risk that Gibson's guilty plea was not attributable to a genuine consciousness of guilt, and unanimously decided to overturn his conviction.

Following Gibson's guilty plea and sentence, three official reviews into the police investigation that lead to his arrest and prosecution revealed numerous flaws in the investigation[2]. The Corruption and Crime Commission (2015) review highlighted "systemic failures" within the Western Australian police, particularly around how they deal with Aboriginal witnesses and suspects and the use of Aboriginal language interpreters (p. 50). Following the Court of Appeal decision, Premier Mark McGowan said that "a modern justice system should not fall down because people didn't understand the language or suffered mental impairment" (Clarke, 2017). Gibson's wrongful conviction was later recognised by the Western Australia government, which awarded him $1.3 million in compensation, with Attorney General John Quigley stating that the ex-gratia payment was made in "recognition of the miscarriage of justice suffered by Mr Gibson" and "reflects the gravity of the wrong done to Mr Gibson by the State" (Government of Western Australia, 2018, p. 3).

The case of Gene Gibson demonstrates that innocent persons in Australia plead guilty to crimes they did not commit and highlights how multifaceted failures throughout the criminal justice system can contribute to such miscarriages of justice. As noted by defence lawyer Michael Lundberg who ran Gibson's appeal, "none of the safeguards present in the criminal justice system prevented Gene from being charged, convicted and then imprisoned for this very serious offence" ("Gene Gibson to seek $2.5m for wrongful conviction over Josh Warneke manslaughter", 2017). It also illustrates the routine nature of erroneous convictions, with Tulich et al. (2018) concluding in their critique of the case that "miscarriages of justice are not always the

[2] One review was conducted by the Corruption and Crime Commission (2015), and another was undertaken by the Internal Affairs Unit of the Western Australian police (IAU). As a result of the IAU review, the Deputy Commissioner of the Western Australian police directed that a thorough "desktop review" be carried out (the Aviemore Review).

results of deliberate attempts to withhold or corrupt vital evidence, rather they are the outcome of poor decision making, lax regimes of accountability, and weakly enforced rules and guidelines" (p. 138). Had it not been for the official reviews into the police investigation, the wrongful conviction of Gene Gibson would not have been recognised and remedied, with lawyer Michael Lundberg acknowledging that they "helped focus the spotlight on Gene's case and his incarceration, and … provided the catalyst for the bringing of [his] appeal" (Australian Associated Press, 2017). While this represents a fortunate outcome for Gene Gibson, it suggests that there may be many more similar miscarriages of justice in Australia that continue to go unrecognised.

### 1.3. Defining Wrongful Convictions

It is important to define the term "wrongful conviction." There is no agreed-upon definition of wrongful conviction and determining what may constitute a wrongful conviction can be a contentious issue. For instance, the term can be used to refer to a variety of situations that range from persons who are falsely accused (arrested, prosecuted, and tried) to those who are wrongfully convicted and imprisoned (Hoel, 2008; Poveda, 2001). Some also debate whether a wrongful conviction should include those cases in which the defendant had a conviction successfully overturned on appeal, as it suggests that the system is working as intended (Hamer, 2014; Naughton, 2005). The term can also fall under the broader umbrella of a "miscarriage of justice" which can refer to the conviction of innocent persons, as well as convictions improperly obtained by the State or that breached the rights of individuals (Greer, 1994; Quirk, 2007; Walker & Starmer, 1993).

Although wrongful convictions can be an ambiguous term, it has become largely associated with "actual" or "factual" innocence in which a defendant was convicted of a

crime they did not commit (known as “wrong person” errors) (for example, see Acker, 2016; Bedau & Radelet, 1987; Gould et al., 2014; Gross & Shaffer, 2012; Huff et al., 1986; Poveda, 2001; Rattner, 1988; Risinger, 2007). However, someone could also be considered wrongfully convicted on the basis that they are “legally” innocent (Roberts & Weathered, 2009). Legal innocence can refer to persons who committed the crime but had a legally relevant defence that should have resulted in an acquittal (Burnett, 2002; Parkes & Cunliffe, 2015; Raymond, 2001), or was convicted based on procedural or legal errors that would inform a successful appeal (Roberts & Weathered, 2009). For instance, Hughes (2011) describes legal innocence as someone whose constitutional rights were violated in the process of being convicted, such as those who did not understand the nature of the charge against them, thus rendering their plea involuntary, those who pleaded guilty to a more serious offence, such as murder instead of manslaughter, and those who were convicted on false evidence.

In recent years, scholars have come to criticise the predominant focus on “factual” innocence in wrongful conviction scholarship, arguing that it devalues other forms of innocence and the values of procedural justice (Hughes, 2011; Raymond, 2001). While there can be inherent difficulties in establishing factual innocence (Findley, 2011b; Hamer, 2022), this focus is also argued to overlook a wider range of issues that may frequently contribute to erroneous convictions. For instance, Hoffman (2007) argues that the criminal justice system as a whole can be profoundly unreliable and that while innocence projects have highlighted several issues contributing to factual errors, the “factual innocence revealed by the projects is just the tip of an iceberg of injustice” (pp. 664-665). Similarly, Hamer (2022) states that the innocence movement has only achieved a “partial view of the problem of incorrect convictions” (p. 2), while

Parkes and Cunliffe (2015) argue that the narrow focus on factual innocence can "deflect attention from unidentified miscarriages of justice" (p. 219).

As such, to recognise the different types of wrongs that may occur in a guilty plea conviction, this thesis adopts a broad definition of wrongful conviction. This includes cases that should not have resulted in a conviction, whether this stems from a factual, legal, or procedural error. Expanding the concept of wrongful convictions beyond "factual" innocence can capture a larger number of errors that may frequently occur in a guilty plea conviction but go largely unrecognised. Furthermore, this approach recognises the importance of due process within the criminal justice system and its obligation to ensure a fair and just process for all defendants, not just factually accurate outcomes. As stated by Smith (2009), "[c]onvictions are wrongful even if the convicted person is guilty when there is demonstrable unfairness" (p. 325). This approach is particularly important when examining guilty plea convictions, as defendants who plead guilty waive many procedural protections associated with a trial, opting instead for "a non-transparent process with limited judicial review and little to no adversarial testing" (Turner, 2017, p. 76). As most defendants plead guilty, it is important to ensure that these convictions are achieved through fair and just procedures and that they are appropriate, as well as just factually accurate.

### 1.4. Data Limitations of Wrongful Convictions Research

Wrongful convictions are notoriously difficult to study due to the inherently hidden nature of the phenomenon. As a result, most empirical research on wrongful convictions is based on cases that result in the exoneration of convicted defendants (Gross, 2017). The bulk of this literature comes from the United States, where extensive datasets have allowed researchers to investigate common factors contributing to

wrongful convictions, including eyewitness misidentifications, false confessions, perjury or false accusations, false or misleading forensic evidence, official misconduct, and incompetent counsel (Garrett, 2011; Gould et al., 2014; Gross & Shaffer, 2012; Huff et al., 1986; Norris et al., 2020; Rattner, 1988). Although research into the causes of wrongful convictions has received less research attention outside of the United States, studies in other common law jurisdictions suggest that these same factors are also apparent in wrongful convictions documented in Australia (Dioso-Villa, 2015; Langdon & Wilson, 2005), Canada (Denov & Campbell, 2005; Roach, 2011), and the United Kingdom (Brandon & Davies, 1973; Helm, 2021; Walker & McCartney, 2008).

While the extant literature has provided important insights into the contributing causes of wrongful convictions, most of this knowledge derives from well-publicised cases that typically involve highly violent crimes of aggravated sexual assault and murder that entail long prison sentences (Gross, 2017; Zalman & Norris, 2021). As these cases compose only a small proportion of criminal cases prosecuted in adversarial systems, scholars have acknowledged that studies on exoneration data do not capture a representative sample of wrongful convictions that likely occur (Gross, 2017; Gross & O'Brien, 2008). Instead, the cases likely represent the “tip of the iceberg” in the wider universe of criminal cases (Roach, 2011, p. 1470), and neglects the more routine criminal cases that present many opportunities and pressures for innocent persons to plead guilty (Natapoff, 2012; Roach, forthcoming). As argued by Zalman & Norris (2021), by failing to account for guilty pleas and misdemeanour convictions, current wrongful conviction scholarship has “largely failed to account for what is possibly the largest source of wrongful convictions” (p. 651). As a result, relatively little is known about the extent and nature of wrongful convictions stemming from a guilty plea, particularly for cases involving less serious offences.

## 1.5. Guilty Plea Wrongful Convictions: What Do We Know?

Though limited research has examined wrongful convictions resulting from a guilty plea, there has been growing recognition that innocent persons are pleading guilty. With reference to international literature, this section will review what we currently know about guilty plea wrongful convictions and false guilty pleas as documented in other common law jurisdictions. This will draw upon known exonerations, self-report rates of false guilty pleas, surveys of legal professionals, and psychological studies on defendant decision-making, highlighting the potential scope and prevalence of false guilty pleas.

### *1.5.1. Exoneration Data*

Like most wrongful conviction scholarship, the occurrence of innocent persons pleading guilty is most extensively documented in the United States. Of the innocent persons exonerated by DNA analysis, 12% (44/375) pleaded guilty to crimes they did not commit (Innocence Project, 2023), while the National Registry of Exonerations (2023) has documented 899 exonerees that were convicted by a guilty plea, representing 26% of all national exonerees documented as of January 2023. The Miscarriage of Justice Registry in the United Kingdom has also recorded 464 recognised miscarriages of justice, of which 85 were convicted based on a guilty plea (Evidence-Based Justice Lab, 2013). Though Canada, like Australia, lacks a national registry of exonerations, there has also been growing recognition of innocent persons pleading guilty in Canada (Brockman, 2010; Public Prosecution Service of Canada, 2018; Roach, 2011, 2017, forthcoming; Sherrin, 2011). Of the 24 innocent defendants exonerated by Innocence Canada (2023), six were convicted based on a guilty plea. Canadian researchers have

also further documented at least 18 recognised wrongful convictions that involved guilty pleas (Roach, forthcoming).

Despite their known occurrence, limited empirical research has examined wrongful convictions stemming from a guilty plea. In the United States, one study utilised the Innocent Project's dataset of DNA exonerations to compare 40 exonerees who pleaded guilty to 322 exonerees that pleaded not guilty (Cooper et al., 2014). This study found that innocent exonerees were more likely to have pleaded guilty to homicides (as opposed to sexual offences), with guilty plea cases also more likely to involve co-defendants, multiple victims and false confessions compared to the not guilty plea cases. Innocent exonerees who pleaded guilty were also more likely to have been threatened or charged with the death penalty, illustrating the pressures generated by the possibility of capital punishment (Cooper et al., 2019). The pressures of capital punishment were also demonstrated by Vick et al. (2019). Utilising homicide convictions drawn from the National Registry of Exonerations, Vick et al. (2019) estimated the probability of false confessions and guilty pleas in death-eligible jurisdictions. This study found that exonerees in death-eligible jurisdictions were significantly more likely to have pleaded guilty, supporting concern that prosecutors can use the death penalty as leverage to obtain a guilty plea conviction (Vick et al., 2019).

Other exoneration-based studies in the United States have highlighted the pressures associated with plea bargaining, where innocent persons have pleaded guilty to receive the lesser sentence associated with a plea. This was demonstrated in Covey's (2013) analysis of the Rampart and Tulia mass exonerations in the United States, which found that many exonerees falsely pleaded guilty due to (a) an outsized trial penalty, (b) a lack of effective trial strategies to contest their innocence, and (c) unsympathetic forums, where defendants pleaded guilty due to an "accurate perception that the system

itself was not constituted in a way likely to give them much chance of prevailing" (p. 1170). Similar findings were apparent in Gazal-Ayal & Tor (2012) examination of 466 exoneration cases in the United States. While only 37 (8%) of these exonerees were convicted following a guilty plea, this study found that innocent defendants were more likely to accept plea offers in certain circumstances, including (a) when the chance of conviction was very likely, (b) when the plea discounts were very lenient, and (c) if the defendant had falsely confessed during the investigation.

While these studies have provided insights into the factors leading innocent persons to plead guilty, there are limitations on relying on known exonerations to examine guilty plea wrongful convictions. False guilty pleas are difficult to document, and many scholars have argued that the number of wrongful convictions based upon a guilty plea is likely much higher than the exoneration data suggests (e.g., see Alschuler, 2016; Bibas, 2014; Covey, 2013; Redlich, 2010a; Wilford & Khairalla, 2019; Zalman & Norris, 2021). For instance, defendants who plead guilty can waive many of their rights to appeal or challenge their conviction which limits their avenues for post-conviction relief (Hoyle & Sato, 2019; King et al., 2005; Stephens, 2013; Zottoli et al., 2019). Some states in America go so far as denying defendants who plead guilty the right to obtain and present DNA evidence that could help establish their innocence (Stone, 2010; Wiseman, 2012). Defendants who plead guilty are also less likely to have forms of evidence necessary for exoneration that can easily prove innocence (Wilford & Khairalla, 2019), and without a detailed trial record, the strength of the prosecution's case and the evidence they may have presented at trial remains untested and unknown (Alschuler, 2016; Bibas, 2014).

Defendants who plead guilty are also less likely to receive the attention and assistance necessary for their wrongful conviction to come to light. Having a wrongful

conviction recognised and remedied is a difficult process that usually requires the assistance of investigative journalists, voluntary lawyers and organisations such as the Innocence Project (Alschuler, 2016; Sherrin, 2011). As these organisations are typically under-resourced and have high workloads, they can use stringent criteria regarding which cases to pursue, often excluding defendants who pleaded guilty (Roberts & Weathered, 2009; Wilford & Khairalla, 2019). Lastly, defendants who plead guilty generally do so to receive lighter sentences or to avoid jail time altogether and may lack the incentive and motivation necessary to address their wrongful conviction (Gross & Shaffer, 2012). As a result, the documented cases of guilty plea wrongful convictions should be considered indicative rather than definitive of the true extent of the problem.

### *1.5.2. Self-Reported Rates of False Guilty Pleas*

Research utilising self-reported rates of false guilty pleas suggests that innocent persons may be pleading guilty more frequently than the official statistics suggest. For instance, through interviews with youths and adults who pleaded guilty to felonies in New York City, Zottoli et al. (2016) found that more than one quarter of the youths (26.5%) and almost one-fifth of the adults (19%) claimed to be completely innocent of all charges and entered false guilty pleas. Similarly, Malloy et al. (2014) found that 18% of adolescent males incarcerated for serious crimes in California claimed to have submitted a false guilty plea to a judge, while 6% of juveniles defendants in Washington state reported they had falsely pleaded guilty (Viljoen et al., 2005). Redlich et al. (2010) also found that self-reported rates of false guilty pleas amongst a sample of mentally ill offenders across six sites in the United States ranged from 27% to 41%.

Outside of the United States, earlier studies in the United Kingdom have also documented high rates of self-reported innocence (Baldwin & McConville, 1977;

Baldwin & McConville, 1979; Bottoms & McClean, 1976; Dell, 1971; McConville & Marsh, 2014). For instance, Baldwin and McConville (1977) interviewed 121 defendants whose cases were tried in the Birmingham Crown Court and found that 37% claimed to be innocent of some or all of the charges they faced. Similarly, Bottoms and McClean (1976) interviewed 293 defendants whose cases were processed through a lower criminal court in Sheffield and found that 18% claimed to be innocent of at least some of the charges. Dell (1971) also interviewed 527 women prosecuted in the Magistrates' Court in England and found that over 44% of those who claimed to be innocent pleaded guilty.

### *1.5.3. Surveys of Defence Lawyers*

Research has also surveyed defence lawyers working within the criminal justice system to gauge their perceptions on the potential prevalence and scope of innocent persons pleading guilty. In the United States, Helm and colleagues (2018b) asked defence attorneys to provide a rough estimate of the proportion of defendants they believe are pleading guilty when innocent. They found that estimates ranged widely between 5% to 70%, with attorneys with more years of experience providing lower estimates (Helm et al., 2018b). In Canada, Erentzen et al. (2021) surveyed defence lawyers on the potential prevalence and factors contributing to false guilty pleas. In open-ended responses, the participants identified lengthy pre-trial detention, padded charges, and the prohibitive costs of mounting a legal defence as contributing to defendants falsely pleading guilty. The responses also indicated high rates of guilty plea wrongful convictions, with participants stating that false guilty pleas occur in 25% or higher of all guilty pleas, while one-quarter of the sample selected a false guilty plea rate of 11-15% or 16-20% of all cases. These findings support concerns that our current

knowledge of wrongful convictions based upon known exonerations “largely underestimate the scope of the problem” (Erentzen et al., 2021, p. 11).

### *1.5.4. Experimental Research*

Psychological studies and experimental research examining plea-bargaining and defendant decision-making also indicate that a high percentage of innocent individuals can be induced to plead guilty. Again, most of this research is based in the United States, supporting what American scholars have labelled plea-bargaining’s “innocence problem”, where innocent persons are pleading guilty in return for a reduced sentence (Covey, 2009; Dervan, 2012; Hessick & Saujani, 2002). For instance, in a revealing laboratory experiment that accused college students of academic dishonesty, Dervan & Edkins (2013) found that over half of the innocent participants (56%) were willing to falsely admit guilt and accept a lesser punishment to avoid having the cheating incident go before an Academic Review Board (their representation of a trial). This rate is consistent with findings from Wilford (2012) and Zannella (2016) who each reported that 52% of innocent participants accused of cheating falsely admitted guilt and accepted a plea deal in exchange for a lesser sanction. Henderson & Levett (2018) also demonstrated the significant influence attorney recommendations can have on plea decisions, finding that innocent students accused of cheating were much more likely to falsely plead guilty if an advocate recommended accepting a guilty plea (58%). In contrast, only 4% falsely pleaded guilty if the advocated recommended going to trial.

Vignette studies that pose hypothetical plea bargaining scenarios have also found that the rate of mock innocent participants pleading guilty can be substantially increased under certain circumstances, such as when the participants are offered higher discounts for a guilty plea (Bordens, 1984; Quickel & Zimmerman, 2019; Schneider,

2018; Schneider & Zottoli, 2019) when the likelihood of conviction is high (Redlich & Shteynberg, 2016; Tor et al., 2010; Zimmerman & Hunter, 2018), or when probation or community service is offered over imprisonment (Helm, 2022; Yan et al., 2022). Taken together, these studies underscore the potential prevalence of innocent defendants pleading guilty, raising important implications for criminal justice systems in which the majority of cases are resolved by a guilty plea.

### 1.6. A Focus on Immediate Causes Over Structural Conditions

A common criticism of wrongful conviction scholarship is its descriptive nature and predominant focus on the immediate causes of wrongful convictions (Leo, 2005, 2017; Leo & Gould, 2009; Lofquist, 2014; Siegel, 2005). Most wrongful conviction scholarship has been limited to narrative methodologies and case studies that tend to focus on identifying isolated legal causes, often attributing wrongful convictions to individual instances of error or misconduct (Leo & Gould, 2009; Zhong & Dai, 2019). This approach can oversimply the multifactorial, complex, and contingent nature of causation in wrongful conviction cases and tends to elevate individual factors over institutional conditions (Leo & Gould, 2009). Instead, rather than being the result of any one individual or malicious act, wrongful convictions likely stem from entrenched institutional and systemic factors (Acker, 2016; Roach, forthcoming; Siegel, 2005). As argued by Siegel (2005) in the United States, “most erroneous or unjust results that emerge from our criminal justice system are the consequence not of extraordinary events, but of the ordinary operation of a flawed system” (p. 1223). As such, to provide a more comprehensive understanding of wrongful convictions, scholars have called for a need to move beyond their “immediate” or “legal” causes, to instead direct attention toward the structural and organisational conditions or “root” causes from which erroneous convictions emerge (Acker, 2016; Leo, 2005; Leo, 2017; Norris et al., 2020).

## 1.7. Research Aims and Questions

Despite the growing recognition that innocent persons may frequently be pleading guilty, this issue has been largely overlooked within wrongful conviction scholarship. As a result, relatively little is known regarding the potential prevalence and contributing causes of wrongful convictions resulting from a guilty plea. This issue is particularly overlooked within the Australian context. To date, no empirical research has examined guilty plea wrongful convictions or false guilty pleas, making the extent and nature of the problem unknown.

This thesis addresses this knowledge gap and provides the first empirical research to examine wrongful convictions stemming from a guilty plea in Australia. Two data sources are utilised to investigate both the *immediate* and *root* causes of guilty plea wrongful convictions. This involved the collection and analysis of Australian appellate court judgements in which a guilty plea conviction was contested on appeal, combined with semi-structured interviews with legal professionals who work directly within the guilty plea system. Viewing the problem from a systems and organisational perspective, this thesis aimes to examine how errors contributing to guilty plea wrongful convictions may occur throughout various stages of the criminal justice process and how underlying structural and organisational conditions of the criminal justice system may contribute to their occurrence. It also aimed to examine how Australian appellate courts recognise and respond to these errors, and whether they can provide an effective safeguard against guilty plea wrongful convictions. Overall, the thesis addresses three overarching research questions (RQ):

> RQ1: What are the types of errors that contribute to a guilty plea wrongful conviction, and where in the criminal justice process do they occur?

RQ2: What are the organisational and structural conditions of the criminal justice system that may contribute to the occurrence of guilty plea wrongful convictions?

RQ3(a): Why are guilty plea convictions overturned in appellate courts?

RQ3(b): Do successful guilty plea appeals differ in grounds of appeal, defendant, case, and appeal characteristics from unsuccessful guilty plea appeals?

## 1.8. Overview of Thesis Chapters

This thesis comprises seven chapters. Chapter 1 has overviewed the impetus for conducting the thesis, outlining the lack of research on guilty plea wrongful convictions and their potential prevalence within common law jurisdictions. It also presented the aims and research questions that will be addressed in the thesis. Chapter 2 then summarises relevant literature on why defendants may falsely plead guilty and how features of the Australian criminal justice system may contribute to this issue. This chapter first outlines the theoretical perspective guiding the research, illustrating how a systems and organisational perspective can provide a more comprehensive understanding of guilty plea wrongful convictions. It then examines the structural and organisational factors that may exert undue pressure on defendants to falsely plead guilty, and the pressures and incentives criminal justice professionals can face to resolve a case through a guilty plea. Chapter 3 outlines the methodological framework adopted for the thesis and provides an overview of the methods used for the empirical papers.

Chapters 4, 5, and 6 then present the empirical papers that examine the contributing causes of guilty plea wrongful convictions and how the Australian criminal justice system may recognise and respond to this issue. Chapter 4 consists of the paper

titled “Factors Contributing to Guilty Plea Wrongful Convictions: A Quantitative Analysis of Australian Appellate Court Judgements” published in *Crime and Delinquency* in 2021. This paper represents the first empirical research to examine wrongful convictions stemming from a guilty plea in Australia. Through a quantitative content analysis of Australian appellate court judgements in which a guilty plea conviction was overturned, this study examined the types of errors contributing to guilty plea wrongful convictions and the stage of the criminal justice process in which the errors occur.This provided an important first step in understanding the *immediate* factors that contribute to guilty plea wrongful convictions.

Chapter 5 presents the article “Efficiency Over Justice?: Exploring Front-Line Practitioners' Experiences and Opinions on the Guilty Plea System,” a manuscript submitted to *Social and Legal Studies*. This paper involved semi-structured interviews with legal professionals that work within the Queensland criminal justice system, exploring the *underlying* organisational and structural conditions of the criminal justice system that may contribute to guilty plea wrongful convictions. By interviewing those directly involved in the guilty plea system, this article explored the realities of resolving cases through a guilty plea and how system-wide pressures and constraints can impact the role, beliefs, and attitudes of those working within the system.

Chapter 6 details the final study of the thesis by presenting the article “Identifying a ‘Miscarriage of Justice’: Factors Influencing a Successful Appeal Against a Guilty Plea Conviction in Australia,” a manuscript accepted for publication in *Criminal Justice Policy Review* in 2023. This paper explored the post-conviction process following a guilty plea, examining how Australian appellate courts may *recognise* and *respond* to guilty plea wrongful convictions. It involved a comparative analysis of appellate court judgements, comparing successful appeals where a guilty

plea conviction was overturned against unsuccessful appeals where the guilty plea conviction remained. This paper thus provides insights into the reasons why guilty plea convictions are overturned and the salient factors influencing judicial decision-making in the appeal process.

Taken together, each of the empirical chapters provides a comprehensive understanding of how guilty plea wrongful convictions may be occurring within the Australian criminal justice system, and whether Australian appellate courts are providing an effective mechanism to identify and correct such wrongful convictions. The final chapter (Chapter 7) then presents an overall discussion that draws these findings together, outlining how guilty plea wrongful convictions represent a system failure and how false guilty pleas are considered an acceptable outcome. It concludes with a discussion on the policy implications derived from the findings, the limitations of the thesis, and provides recommendations for future directions of research.

# Chapter 2. Literature Review

## 2.1. Introduction

Chapter 1 provided the background and context for researching guilty plea wrongful convictions, highlighting the current lack of empirical knowledge on this issue and its potential prevalence within common law jurisdictions. Although no prior Australian scholarship has investigated the potential scope or causes of guilty plea wrongful convictions, there is growing recognition that structural pressures and inducements embedded within adversarial criminal justice systems can encourage innocent persons to plead guilty (see, for example, Alschuler, 2016; Blume & Helm, 2014; Brockman, 2010; Helm, 2019a; Rakoff, 2014; Roach, forthcoming; Webster, 2022). With reference to relevant literature, this chapter will review the structural and organisational features of the Australian criminal justice system that may be increasing the risk of guilty plea wrongful convictions. The chapter is present over five sections.

The first section outlines the theoretical perspective guiding the research, arguing that viewing guilty plea wrongful convictions from a systems and organisational perspective can provide a more comprehensive understanding of this issue. This approach moves beyond the traditional focus on immediate causes of wrongful conviction to instead consider their underlying or root causes, emphasising the complex interaction of errors that can combine and compound throughout various stages of the criminal justice process. The second section then reviews the various structural pressures and inducements to plead that exist within the Australian justice system that can undermine the reliability of a guilty plea. Section three turns to the organisational pressures and incentives confronting criminal justice professionals working within the criminal justice system, considering how they may contribute to the production of false guilty pleas. The fourth section then highlights the implications these findings have for

how appellate courts view guilty plea convictions, raising concerns about whether they provide an appropriate mechanism in recognising and remedying guilty plea wrongful convictions. The fifth and final section outlines the thesis aims and research questions in the context of the literature reviewed.

## 2.2. Systems and Organisational Theoretical Perspective

As noted in the previous chapter, wrongful conviction scholarship has frequently been criticised for lacking a "theoretically informed and methodologically sophisticated field of study within the discipline of criminology" (Leo, 2017, p. 86). While this has improved in recent years (see, for example, Bonventre et al., 2014; Doyle, 2010; Naughton, 2014; Norris & Bonventre, 2015; Stratton, 2015; Zalman, 2014), many scholars have criticised the descriptive nature of the literature and the predominate focus on the immediate causes of wrongful convictions, and have called for a need to look towards the structural and organisational conditions or "root" causes from which erroneous convictions emerge (Acker, 2016; Leo, 2005, 2017; Norris et al., 2020).

One approach to providing a more comprehensive understanding of wrongful convictions that has been advanced in recent years is to view the problem from an systems and organisational perspective (Doyle, 2010, 2014; Lofquist, 2014; Luna, 2005; Thompson, 2008). These approaches move away from considering wrongful convictions as the result of individual instances of error or misconduct by a select few individuals, often referred to as the "bad apples" approach (Bonventre, 2021, p. 6; Doyle, 2020, p. 256; Thompson, 2008, p. 1028), to instead focus on the underlying structural and organisational conditions that increase the likelihood that such errors will occur in the first place. For instance, an organisational theoretical perspective considers how individual decision-making can be influenced by the broader organisational, cultural, and environmental context in which it takes place, focusing on how

overarching structural rules and norms can shape individual perceptions, decisions, and behaviour (Lofquist, 2001; Siegel, 2005; Thompson, 2008). Such approaches have been applied to major technical failures, such as the Three Mile Island nuclear accident (Perrow, 1999) and the crash of the space shuttle Challenger (Vaughan, 1996). Rather than focusing on individual instances of error, these analyses conceptualised errors or misconduct as expected, "normal" events likely to occur in any complex organisation, and instead concentrated on the institutional and organisational factors that likely make these events more common (Perrow, 1999; Vaughan, 1996).

In wrongful conviction scholarship, Lofquist (2001) drew upon these earlier theories of organisational wrongdoing to examine the structural and organisational factors that contributed to a single wrongful conviction case study. Rather than focusing on the actions of individual actors and identifiable instances of misconduct, this study explored the complex interactions of numerous decision-makers and the broader organisational and environmental context in which they work. From this perspective, Lofquist (2001) found that the wrongful conviction was "…the product of the normal, day-to-day routine operations of decision-makers acting free of conspiratorial intent or wrongdoing: the outcome was generated by the structures and routines in which actors act" (p. 192). This view recognised that "individual decision making is nested within organisational structures and cultures, which are themselves nested within larger institutional and societal environments," which Lofquist (2001) suggests can provide a more comprehensive explanation of a wrongful conviction (p. 192).

Others have suggested a systems-oriented approach to understanding wrongful convictions, treating the criminal justice system as an organisational system consisting of interrelated, interacting, and independent parts (Bernard et al., 2005; Doyle, 2010, 2014; Luna, 2005). From this point of view, Doyle (2010, 2016) suggests that wrongful

convictions should be analysed as "organisational accidents." This recognises that wrongful convictions cannot adequately be explained by the failures of a "single component or lone operator" (Doyle, 2016, p. 897), but rather are complex events in which small mistakes combine with each other and with latent system weaknesses to create a system failure (Doyle, 2010, 2016). This approach argues that many things have to fail before the wrong person is convicted, and that essentially "everyone" is involved in producing a wrongful conviction, either by making an error or by failing to anticipate or intercept someone else's error (Doyle, 2016, p. 897). As such, from a systems perspective, it is important to examine how errors may compound and combine throughout the criminal justice process without being detected or prevented. As observed by Colvin (2009), "[w]rongful accusations do not necessarily lead to wrongful convictions. They lead to wrongful convictions when the safeguards of the criminal justice system fail" (p. 174).

This thesis will be the first to apply a systems and organisational perspective to the examination of guilty plea wrongful convictions. While previous literature in North America has highlighted plea-bargaining as a contributing cause of wrongful convictions (for example, see Bibas, 2014; Brockman, 2020; Dervan, 2012; Kennedy, 2016), this perspective will expand the focus to consider the guilty plea system as a whole. This recognises that errors contributing to a guilty plea wrongful conviction may occur throughout the various stages of the criminal justice process, not just with discussions between prosecutors and defence lawyers (as illustrated by the Gene Gibson case described in Chapter 1). While it is recognised that innocent defendants can face strong incentives to plead guilty, this more systemic approach can also consider how a defendant can falsely plead guilty and receive a criminal conviction without the intervention of the numerous criminal justice actors involved in the process. Further, an

organisational approach can place the actions of criminal justice professionals within the wider institutional and structural environments in which they work, examining how this may impact their perceptions, decisions, and behaviour (Thompson, 2008).

This theoretical perspective is used to frame the following literature review, outlining the structural and organisational conditions of the criminal justice system that may contribute to guilty plea wrongful convictions. This includes the structural pressures and inducements to plead for criminal defendants that can increase the risk of false guilty pleas, as well as the organisational pressures and incentives for criminal justice professionals that may impact the production, detection, and prevention of guilty plea wrongful convictions. It also considers the post-conviction process, considerating whether appellate courts are providing an appropriate safeguard against false guilty pleas.

### 2.3. Structural Pressures and Inducements to Plead

Like other common law jurisdictions, the vast majority of criminal cases in Australia are resolved by the defendant pleading guilty, with over 80% of all criminal cases adjudicated in the higher courts resolved by a guilty plea (Australian Bureau of Statistics, 2012). The main justification for the high number of guilty pleas is to improve court efficiency and reduce court delays, with many claiming that the court system simply could not function if all cases proceeded to trial (Blume & Helm, 2014; Cheng et al., 2018; Walsh, 2017a). Concerns over court inefficiency have resulted in the introduction of numerous incentives designed to encourage defendants to plead guilty to avoid the costs and time associated with a trial (for example, see New South Wales Law Reform Commission, 2014; Tasmanian Sentencing Advisory Council, 2018; Victorian Sentencing Advisory Council, 2007). However, with this increasing reliance on guilty pleas, many have raised concerns that incentives to plead have become unduly coercive

and can put innocent defendants at risk of pleading guilty to crimes they did not commit (Baldwin & McConville, 1977; Blume & Helm, 2014; Helm, 2019a; Horne, 2016; McConville & Marsh, 2014). This section will review the inducements to plead guilty that exist within the Australian criminal justice system and other systemic pressures that may be increasing the risk of false guilty pleas.

### *2.3.1. The Guilty Plea Discount*

In Australia, all jurisdictions provide incentives for defendants to plead guilty through sentencing discounts, either in statute[3] or through common law, with greater discounts offered the earlier the plea is made. The justification for encouraging defendants to plead guilty with a reduced sentence is largely pragmatic; a guilty plea saves the criminal justice system and community the cost and inconvenience of trial, reduces court delays, and spares victims and witnesses from having to give evidence (Bagaric & Edney, 2015). However, scholars in the United Kingdom and Australia have criticised sentencing discounts for their potential to unduly compel innocent persons into pleading guilty for the more lenient sentence, and for punishing defendants for exercising their right to trial (Bagaric & Brebner, 2002; Baldwin & McConville, 1978; Mack & Roach Anleu, 1997, 2000; Mackenzie, 2007; Peay & Player, 2018; Roberts & Bradford, 2015; Willis, 1985, 1995). As stated by Bagaric and Brebner (2002), the risk of providing a guilty plea discount is that it "may cross the threshold between providing an *incentive* to plead guilty and *coercing* accused persons to forego their right to a hearing" (p. 64, emphasis in original).

[3] *Crimes Act 1914* (Cth) s16A(2)(g); *Criminal Law (Sentencing) Act 1988* (SA) s10A(2); s10B; s10C; *Sentencing Act 1991* (Vic) s6AAA; s5(2)(e); *Penalties and Sentences Act 1992* (Qld) s13; *Sentencing Act 1995* (WA) s9AA; *Sentencing Act 1995* (NT) s5(2)(j); *Crimes (Sentencing Procedure) Act 1999* (NSW) s22; *Crimes (Sentencing) Act 2005* (ACT) s35.

It has been argued that the potential for the sentence discount to coerce an innocent person to plead guilty increases with the size of the discount offered. That is, the greater the sentencing differential between plea and potential trial sentence, the greater the likelihood of a false guilty plea (Mack & Roach Anleu, 1997; New South Wales Law Reform Commission, 2014; Roberts & Bradford, 2015). This pressure is particularly apparent in the United States in which prosecutorial discretion has led to substantial sentencing differences between the plea offered and the potential trial sentence (Blume & Helm, 2014; Caldwell, 2011; Cooper et al., 2019; Johnson, 2019; Lynch, 2016; Rakoff, 2014; Vick et al., 2021). For instance, a report by the National Association of Criminal Defence Lawyers (2018) found that "there is ample evidence that many defendants are compelled to forego their right to a trial because the penalties they would otherwise face are too steep to risk" (p. 15). This concern was supported in Covey's (2013) analysis of the Rampart and Tulia mass exonerations, where he found that many innocent exonerees pleaded guilty to avoid the "outsized trial penalty," with defendants contesting their case at trial receiving sentences four to thirteen times longer than the sentences offered on a plea deal (pp. 1166-1170).

Limited research regarding the size of the discount offered within Australia exists. However, sentence reductions appear to be more modest, with the normal range suggested to be generally between 10% to one-third, depending on the circumstances of the case (Bagaric & Edney, 2015). Nevertheless, sentence reductions may be problematic if a guilty plea has the potential to result in a less serious "type" of sentence, meaning that a defendant who would likely receive a custodial sentence at trial would instead receive a non-custodial sentence (Helm, 2019b; Mack & Roach Anleu, 1997). Research suggests that this may be a common sentencing outcome, with a report by the Victorian Sentencing Advisory Council (2015) finding that sentence

reductions in Victoria ranged from around 25%-30% in imprisonment terms, while around one-third of cases resulted in a less serious type of sentence (e.g., a community correction order instead of imprisonment).

In the United Kingdom, Helm (2019b) has argued that the opportunity to avoid a term of imprisonment can be "both practically and psychologically persuasive to defendants," and the negative consequences of imprisonment may be so severe for some defendants that "they cannot risk going to trial and are left with no practical choice but to plead guilty" (p. 169). She later supported this concern in an experimental study that examined the impact of reductions in sentence length and sentence type on participants' decisions to plead guilty, finding that "innocent" participants were much more likely to plead guilty if it would change the sentence from custody to community service (Helm, 2022). Similarly, Yan and colleagues (2022) in the United States examined plea decision-making when study participants faced probation and found that nearly one-third of the "innocent" participants pleaded guilty when doing so eliminated the risk of incarceration. As such, while sentence discounts may be more modest within an Australian context, this highlights how the opportunity to avoid imprisonment can induce both guilty and innocent persons to plead guilty.

### *2.3.2. Plea-Negotiations and the Power of the Prosecution*

The practice of plea negotiations (commonly referred to as "plea-bargaining"[4]) is also frequently criticised for its potential to place undue pressure on defendants to plead guilty (Baldwin & McConville, 1977; Flynn, 2011b, 2016; Mack & Roach Anleu, 2000; McConville & Marsh, 2014). In Australia, a negotiated plea generally involves

[4] Plea negotiations is the preferred term within the Australian legal community, with the term plea-bargaining having "negative connotations of a bargain or trade that may occur outside the formalised rules and scrutiny applied at trial" (Flynn & Freiberg, 2018a, p.1).

the prosecutor making some form of concession in exchange for the accused to plead guilty and can include the prosecution reducing the seriousness of charges, withdrawing charges, and/or omitting or altering case facts to be presented to the court (the basis upon which the accused is sentenced) (Flynn, 2016, p. 565). The intended aim of the process is to encourage an early resolution of a case by reaching an agreement that is mutually beneficial for the prosecution and the accused. However, by actively encouraging defendants to plead guilty, plea negotiations have been extensively criticised for undermining fundamental criminal justice principles, specifically the presumption of innocence and the public's right to a transparent justice process (Flynn & Freiberg, 2018a; McConville & Marsh, 2014; McConville & Mirsky, 2005; Woolard et al., 2016). As stated by McConville and Marsh (2014) in the United Kingdom, "because the process of State-induced guilty pleas is *intended to replace* in whole or part the promise of adversary justice, it challenges the foundations on which the claim of legitimacy of criminal courts has traditionally rested" (p. 216, emphasis in original).

As prosecutors cannot offer sentence guarantees in exchange for a guilty plea, plea negotiations in Australia are argued to be less coercive compared to the United States (Brook et al., 2016; Roach Anleu & Mack, 2001). However, the plea negotiation process in Australia has been heavily criticised for increasing the discretionary powers of the prosecution, resulting in them becoming the "primary adjudicators of guilt in the criminal justice system" (Mackenzie et al., 2015, p. 580; see also Sklansky, 2018; Stubbs & Tolmie, 2008; Yang, 2013). For instance, in Australia, prosecutors have the full discretionary power to decide whether or not to proceed with a criminal case, as well as what charges to lay, whether to reduce or withdraw charges, what information to disclose, and whether to make or accept a plea agreement, all of which can have a significant influence of how a case is resolved (Flynn, 2011b; Mack & Roach Anleu,

1995). This decision-making process is rarely subjected to any external scrutiny, and many have expressed concern over the potential for the prosecution to "overcharge" a defendant with multiple and/or more serious offences to unduly compel them into pleading guilty to a "bargained" version of these charges (Flynn & Fitz-Gibbon, 2011; Graham, 2014). In the United States, this has been referred to as "coercive plea-bargaining" (Alkon, 2016; Caldwell, 2011), with research suggesting that such coercive tactics have induced innocent defendants to plead guilty in order to avoid extremely harsh trial penalties (Covey, 2013; Gazal-Ayal & Tor, 2012; Zottoli et al., 2016).

The potential for prosecutors to induce guilty pleas may also be exacerbated by the existence of mandatory minimum sentences and sentencing guidelines, which are criticised for giving prosecutors increased leverage over a defendant that can coerce them into accepting a plea deal (Dripps, 2016; Fellner, 2014; Flynn, 2016; Martin, 2001; Rakoff, 2014; Zimmerman & Hunter, 2018). In the United States, Judge Rakoff described mandatory minimum sentences as providing "prosecutors with weapons to bludgeon defendants into effectively coerced plea bargains" (Rakoff, 2014). Similar concerns have been raised in an Australian context, with Victoria Legal Aid (2016, pp. 7, Note 38) stating in their submission to the Sentencing Advisory Council (SAC) that "the threat of a mandatory penalty may place undue pressure on a defendant to plead guilty to a lesser charge". Findings from Flynn and Freiberg's (2018) study on plea negotiations in Victoria provide some empirical support for these concerns, finding that mandatory sentencing regimes introduced in Victoria pressured defendants to plead guilty to lesser offences that do not carry mandatory penalties, even in cases in which there "may be a strong case that the accused is not guilty of that lesser offence" (p. xiii). This suggests that innocent persons may be unfairly induced to plead guilty to lesser offences to avoid mandatory punishment.

### *2.3.3. Process Costs and Pleading Guilty to "Get it Over With"*

Regardless of sentence and charge reductions, innocent defendants may also face substantial pressure to plead guilty to avoid going through the criminal justice system, with research suggesting that a number of defendants plead guilty simply to avoid the financial, emotional, and time costs of proceeding to trial (Cheng, 2013; Flynn, 2016; Flynn & Freiberg, 2018a; Mack & Roach Anleu, 1995, 2000; Sherrin, 2011). Going to trial can be a stressful, lengthy, and expensive process, and some defendants simply may not have the time or resources required to contest their guilt at trial and may view a guilty plea as their only realistic option (Helm, 2019b). For instance, in their interviews with Canadian criminal defendants, Leclerc and Euvrard (2019) found that some innocent defendants felt coerced to plead guilty in order to end the stress and time that was required in the judicial procedure, with one defendant claiming "it isn't a free decision … for me it was too heavy.… I always had to appear in court, in front of the judge, the lawyers, you lose your job, two to three hours, no, no, no, it was too much" (p. 470).

This pressure is assumed to affect innocent defendants accused of minor offences more because the process costs can be perceived to outweigh the consequences of a guilty plea (Blume & Helm, 2014; Bowers, 2008; Gross, 2017; Natapoff, 2012; Sherrin, 2011). For instance, Feeley (1979) has argued that the process is the punishment, observing that "it is the cost of being caught up in the criminal justice system itself that is often most bothersome to defendants accused of petty offences" (p. 30). Cheng (2013) provides support for this observation, finding that defendants in the Hong Kong magistrate court pleaded guilty to terminate as quickly as possible the "punishment" of being caught up in the criminal justice system, highlighting the "intrinsic pressures" involved in going through the criminal justice process (p. 257).

Australian research that has interviewed criminal justice professionals on their experiences and opinions on the plea negotiation process has raised similar concerns, with legal professionals acknowledging how defendants can be under pressure to plead guilty simply to have the matter over and done with (Flynn, 2011b, 2016; Flynn & Flynn & Freiberg, 2018a; Mack & Roach Anleu, 2000). For instance, in their study on plea negotiations in Victoria, Flynn and Freiberg (2018a) found that several legal professionals acknowledged that many defendants plead guilty to get "it over and done with and out of their lives," with some participants arguing how this pressure can result in defendants being "forced in [guilty] pleas where they just shouldn't be" (p.133). This corroborated previous research by Mack and Roach Anleu (2000) who found that innocent persons may be improperly induced to plead guilty in order to save time and have the matter resolved immediately.

There are also numerous financial costs associated with proceeding to trial that may force defendants into pleading guilty simply because they cannot afford a contested trial. Financial costs associated with proceeding to trial can include fees related to legal represented, court filing, hearings, interpreters', support in the form of reports and witnesses, experts, and accessing information from government departments (Law Council of Australia, 2018). For economically disadvantaged defendants in Australia, such legal costs have been found to present "a barrier to justice" and prevent them from "obtaining legal advice and pursuing resolution of legal problems through the court system" (Law Council of Australia, 2018, p. 3). This is particularly concerning in light of the increasingly restrictive access to legal aid in Australia (Community Law Australia, 2012; Flynn & Hodgson, 2017; Flynn et al., 2016; Productivity Commission, 2014), which has resulted in an increasing number of unrepresented defendants left to navigate the complex legal process alone (Flynn & Freiberg, 2018a). While this raises

concerns over the potential for unrepresented defendants to enter "coerced or misunderstood" guilty pleas (Flynn & Freiberg, 2018a, p. 138; Gibbs, 2016), interviews with legal professionals have also raised concerns over unrepresented defendants pleading guilty rather than trying to represent themselves in legal proceedings (Flynn & Freiberg, 2018a; Mack & Roach Anleu, 2000). As such, due to high financial costs and the restrictive access to legal aid, many defendants who wish to contest their case at trial may plead guilty simply due to external economic pressure.

#### *2.3.4. Remand as "Structural Coercion"*

The pressure to plead guilty may also be exacerbated for innocent defendants held in pre-trial detention, with research finding that defendants who are denied bail are more likely to plead guilty simply to get out of jail (Edkins & Dervan, 2018; Heaton et al., 2017; Kellough & Wortley, 2002; Petersen, 2020; Sacks & Ackerman, 2012). In their study on bail court hearings in Canada, Kellough and Wortley (2002) found that defendants who were held in custody were over twice as likely to plead guilty than defendants who were granted bail. They argued that pre-trial detention constituted "structural coercion" (p. 205), finding that the prosecution used bail as a resource "to encourage (or coerce) guilty pleas from accused persons" (Kellough & Wortley, 2002, p. 186). This can be particularly problematic when the length of pre-trial detention will be longer than the actual sentence expected, providing a strong incentive to "plead guilty to avoid being unnecessarily incarcerated" (Euvrard & Leclerc, 2017, p. 532; see also Heaton et al., 2017; Helm, 2019a; Natapoff, 2012; Petersen, 2019). As argued by Bibas (2014) in the United States, a "guilty plea thus means immediate freedom, whereas fighting to vindicate one's innocence necessarily means a longer wait for a trial and potential freedom. Even an innocent defendant may find such a deal, and the prospect of immediate release, irresistible" (p. 161).

### *2.3.5. Vulnerable Defendants*

Lastly, a growing body of academic literature also indicates how certain vulnerable populations can be more susceptible to pleading pressures and false guilty pleas, such as juveniles (Helm et al., 2018a; Malloy et al., 2014; Redlich & Shteynberg, 2016; Zottoli et al., 2016), Indigenous persons (Bressan & Coady, 2017; Carling, 2017; Roach, 2015), those with cognitive deficits or mental health issues (Redlich et al., 2010), or those otherwise marginalised due to factors such as race, gender, poverty, or a combination of these issues (Jones, 2011; Public Prosecution Service of Canada, 2018; Roach, forthcoming). Due to their vulnerabilities, these defendants are suggested to be under increased pressure to plead guilty, but less likely to understand the implications of their guilty plea (Flynn & Freiberg, 2018a; Peay & Player, 2018).

For instance, research has shown that juvenile defendants demonstrate deficits in legal understanding and decision-making capabilities (Cabell & Marsh, 2020; Redlich, 2010b; Viljoen et al., 2005; Zottoli & Daftary-Kapur, 2019), with adolescents being overly influenced by short-term benefits associated with a plea and not being fully aware of their legal options (Daftary-Kapur & Zottoli, 2014). Research has also found that persons with mental health issues and cognitive impairments are less able to make informed and voluntary decisions (Redlich et al., 2011, 2017). This is particularly concerns given these defendants can be at an increased risk of falsely pleading guilty due to the defining characteristics of mental illness, as well as their over-representation within the legal system and heightened recidivism rates (Redlich et al., 2010).

Indigenous persons also experience unique cultural differences that can increase their risk of falsely pleading guilty, such as language and linguistic barriers, a distrust in the criminal justice system, and a "cultural premium" placed on agreement, cooperation, and taking responsibility (Bressan & Coady, 2017, p. 5). They are also overrepresented

throughout the criminal justice system, increasing their likelihood of having a criminal record and being held in remand, with these systemic issues identified as increasing the risk that Indigenous persons would plead guilty when they are innocent or have a valid defence (Carling, 2017; Roach, 2015).

#### *2.3.6. Summary*

Overall, this section has highlighted how structural pressures and inducements to plead within the Australian criminal justice may put innocent defendants at risk of pleading guilty, particularly for those already disadvantaged and marginalised within the legal system. While concerns that policies and procedures designed to encourage guilty pleas may unfairly compel defendants to plead guilty have been previously raised, wrongful convictions resulting from a guilty plea have not been empirically investigated within Australia. With the increasing reliance on guilty pleas within the criminal justice system, the possibility that defendants may be entering false guilty pleas demands increased attention, especially regarding how features of the Australian justice system may be systemically contributing to this issue.

### 2.4. System of Incentives and the Role of Criminal Justice Professionals

In addition to the structural pressures and inducements to plead that confront criminal defendants, the increasing reliance on guilty pleas may also put substantial pressure on those who work within the criminal justice system to resolve a case through a guilty plea. This section will examine the role of the police, prosecutors, defence lawyers, and judges in the guilty plea system, and the institutional pressures and incentive structures each actor faces that may contribute to the production of false guilty pleas.

#### *2.4.1. Police*

Police involvement in the guilty plea system is often overlooked, with the bulk of the literature focusing on plea negotiations and the role of prosecutors, defence lawyers, and judges. However, most wrongful convictions inevitably begin with errors made in the police investigation, as "the police gather the evidence, identify the prime suspect, and build the case for conviction" (Martin, 2002b, pp. 77-78). Unfortunately, police can face "high-powered incentives" to make arrests and clear cases that can increase the risk of false arrests and convictions (Koppl & Sacks, 2013, p. 139; Martin, 2002b). For instance, police investigators can face pressure from their supervisors, the community, the media, victims, and their families to make arrests and solve a case quickly (Findley & Scott, 2006; MacFarlane, 2008; Martin, 2002a). These pressures can contribute to tunnel vision, in which investigators "focus on a suspect, select and filter the evidence that will 'build a case' for conviction while ignoring or suppressing evidence that points away from guilt" (Martin, 2002a, p. 848). This can put innocent persons at risk of being convicted, with tunnel vision being recognised as a frequent cause of wrongful convictions (Gould et al., 2014; Gould & Leo, 2010).

Personal and institutional pressure to solve crimes can also contribute to "noble cause misconduct", an ends-based investigative culture in which investigators justify and legitimise inappropriate conduct in "the belief that they are pursuing an important public interest" (MacFarlane, 2008, p. 20; Martin, 2002b). Noble cause misconduct can manifest in various ways, such as using excessive force, pressuring witnesses, falsifying or destroying evidence, and providing dishonest testimony, all to secure "a conviction of someone the police have decided, is guilty" (MacFarlane, 2008; Martin, 2002b, p. 85). Police responding to substantial pressures to convict was identified as a contributing factor to well-known miscarriages of justice such as the Guilford Four and the Birmingham Six in the United Kingdom (Macfarlane, 2006; Martin, 2002b).

While issues associated with the police investigation have been shown to contribute to wrongful convictions following a trial, they may be more common among guilty plea convictions, as any errors or unethical conduct in the police investigation may be less likely to be discovered and corrected in the absence of a trial (Redlich, 2010a). Defendants can also confront significant challenges in contesting police evidence and may feel that their accounts are "unlikely to be believed because it amounts to their word against the word of the police or another figure of authority" (Peay & Player, 2018, p. 938). This was observed in Covey's (2013) analysis of the Rampart and Tulia mass exoneration cases in the United States, where the majority of exonerated individuals pleaded guilty because they felt they could not challenge the police evidence against them, with a common mantra being "it was their word against that of the police...who were the prosecutors, judges, or jurors going to believe?" (p. 1170). However, these cases involved systematic police misconduct and the evidence against them was fabricated, with the police either filing false reports, planting drugs or weapons, generating false witness statements or confessions to support their version of events, and/or committing police perjury (Covey, 2013).

Baldwin and McConville's (1977) examination of plea bargaining in the Birmingham Crown Court in the early 1970s also established that defendants would plead guilty rather than challenge allegations of police misconduct and fabricated confessions, with defence counsel unwilling to challenge police evidence in court. In this study, several interviewed defence barristers explained how challenging police evidence would be ill-advised, as it would be the police, rather than the defendant, who would almost always be believed in court (Baldwin & McConville, 1977, 1979).

Police's contribution to guilty pleas was also demonstrated in Durnian's (2018) historical analysis of the 'rise of the guilty plea system' in Australia. This research

challenged the assumption that the guilty plea phenomenon was the outcome of emerging plea bargaining practices between the prosecution and defence. Instead, through an analysis of archival records, she found that police practices played a "central cog" in establishing the origins of the contemporary guilty plea system in Australia (p. iii), with police demonstrating a "conviction at all costs" mentality and relying upon convictions obtained through confessional material rather than investigation (p. 285). Rather than systemic plea bargaining practices, this research attributed the rise of the guilty plea in Australia to police practices and a history of police misconduct, illustrating how police practices should not be discounted when examining guilty plea convictions.

It is important to note that the police are also involved in the prosecution process in Australia, with the majority of prosecutions in the lower courts being conducted by police prosecutors. While most common law jurisdictions have an independent prosecutorial service, Australia and New Zealand still retain police prosecutors in the summary jurisdiction (Ellis & Camilleri, 2022). Police prosecutors are employed by the police and are not necessarily required to be legally qualified (Flynn & Freiberg, 2018a; Yang, 2013). Instead, they can be either civilian prosecutors who are admitted lawyers or sworn police officers who have completed the Prosecutors Training Course. This system has been criticised to have several weaknesses, raising concerns over the lack of ethical standards subjected to non-legal practitioners, issues of competence and training, the potential for corruption, and importantly, breaching the principle of independence (Amagnya, 2023; Beck, 2006; Corns, 1999, 2000; Ellis & Camilleri, 2022; Yang, 2013). Combining the functions of policing, investigation and prosecution can raise serious concerns over impartiality within the process and the potential for bias, diminishing the

requirement that prosecutions should be independent, fair, and accountable (Frye, 2012; Horwitz, 1998; Ward, 2015; Yang, 2013).

In the United States, interviews with criminal justice officials have also found that police officers can exert significant influence on the plea negotiations process, calling into "question basic assumptions about who controls the prosecution team" (Abel, 2017, p. 1730). Abel (2017) highlighted several implications of increased police involvement in plea-bargaining, one of which is the diminished capability of the prosecution to provide an independent check against improper police action, finding that "[b]ad arrests would be more likely to become bad convictions" (p. 1769). Further, in cases involving police misconduct, he argued that the police will have "institutional interests" in seeking a guilty plea in order to avoid having the misconduct exposed at trial (Abel, 2017, p. 1771). Overall, while police involvement in the production of false guilty pleas has largely been overlooked, these findings suggest that the investigative process may frequently contribute to guilty plea wrongful convictions. Police practices may thus be more relevant in the plea process than previously acknowledged.

### *2.4.2. Prosecutors*

Once a case is handed over to the prosecution, their primary duty is not to secure a conviction but rather to assist the court in arriving at the truth and act as "ministers of justice." However, prosecutors can face several pressures and incentives to resolve a case through guilty pleas that can put innocent defendants at risk of being convicted. With most common law jurisdictions encountering increasing workloads and significant court delays, it is acknowledged that prosecutors face efficiency-driven pressures to swiftly obtain convictions in order to save money, expedite cases and reduce court backlog (Alschuler, 1968; Bibas, 2004; Flynn, 2011b, 2016; Flynn & Fitz-Gibbon, 2011; Hessick & Saujani, 2002). As stated by former Victorian Director of Public

Prosecutions Jeremy Rapke QC (2008), prosecutors are expected to "manage a higher volume of cases," whilst also facing "continuing pressure to contribute to reducing case backlogs and the growing cost of trials" (p. 46). As guilty pleas require much less time and resources than taking a case to trial, prosecutors have a clear incentive to finalise a case through a guilty plea to reduce their workload and expedite convictions (Bibas, 2004; Flynn, 2011b). This was reflected in Flynn's (2016) study on the plea negotiation process in Victoria, Australia, which found that the focus on efficiency created pressures for prosecutors to resolve cases through plea negotiations. Such efficiency-driven pressures may increase the likelihood that prosecutors will exert greater pressure on defendants to plead guilty to quickly process cases. Indeed, Ulmer et al. (2010) found that higher court caseloads were associated with greater trial penalties compared to pleading guilty in the United States.

In addition to reducing their workloads, prosecutors may also face incentives to ensure a conviction (Alschuler, 1968; Bibas, 2004; Burke, 2007; Ferguson-Gilbert, 2001; Hessick & Saujani, 2002). In an adversarial system, prosecutors are expected to be zealous advocates for conviction (Mack & Roach Anleu, 1995), and finalising cases through guilty pleas can contribute to higher conviction rates, which may reflect well on their reputation and further their career (Alschuler, 1968; Ferguson-Gilbert, 2001; Hessick & Saujani, 2002). This has led some to raise concerns that prosecutors may seek a guilty plea in cases where evidence is weak and defendants may have a chance of receiving an acquittal at trial by offering a substantially lenient plea offer (Alkon, 2016; Alschuler, 1968, 2016; Bar-Gill & Ayal, 2006; Bibas, 2004; Turner, 2012). As stated by Mack and Roach Anleu (1995), prosecutors may be subjected to "institutional or personal pressure to get something from even very weak cases" and this "reflect[s] the conflicting obligations in the prosecutor's role to be an advocate for conviction on the

one hand, and to be independent, impartial and objective on the other" (p. 79). Assuming that innocent defendants are more likely to have weak evidentiary cases, this may put them at an increased risk of receiving highly coercive plea deals (Hessick & Saujani, 2002; Redlich, 2010a).

In light of these institutional pressures, and as previously discussed, there are concerns that the prosecution may use their significant discretionary powers to "overcharge" defendants in order to unduly compel them into pleading guilty. Such overcharging tactics have been described to be in the prosecutor's best interest as it "gives them greater bargaining leverage to obtain pleas" (Barkow, 2013, p. 312; see also Covey, 2008; Meares, 1995). While research on plea negotiation and prosecutorial discretion in Victoria suggests that overcharging does occur, legal professionals have attributed this "not to deviousness of the prosecution, but rather to the inexperience or the overzealousness of the police" (Flynn & Fitz-Gibbon, 2011, p. 916). Similarly, Flynn and Freiberg (2018) found that the "endemic" overcharging by the Victorian police was not a "deliberate or malicious approach" but rather "the way Victoria Police have done things for a long, long time" (pp. 82-83). However, as noted by Caldwell (2011), opinions of overcharging by criminal justice professionals rely largely on anecdotal evidence, and prosecutorial agencies (even in a candid moment) have no incentives to report that such practices exist (p. 65. Note 14). Overall, due to institutional and personal pressures to quickly ensure a conviction, prosecutors may use their significant discretionary powers to exert undue pressure on defendants to plead guilty.

### *2.4.3. Defence Lawyers*

Defence lawyers are expected to provide a safeguard against the power of the prosecution and protect innocent defendants from falsely pleading guilty. However,

they often have overwhelming caseloads and lack adequate resources that can create strong incentives for them to resolve cases by guilty pleas (Bibas, 2004, p. 277; Hessick & Saujani, 2002; Koppl & Sacks, 2013; Roberts, 2011; Sherrin, 2011). Research also suggests that many defendants may receive substandard legal advice when it comes to plea decisions (Fair Trials, 2016; Sherrin, 2011). For instance, in the United States, evidence suggests that funding and time constraints have resulted in a "meet 'em and plead 'em" system in which defendants met their lawyer for the first time at a court hearing during which a guilty plea is offered, accepted, and entered (Bach, 2010; Backus & Marcus, 2006; Bibas, 2013). This is supported by interviews with defendants who plead guilty to felonies in New York City, with Zottoli et al. (2016) finding that participants reported infrequent contact with attorneys prior to accepting plea deals (20% of juvenile defendants reporting that they met their attorney only once before entering a guilty plea). Research in the United Kingdom and Australia also suggests that many defendants may have limited contact with legal representation before making a plea, minimising their capacity to provide an effective safeguard against pleading pressure (Flynn, 2011b; McConville et al., 1994).

Rather than providing an adequate safeguard against false or inappropriate guilty pleas, research also suggests that defence lawyers may instead contribute to pleading pressures (Flynn, 2011b; Seifman & Freiberg, 2001). For instance, defence lawyers have a duty to inform their clients about the plea discount and the dangers inherent in proceeding to trial, which may "inadvertently be providing some inducement to the accused to plead guilty" (Seifman & Freiberg, 2001, p. 67). This risk was acknowledged by Roach Anleu and Mack (2001) in their research on plea discussions in Australia. While this study did not focus on false guilty pleas or guilty plea wrongful convictions, semi-structured interviews with legal practitioners found that defence lawyers stress a

substantial discount in their advice to plead guilty, with the authors stating how this may "be experienced by the accused as pressure to plead guilty" (Roach Anleu & Mack, 2001, p. 169).

Research also suggests that advice given by defence lawyers can have a strong impact on an innocent defendant's decision to plead guilty (Henderson & Levett, 2018; Viljoen et al., 2005). For instance, early studies conducted in England found that pressure from the defendant's defence counsel was the main reason innocent defendants claimed to have pleaded guilty (Baldwin & McConville, 1977; Bottoms & McClean, 1976; McConville et al., 1994). Similar claims were made in a more recent study that interviewed convicted offenders in Canada, with Leclerc and Euvrard (2019) finding that several defendants felt coerced into pleading guilty by their defence lawyer, even though they considered themselves to be innocent. These defendants felt poorly represented and felt as though they had no other choice but to plead guilty (Leclerc & Euvrard, 2019). As such, while defence lawyers are expected to protect accused persons from falsely pleading guilty, evidence suggests they provide an inadequate safeguard, and instead actually may add to the pressures rather than alleviate it.

#### *2.4.4. Judges*

Judges are frequently criticised for their limited involvement in the guilty plea system and lack of oversight in the process, providing an insufficient safeguard to ensure guilty pleas are just or factually accurate (Hessick & Saujani, 2002; Turner, 2017). As a result, some have suggested that increased judicial scrutiny at the plea stage may improve the fairness of the system and allow judges to identify potentially innocent defendants more readily (McCoy, 2005; Turner, 2006, 2017; Zottoli et al., 2019). However, judges face the same efficiency pressures as prosecutors to quickly resolve cases and reduce court dockets (Hessick & Saujani, 2002; Roach Anleu & Mack, 2017),

and research suggests that they may also indirectly influence the production of guilty pleas. For instance, in their study that observed criminals' proceedings in Australian lower courts, Roach Anleu and Mack (2009) found that magistrates used a variety of strategies to encourage guilty pleas that maintained an image of judicial neutrality. They identified four main strategies, including (a) routine adjournment, (b) adjournment with explicit expectations, (c) setting a trial or pre-trial conference date, and (d) informing the defendant that a guilty plea will result in a reduced sentence and/or resolve the matter that day. Granting an adjournment was used to allow defendants to seek legal advice, which typically results in a guilty plea, while adjournments with explicit expectations expressed a magistrate's frustration that a defendant had not yet decided to plead guilty or progress to trial. Further, by setting a trial or pre-trial conference date, the certainty of the case quickly proceeding to trial was often enough to produce a guilty plea. In sum, though limited judicial involvement in the guilty plea system has been criticised to "frustrate attempts to correct flaws in the process" (Turner, 2017, p. 73), judges are subjected to the same efficiency pressures to resolve cases that may also contribute to the production of false guilty pleas.

#### *2.4.5. Summary*

Overall, this section demonstrates how the organisational and institutional context of the criminal justice system may impact criminal justice professionals and the various pressures and incentives they can face to resolve cases through a guilty plea. While prior Australian literature has examined the roles and experiences of legal actors within the plea negotiation process (Flynn, 2016; Flynn & Freiberg, 2018a; Mack & Roach Anleu, 2001; Roach Anleu & Mack, 2001), no research has explicitly explored how these pressures and constraints can contribute to the production of guilty plea wrongful conviction. Further, by examining the literature through the lens of a systems

and organisational perspective, this section also highlights how errors contributing to guilty plea wrongful convictions may occur throughout various stages in the criminal justice system. This illustrates how guilty plea wrongful convictions are likely not limited to plea discussions between the defence and the prosecution, but can instead involve a range of actors throughout the legal process by either contributing to the production of false guilty pleas or failing to detect or prevent their occurrence.

### 2.5. Post-Conviction: Appealing a Guilty Plea Wrongful Conviction

As the above discussion highlights, both defendants and those working within the criminal justice system can face a substantial amount of pressure to resolve cases through guilty pleas that can impact the accuracy and reliability of a guilty plea conviction. With pressures and inducements to plead becoming institutionalised, many have raised concerns over the current validity of a guilty plea, which may no longer represent a free and informed decision, but rather the result of pressure (Helm, 2019b; Horne, 2016; Mack & Roach Anleu, 2000; McConville & Marsh, 2014; Wundersitz et al., 1991). While there are increasing pressures to plead guilty within the criminal justice system, this has not been accompanied by enhanced procedural protections to ensure defendants are entering appropriate guilty pleas, with access to legal representation being considered a sufficient safeguard (Mack & Roach Anleu, 2000; Peay & Player, 2018). Though the vulnerability of defendants in the investigation process is recognised (e.g., with many safeguards to protect against false confessions), the “act of pleading guilty has been remarkably untouched by such concerns” (Peay & Player, 2018, p. 952).

As defendants who plead guilty waive their right to a trial and many of the associated procedural protections, it might be thought that appellate courts would be

more open to reviewing a guilty plea conviction "because the case has not previously been subjected to a comprehensive review by the courts" (Horne, 2013, p. 6). However, this is not the case, and it is widely recognised that defendants can face considerable difficulties in appealing a guilty plea conviction, particularly if they had the benefit of legal advice at the time of pleading guilty (Alschuler, 2016; Horne, 2013; King, 2014; Stephens, 2013). As argued by King (2014) in the United States, "after a defendant has stated in open court to the trial judge that he is pleading voluntarily, appellate judges are reluctant to credit a prisoner's claim that he lied then but is not lying now" (p. 218). As outlined in Chapter 1, defendants can face several legal and practical barriers to having a guilty plea conviction reviewed and overturned on appeal. This includes, but is not limited to, the more restrictive access to appeal and limited avenues for post-conviction relief for defendants who plead guilty, the lack of a detailed trial record, and the reduced likelihood of obtaining evidence that can help support an exoneration.

In Australia, defendants have limited options for a wrongful conviction to be reviewed and overturned. Unlike our international counterparts, Australia has not implemented any significant governmental bodies or other legal mechanisms to identify and correct wrongful convictions (Weathered, 2013). Instead, Australia has been extensively criticised for providing limited options for errors to be discovered and corrected, with most jurisdictions limiting defendants to only one appeal[5] (Hamer, 2014; Sangha & Moles, 2012). While defendants may attempt to appeal to the High Court of Australia, special leave can be difficult to obtain, and it does not have the power to admit any new or fresh evidence (Hamer, 2014; Weathered, 2005). Although other common law jurisdictions have established independent bodies to investigate

[5] South Australia, Tasmania and Victoria are an exception and have each introduced legislation allowing for a second or further appeal where there is fresh or compelling evidence demonstrating a substantial miscarriage of justice.

claims of miscarriages of justice (see Leverick et al., 2017), the only other post-conviction recourse available for defendants in Australia is to petition to the Governor or Attorney General, a process heavily criticised for lacking transparency, accountability, and independence (Sangha & Moles, 2012; Weathered, 2005).

For defendants who plead guilty, opportunities to appeal a conviction are further restricted. As a guilty plea is taken to be an admission of all the elements of the offence, the court's approach to overturning a guilty plea conviction is said to be "one of caution bordering upon circumspection" due to the "high public interest in the finality of legal proceedings" (*R v Liberti*, 1991, para. 122). As a guilty plea represents an admission of all elements of an offence, the appellate court will not set aside a conviction based on a plea of guilty unless it is satisfied that a "miscarriage of justice" has occurred (*Meissner v R*, 1995). While the categories of "miscarriage of justice" are not closed, there are three well-recognised grounds for allowing a change of plea: (a) where the applicant did not understand the charge or did not intend to plead guilty, (b) where on the admitted facts the applicant could not in law be guilty of the offence, and (c) where the plea of guilty has been obtained by inducement, fraud, or intimidation (*Vella v The State of Western Australia*, 2006)

However, legal authorities have established that persons may plead guilty for reasons that extend beyond belief in their guilt. As Dawson J pointed out in *Meissner v R* (1995), a person may plead guilty:

> for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of a plea of guilty upon grounds such as these nevertheless constitutes an admission of all the elements of the offence and a conviction entered upon the

> basis of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. (para. 157)

This approach potentially overlooks the context in which the majority of guilty pleas are being made, where many defendants can face substantial pressures and incentives to plead guilty that can undermine their voluntary and consensual nature (Helm, 2019b; Helm et al., 2021; Wundersitz et al., 1991).

While the difficulties in appealing a guilty plea conviction are widely recognised, there is limited academic attention and research that examines how appellate courts approach guilty plea convictions. An exception is Horne's (2016) doctrinal analysis of appellate caselaw in England and Wales, which examined how appellate courts responded to challenges to guilty plea convictions and the accounts of the guilty plea they provided to justify these responses. She found that, despite the risk of injustice, the appellate courts resisted challenges to guilty plea convictions, and instead relied upon unsupportable accounts of the guilty plea as a confession and considered defence lawyers to offer adequate protection against pressures to plead (Horne, 2016, p. 15). As such, she found that the English criminal justice system prioritises efficiency over fairness and accuracy in its treatment of guilty pleas (Horne, 2016, p. 15). Nobles & Schiff (2020) have similarly argued that the English Court of Appeal is unable to provide a remedy for wrongful convictions resulting from a guilty plea, instead justifying such convictions as so "safe that there is little or no need for review" (p. 513).

While this scholarship in the United Kingdom has considered the justifications provided in appellate caselaw for restricting the right to appeal a guilty plea conviction, the extant literature does not provide an empirical understanding as to how appellate courts handle guilty plea convictions and the reasons why such convictions may be

overturned. As such, there is little knowledge of the reasons why a guilty plea conviction may be overturned and the factors appellate courts may take into consideration when deciding a guilty plea conviction appeal. With most criminal cases being resolved by guilty pleas, it is important to empirically investigate how appellate courts respond to guilty plea convictions and the types of cases that may be more or less likely to be set aside on appeal. This can provide an important first step in examining whether appellate courts provide an appropriate appeal mechanism to identify and correct wrongful convictions based on guilty pleas.

## 2.6. The Current Project

This literature review has outlined the structural features of the Australian criminal justice system that may increase the risk of guilty plea wrongful convictions. This includes the significant inducements and pressures to plead confronting criminal defendants, as well as the pressures and incentives of those working within the criminal justice system. It also highlighted the implications these findings may have for appellate courts in responding to guilty plea convictions, raising concerns over whether they can provide an appropriate mechanism to detect and remedy wrongful convictions based on a guilty plea. However, despite the numerous pressures within the criminal justice system, no empirical research has examined wrongful convictions resulting from a guilty plea in Australia, making the extent and nature of the problem unknown. Furthermore, there is little understanding as to how appellate courts handle guilty plea convictions and whether they can provide an appropriate mechanism to recognise or correct such wrongful convictions.

This thesis addresses this gap in the literature and presents the first empirical research to analyse guilty plea wrongful convictions in Australia. Viewing the problem from a systems and organisational perspective, this thesis aims to examine how errors

contributing to guilty plea wrongful conviction may occur throughout various stages of the criminal justice process, and how underlying structural and organisational conditions of the criminal justice system may contribute to their occurrence. It also aims to examine how Australian appellate courts recognise and respond to these errors, and whether they can provide an effective safeguard against guilty plea wrongful convictions. To address these aims, this thesis will answer three overarching research questions (RQ):

RQ1: What are the types of errors that contribute to a guilty plea wrongful conviction, and where in the criminal justice process do they occur?

RQ2: What are the organisational and structural conditions of the criminal justice system that may contribute to the occurrence of guilty plea wrongful convictions?

RQ3(a): Why are guilty plea convictions overturned in appellate courts?

RQ3(b): Do successful guilty plea appeals differ in grounds of appeal, defendant, case, and appeal characteristics from unsuccessful guilty plea appeals?

# Chapter 3. Methodology

## 3.1. Introduction

The previous chapter highlighted numerous features of the Australian criminal justice system that may increase the risk of false guilty pleas and guilty plea wrongful convictions. However, despite the majority of criminal cases being resolved by a guilty plea, no prior Australian research has examined the potential scope and nature of guilty plea wrongful convictions. This thesis addresses this critical research void and provides the first empirical research to examine guilty plea wrongful convictions, exploring how the Australian criminal justice system may contribute to, recognise, and respond to this issue. This chapter will introduce, describe, and justify the research methods employed throughout the thesis to address these research aims. The chapter first outlines the methodological framework of the thesis, briefly summarising the aims and research methods for each of the studies conducted. The chapter then describes the specific data collection and analysis phases that underpin the empirical chapters within the thesis. As this thesis comprises published and unpublished journal articles, more detailed study methods are also contained within the relevant chapters (Chapters 4, 5, and 6).

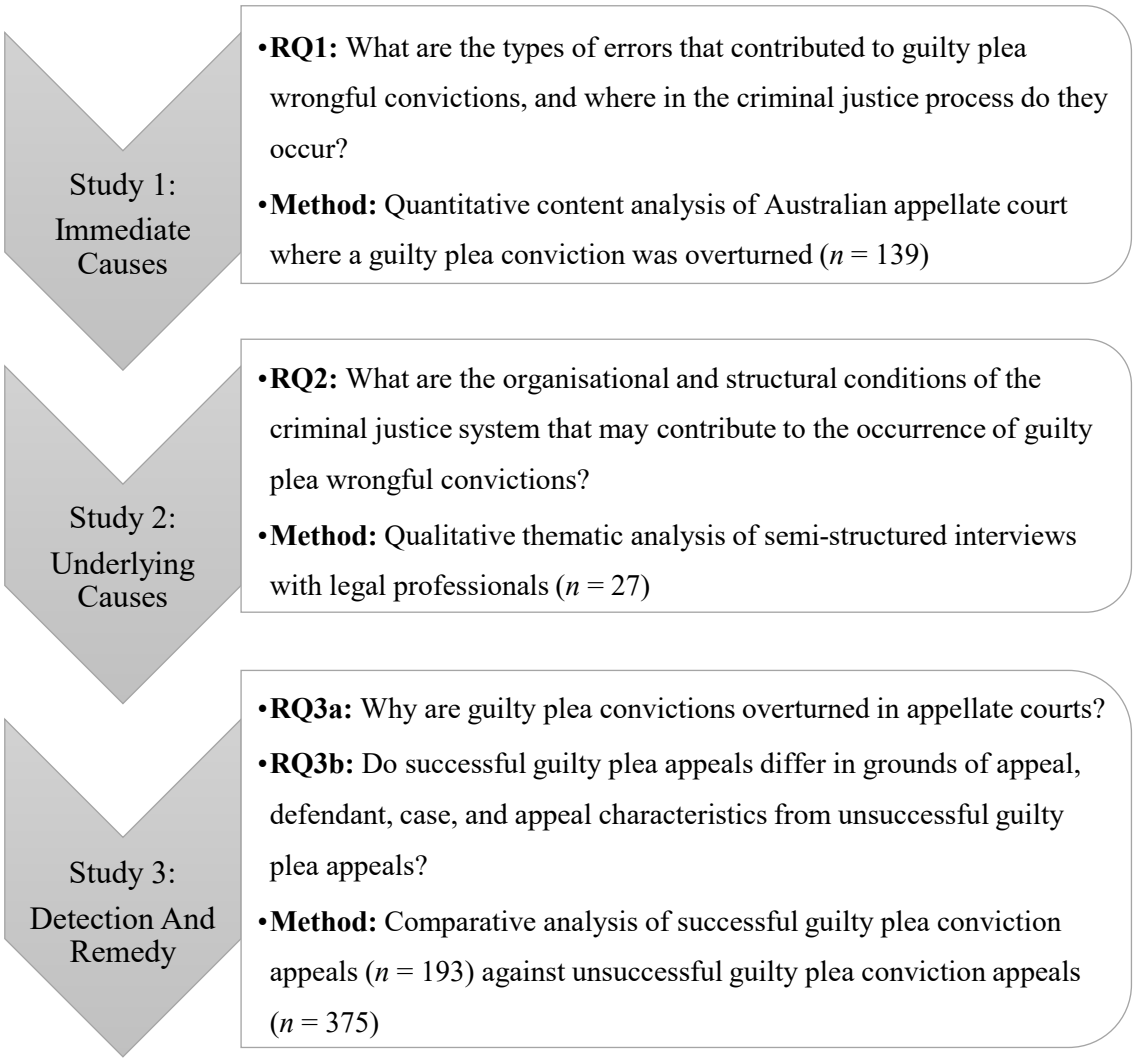
## 3.2. Methodological Framework

The thesis comprises three studies that address each of the three research questions, respectively (see Figure 3.1). A mixed-methods approach is utilised, incorporating both quantitative and qualitative methods to provide a more complete and comprehensive understanding of how guilty plea wrongful convictions may occur in the Australian criminal justice system (Doyle et al., 2009). The quantitative data were extracted through content analysis of Australian appellate court judgements in which a guilty plea conviction was contested (Studies 1 and 3), while the qualitative data

comprised semi-structured interviews with legal professionals that work within the Queensland criminal justice system (Study 2).

**Figure 3.1**

*Overview of the three studies*




Being the first empirical study to examine wrongful convictions stemming from a guilty plea in Australia, Study 1 intended to provide initial insights into the *immediate*

factors contributing to guilty plea wrongful convictions. This involved the collection and quantitative content analysis of 139 Australian appellate court judgements in which a defendant had a guilty plea conviction overturned, examining the types of errors involved in these erroneous convictions, and the stage of the criminal justice process at which they occurred (addressing RQ1). By collecting and analysing a comprehensive dataset of erroneous guilty plea convictions overturned on appeal, this study provided the first opportunity to empirically examine how guilty plea wrongful convictions may occur throughout the criminal justice process. Given the exploratory nature of this thesis, utilising quantitative research methods provided an important first step in systematically analysing and describing the factors that contribute to erroneous guilty plea convictions (Queirós et al., 2017).

Study 2 then supplemented the quantitative research with qualitative methods to provide a more comprehensive understanding of how guilty plea wrongful convictions may occur throughout the criminal justice process. This study involved semi-structured interviews with legal professionals working within the Queensland criminal justice system, examining the *underlying* organisational and structural features that may contribute to the occurrence of guilty plea wrongful convictions (addressing RQ2). The use of interviews provided an alternative method of exploring guilty plea wrongful convictions that could capture additional issues overlooked within the appellate court judgements and provide further context into their occurrence. They also convey the experiences and opinions of legal professionals directly involved in the guilty plea system, investigating how routine procedures, beliefs, and attitudes may be impacted by system-wide pressures and constraints. While prior Australian research has examined legal practitioners' experiences of plea negotiations (Flynn, 2016; Flynn & Freiberg, 2018a), this study focused on the guilty plea system as a whole, explicitly exploring

how the wider environment may contribute to the production of guilty plea wrongful convictions.

Study 3 then examined how Australian appellate courts may *recognise* and *correct* guilty plea wrongful convictions. This quantitatively compared a sample of successful guilty plea conviction appeals that were overturned ($n$ = 193) against unsuccessful guilty plea conviction appeals that were dismissed ($n$ = 375). This comparative analysis examined the reasons why a guilty plea conviction may be set aside and whether there are any significant differences between the two samples (addressing RQ3). While prior literature in the United Kingdom has considered how appellate caselaw justifies guilty plea convictions (Horne, 2016; Nobles & Schiff, 2020), utilising quantitative research methods allowed for a more systematic and objective analysis of how appellate courts handle guilty plea convictions and the factors that may predict a successful or unsuccessful outcome.

### 3.3. Studies 1 and 3: Australian Appellate Court Judgements

The data for Studies 1 and 3 were extracted from Australian appellate court judgements in which a guilty plea conviction was contested. Study 1 was limited to guilty plea convictions that were *successfully* set aside, while Study 3 statistically compared the *successful* cases from Study 1 with cases that were *unsuccessful* at appeal. Australian courts operate in a hierarchical structure, and appellate courts are higher courts that hear and review legal cases already heard and ruled on in a lower court. Most Australian jurisdictions have three levels of courts: the lowest court is the Magistrates' Court (called the Local Court in New South Wales), followed by the District Court (called the County Court in Victoria), and the Supreme Court[6]. Each jurisdiction also

[6] Tasmania, the Northern Territory, and the Australia Capital Territory do not have an intermediate level court.

has a Court of Appeal, a special appeal division of the Supreme Court. The High Court of Australia is at the top of the hierarchy of state courts, and applicants can seek special leave to appeal decisions of each state's Supreme Court to the High Court. For persons who plead guilty, *there is no automatic right to appeal their conviction* and they must seek leave to appeal their conviction to a higher court. However, as outlined in Chapter 2, defendants convicted by way of a guilty plea must show that exceptional circumstances exist before being granted leave to appeal, and a guilty plea conviction can only be overturned if the appellate court is satisfied a "miscarriage of justice" has occurred (*Meissner v R,* 1995).

As noted in Chapter 1, this thesis takes a broad definition of a wrongful conviction and includes all cases that should not have resulted in a conviction, regardless of whether this stemmed from a factual, legal, or procedural error. Therefore, to examine the types of errors contributing to guilty plea wrongful convictions (RQ1), Study 1 involved the collection and analysis of appellate court judgements in which a guilty plea conviction was *successfully* overturned. As wrongful convictions are an inherently hidden phenomenon, utilising appellate court judgements allowed for the systematic and objective identification of relevant cases that had previously undergone legal scrutiny. Given that a 'miscarriage of justice' must be demonstrated to have a guilty plea conviction set aside on appeal, this sample ensured a strict definition of which cases would be included. This approach also removed the need for subjective judgements about case selection and allowed for a greater sample size, capturing a wider range of wrongs that may frequently occur in guilty plea convictions.

To examine how appellate courts handle guilty plea convictions (RQ3a, RQ3b), Study 3 collected and analysed appellate court judgements in which a guilty plea conviction was *contested*. This included *successful* appeals where the guilty plea

conviction was set aside (as in Study 1), as well as *unsuccessful* appeals that were dismissed, and the guilty plea conviction remained. By utilising a comparison group, this study was able to examine factors uniquely present in either a successful or unsuccessful appeal and statistically test these factors to see if they predict the outcome of the appeal (Gould et al., 2014). This approach was able to provide an objective and systematic understanding of how a guilty plea conviction may be overturned on appeal and identify salient factors influencing judicial decision-making in the appeal process.

### *3.3.1. Collection of Appellate Court Judgements*

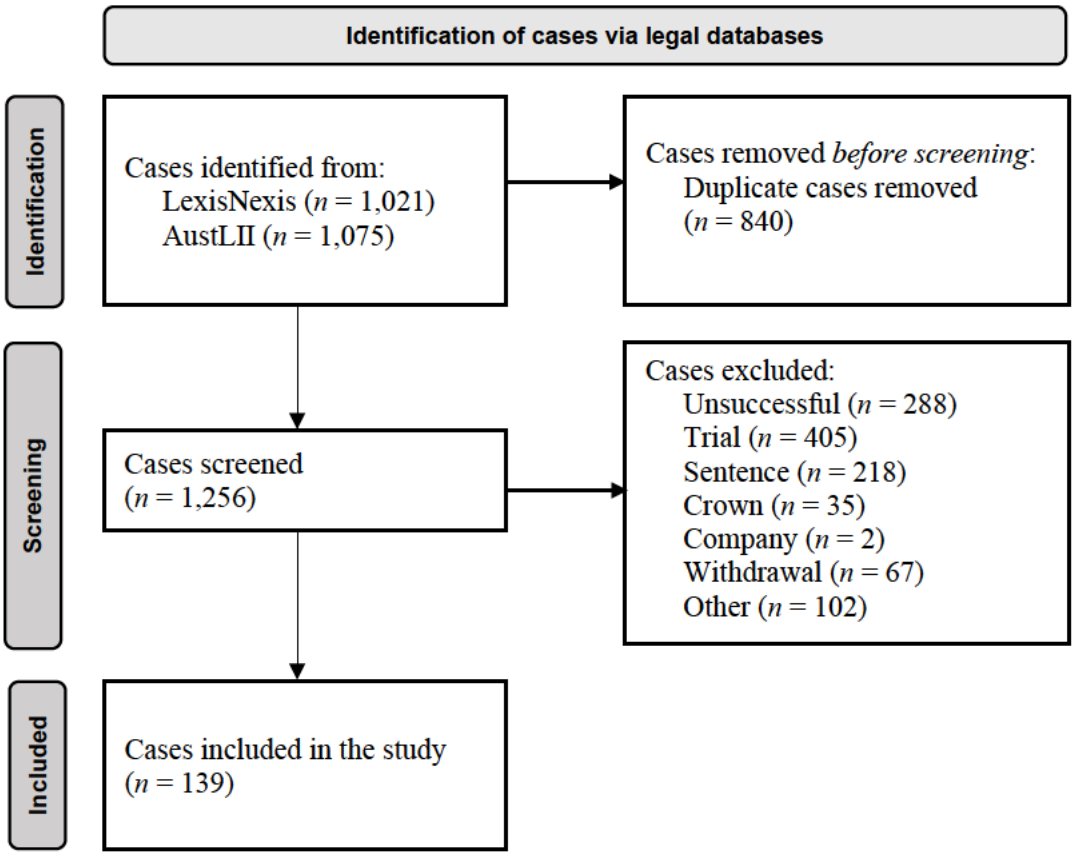
The appellate court judgements were drawn from the online legal databases Australasian Legal Information Institute (AustLII) and LexisAdvance (formerly LexisNexis AU). AustLII is a popular online free-access resource that maintains a collection of Australian legislation and court judgements. It is jointly operated by the Faculties of Law of the University of Technology Sydney and the University of New South Wales and has become one of the largest sources of legal materials online. Lexis Advance is a subscription-based legal research platform that provides access to an extensive library of legal resources and provides the largest collection of Australian case law, statutes, and regulations. By utilising both databases, the thesis was able to conduct a comprehensive search of appellate court judgements throughout Australia.

**3.3.1.1. Study 1 Case Selection.** To locate relevant cases for Study 1, both legal databases were searched using a combination of the terms “guilty plea”, “plead guilty”, “miscarriage of justice”, and “set aside.” The searches were restricted to cases heard in the District/County Court, the Supreme Court, the Court of Appeal, and the Criminal Court of Appeal, limiting the date range to any cases heard before December 31st, 2020. This returned a result of 2,096 cases across both databases, which was reduced to 1,256

after duplicates were removed. Each case was quickly reviewed to determine relevance, excluding all cases that did not involve a person *successfully* appealing a guilty plea conviction (see Figure 3.2). This excluded unsuccessful appeals where the guilty plea conviction remained ('unsuccessful'), appeals against a conviction received following a contested trial, not a plea of guilty ('trial'), appeals that contested the sentence received, not the conviction ('sentence'), appeals initiated by the State, not the defendant ('Crown'), appeals that involved a company rather than an individual ('company'), cases where the defendant applied to have their guilty plea withdrawn or changed *prior* to receiving a conviction ('withdrawal'), and other unrelated legal judgements, such as applications for bail, costs, or a stay of criminal proceedings ('other'). This screening process resulted in a total sample size of 139 appellate court judgements where a guilty plea conviction was set aside.

**Figure 3.2**

*PRISMA flowchart of Study 1 data collection*




*Note*. Adapted from "The PRISMA 2020 statement: an updated guideline for reporting systematic reviews", by M.J. Page, J.E. McKenzie, P.M Bossuyt, I. Boutron, T.C. Hoffmann, C.D. Mulrow, et al. 2021, *BMJ, 372*(71), p. 5 (http://dx.doi.org/10.1136/bmj.n71).

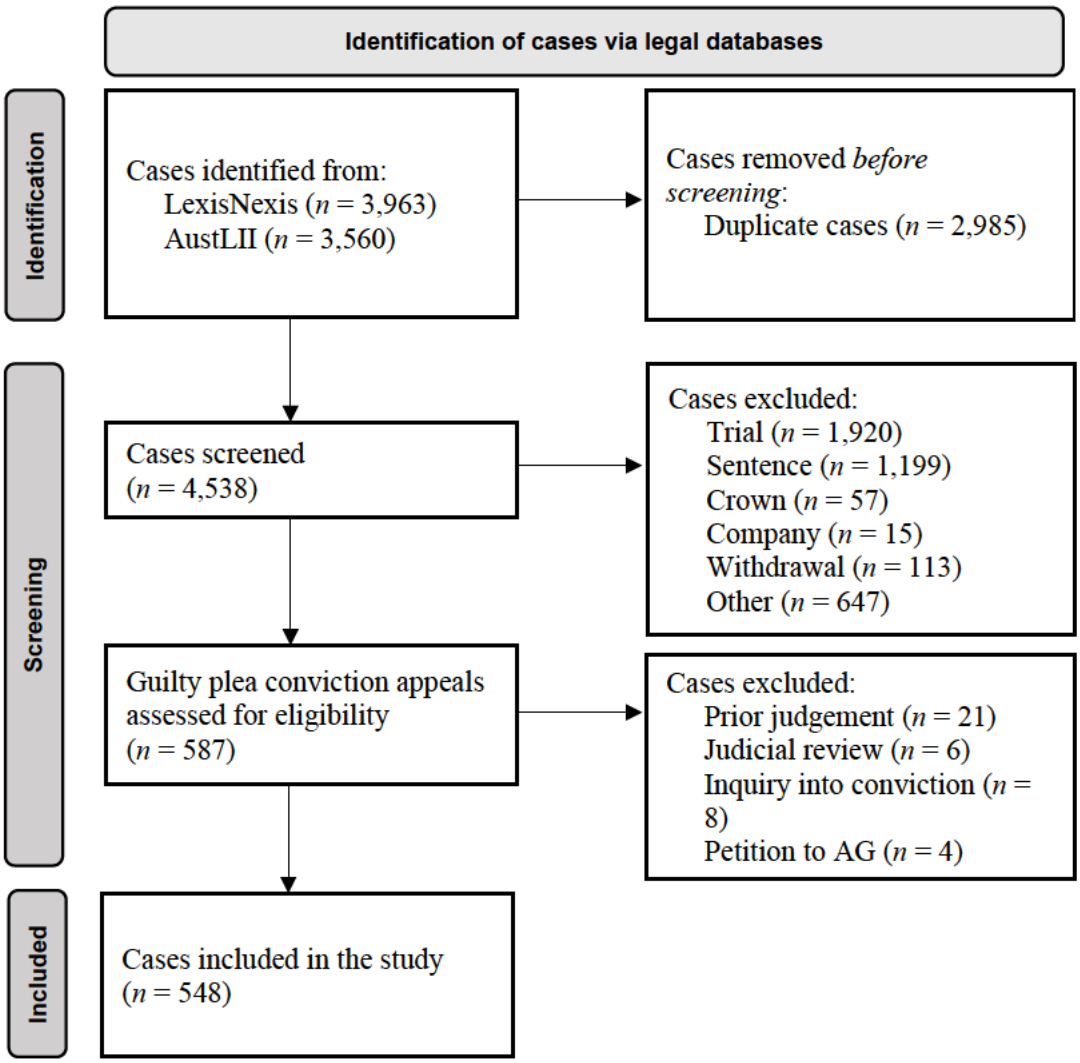
**3.3.1.2. Study 3 Case Selection.** Data collection for Study 3 was conducted at a later date and utilised a more expanded search, as it was not restricted to appellate court judgements in which a guilty plea conviction was successfully set aside, but rather included all cases in which a defendant *contested* a guilty plea conviction. For Study 3, both legal databases were searched using the terms "guilty plea", "plead guilty", "plea of

guilty", and "miscarriage of justice" (removing the search term “set aside”). Like Study 1, the searches were limited to cases heard in the District/County Court, the Supreme Court, the Court of Appeal, and the Criminal Court of Appeal, but with the date range restricted to any cases heard before 31st December, 2021. This search returned 7,523 cases across both databases, reduced to 4,538 after removing duplicates. Each case was screened to determine relevance, excluding all cases that did not involve a person appealing a guilty plea *conviction* (see Figure 3.3). Like Study 1, this excluded appeals contesting a conviction received following a trial, appeals contesting the sentence received, appeals initiated by the State, appeals involving a company, applications to withdraw a guilty plea, and other unrelated legal judgements. However, to ensure consistency across the legal judgements and to control for variations in the appellate structure, this study was further restricted to direct appeals against a conviction. This excluded appeals against a prior judgement, judicial reviews, inquiries into a conviction, and cases referred to the Court of Appeal following a petition to the Attorney-General. This screening process resulted in 548 appellate court judgements, involving a total of 568 applicants. During the screening process, each applicant was distinguished into two categories: ‘successful’ for appeals that were accepted by the court and the applicant had their guilty plea conviction overturned ($n$ = 193[7]), and ‘unsuccessful’ for appeals that were dismissed, and the guilty plea conviction remained ($n$ = 375).

[7] Due to the more expanded search conducted at a later date, the number of successful appeals located for Study 3 was greater than the cases identified in Study 1. However, there was significant overlap in the cases identified between the two samples.

**Figure 3.3**

*PRISMA flowchart of Study 3 data collection*




*Note.* Adapted from "The PRISMA 2020 statement: an updated guideline for reporting systematic reviews", by M.J. Page, J.E. McKenzie, P.M Bossuyt, I. Boutron, T.C. Hoffmann, C.D. Mulrow, et al. 2021, BMJ, 372(71), p. 5 (http://dx.doi.org/10.1136/bmj.n71)

### *3.3.2. Coding of Appellate Court Judgements*

The appellate court judgements were coded utilising quantitative content analysis, a research technique defined as "the systematic, objective, and quantitative

description of the manifest content of communication" (Berelson, 1952, p. 18). This provides a systematic and rigorous approach to analysing text and symbols of communication, allowing researchers to categorise and quantify relevant information so it can be statistically analysed (Coe & Scacco, 2017; Hall & Wright, 2008; White & Marsh, 2006). This approach essentially converts the information presented in the appellate court judgements into numbers for analysis, which can be used to describe typical patterns or characteristics or identify important relationships among the content qualities examined (Riffe et al., 2014).

This approach requires the development of a coding dictionary to systematically extract relevant data, ensuring that the variables of interest are clearly defined and consistently measured (Coe & Scacco, 2017; Hall & Wright, 2008; White & Marsh, 2006). Given the exploratory nature of both Studies 1 and 3, the development of a coding dictionary involved both deductive and inductive methods. This involved approaching the appellate court judgements with pre-existing assumptions and categories based on existing knowledge (deductive coding), whilst also allowing new coding categories to emerge from the primary data (inductive coding; Zhang & Wildemuth, 2017). This was an iterative process that required careful reading of the data and repeatedly reviewing the coding scheme, revising cases throughout the process to ensure coding consistently (White & Marsh, 2006; Zhang & Wildemuth, 2017).

**3.3.2.1. Study 1 Coding.** For Study 1, a quantitative content analysis allowed for the systematic identification, quantification, and description of the types of errors contributing to erroneous guilty plea convictions. In contrast to "story-telling" or "exoneration narratives", this quantitative approach provides a "more empirically accurate generalisation of the legal causes and consequences of wrongful conviction" (Leo & Gould, 2009, pp. 19-20). To code for the types of errors contributing to guilty

plea wrongful convictions, the appellate court judgements were initially approached with pre-existing coding categories based on previous literature on factors that are believed to contribute to wrongful convictions and false guilty pleas (Dioso-Villa, 2015; Gross & Shaffer, 2012; Sherrin, 2011). This included factors such as eyewitness identification errors, false confessions, inadequate legal representation, and official misconduct. These codes were later modified and additional ones were added based on the primary data, which allowed new categories to emerge inductively (Zhang & Wildemuth, 2017). This process produced 14 distinct different types of errors, which occurred in three different stages of the criminal justice process (the police investigation, pretrial preparations, and formal court hearings). The appellate court judgements were also coded for the type of wrongful convictions (factual, legal, and procedural), as well as relevant defendant and case characteristics, such as the defendant's gender, Indigenous status, and crime they pleaded guilty to. The full coding dictionary outlining the variables and their definitions can be found in Appendix A.

**3.3.2.2. Study 3 Coding.** For Study 3, quantitative content analysis allowed for the identification and quantification of salient factors that may be uniquely present in a *successful* or *unsuccessful* appeal, revealing key variables that influence judicial decision-making during the appeal process. As argued by Hall and Wright (2008), content analysis is particularly appropriate for examining judicial opinions and can provide an important tool to "document trends in case law and the factors that appear important to case outcomes" (p. 91). The data collected can then be analysed for the presence of statistical associations between the variables measured and the outcome of an appeal against a guilty plea conviction (Dargue, 2016).

To consider the reasons why a guilty plea conviction may be overturned on appeal, Study 3 first compared the two samples on the grounds of appeal raised,

revealing the legal arguments presented by defendants as to why their guilty plea conviction should be set aside. This involved initially approaching the appellate court judgements with the three well-recognised grounds for allowing an appeal against a guilty plea conviction (as outlined in Chapter 2). This included the defendant arguing (a) they did not understand the charge or did not intend to plead guilty, (b) they were not in law guilty of the offence, or (c) the plea of guilty was obtained by inducement, fraud, or intimidation. Additional codes were developed during the analysis based on the primary data, which resulted in a total of 12 distinct grounds of appeal.

To further understand how the two samples may differ, and to consider the possible presence of bias or judicial heuristics in decision-making, a range of defendant, case, and appeal characteristics were also compared. These included factors considered likely to influence case outcome, such as having legal representation on appeal and the presence of new or fresh evidence, as well as factors suggested to increase the susceptibility of a person entering a pressured plea, such as the Indigenous status of the accused, mental vulnerabilities, and age. The full coding dictionary outlining the variables and their definitions for Study 3 can be found in Appendix B.

### *3.3.3. Analysis of Appellate Court Judgments*

The coding instruments for Studies 1 and Study 3 were used to systematically record relevant variables into a Microsoft Excel spreadsheet. Once all the data were content coded, the spreadsheets were exported into the software program SPSS (IBM SPSS Statistics Version 27) to conduct data analyses.

**3.3.3.1. Study 1 Descriptive Analyses.** To address RQ1, the data collected in Study 1 were primarily analysed descriptively, revealing the prevalence and range of the types of errors contributing to the erroneous conviction and the stages at which they

occurred. Chi-square tests were also utilised to compare the different categories of wrongful conviction by the types of errors, examining whether any significant differences existed between a factual, legal, or procedural wrongful conviction. The findings from this study are reported in Chapter 4 of this thesis.

**3.3.3.2. Study 3 Bivariate and Multivariate Analyses.** To address RQ3, the appellate court judgements were analysed using bivariate and multivariate analysis techniques. Chi-square tests were first conducted to examine significant differences between a successful or unsuccessful appeal by the grounds of appeal raised, defendant, case, and appeal characteristics. As the dependent variable was dichotomous, statistically significant ($p$ <.05) variables were then included in a series of multiple logistic regression models to further examine which factors may *predict* a successful or unsuccessful guilty plea conviction appeal, while controlling for other factors in the model. The findings are presented in Chapter 6 of this thesis.

### *3.3.4. Limitations*

Utilising appellate court judgements allowed for the systematic and objective collection of cases that have previously undergone legal scrutiny, ensuring that the resulting samples captured relevant cases that represented the issue under analysis. However, there are some key limitations to acknowledge. First, cases in which a guilty plea conviction is overturned on appeal do not represent the true extent of guilty plea wrongful convictions. While defendants can face numerous legal and practical difficulties in having their guilty plea reviewed on appeal (Alschuler, 2016), they can also lack the incentives and motivation necessary to address their wrongful conviction (Gross & Shaffer, 2012). As such, appellate court judgements only capture the cases in which defendants chose to appeal their guilty plea conviction and do not reflect all

instances of false guilty pleas or wrongful convictions, with many erroneous guilty plea convictions likely going unrecognised and uncorrected.

These studies were also limited in their reliance on secondary data sources, as appellate court judgements do not always provide the necessary information. For Study 1, this may overlook contributing causes of erroneous guilty plea convictions not clearly identified or discussed in the data. Furthermore, the data can only reveal the immediate or legal causes of wrongful convictions and do not capture the underlying structural or "root" causes that may contribute to these errors (Leo, 2005, p. 213). As such, by supplementing the quantitative data with qualitative research, Study 2 intended to address these limitations through interviews with legal professionals directly involved in the guilty plea system.

### 3.4. Study 2: Interviews with Criminal Justice Professionals

The data for Study 2 used semi-structured interviews with legal professionals working within the Queensland criminal justice system. The value of conducting interviews with criminal justice professionals is well recognised in criminology, as it can provide valuable insight into the operation of the system that goes "beyond the pages of trial transcripts, sentencing judgements and legislation" (Fitz-Gibbon, 2014, p. 248). As the guilty plea process can often be hidden from public view, the use of interviews with those directly involved can provide a mechanism to understand the "real" processes involved in resolving a case by guilty plea (Flynn & Freiberg, 2018a, p. 16). As noted by Flynn and Fitz-Gibbon (2011), interviews with those who work within the system "offers a way to capture the variation between what should happen according to internal policy and what does happen in practice" (p. 909). As such, this study provides important insights into the role that criminal justice professionals are expected

to perform in the guilty plea system, what actually occurs, and how their actions and behaviours may be impacted by various organisational and structural features of the criminal justice system. In combination with statistical and numerical results from Study 1, these qualitative data help provide a more comprehensive understanding of how guilty plea wrongful convictions may be occurring throughout the criminal justice process, and how organisational and structural features of the criminal justice system may contribute to their occurrence.

### *3.4.1. Participants*

Study 2 involved 27 semi-structured interviews with legal professionals working within the Queensland criminal justice system, including 16 defence lawyers, seven prosecutors, and four magistrates. The legal participants represented different experiences and seniority within various organisations, including nine barristers working within Queensland Legal Aid (QLA), four solicitors and regional managers working within Aboriginal and Torres Strait Islander Legal Service (ATSILS), three instructing solicitors in private defence firms, one police prosecutor working within the Queensland Police Service (QPS), one legal officer and five Crown prosecutors (consultant, principle, and senior) working within the Queensland Office of the Director of Public Prosecution (ODPP), and four magistrates within the Queensland Magistrate Criminal Court.

While a national sample would have been preferable, this study focused only on Queensland for two main reasons. First, as the researcher is based in Queensland, this improved the accessibility to study participants and allowed more face-to-face interviews to be conducted. Second, as legislation, policies, and procedures can vary between each jurisdiction, trying to gather a nationally representative sample of criminal

justice professionals would have required a substantial number of participants, which was beyond the scope and feasibility of the thesis. Instead, by focusing on the Queensland criminal justice system, this approach allowed a more in-depth and representative account of the experiences and perceptions of the various criminal justice professionals working within this system. Implications of the findings for generalisability are discussed within the study chapter (Chapter 5) and thesis discussion (Chapter 7).

### *3.4.2. Recruitment*

Many Australian scholars have noted the significant barriers that can confront qualitative researchers who seek access to interview those working within the criminal justice system (Ashworth, 1995; Baldwin, 2008; Fitz-Gibbon, 2014; Flynn, 2011a; Mackenzie, 2005). As stated by Flynn (2011a), there can often be a reluctance within criminal justice systems "to engage with outsiders, particularly those analysing legal conduct" (p. 49), although Fitz-Gibbon (2017) has noted that this has improved in recent years. Obstacles involved in the recruitment phase may include the busy schedule of the criminal justice practitioner, a reluctance to engage with academia, and concerns surrounding confidentiality and anonymity (Fitz-Gibbon, 2017).

Due to the potential challenges of gaining access to legal professionals, a variety of different methods were relied upon to recruit relevant participants. This included utilising personal networks, obtaining referrals from other study participants, and cold-calling relevant organisations (Buchanan et al., 2013; Conti & O'Neil, 2007; Saunders, 2012). Drawing on their own experiences, Buchanan et al. (2013) recommend utilising personal contacts wherever possible to help gain access to organisations for research purposes, noting the difficulties and lack of success they have faced "cold-calling"

organisations or going “in at the top” (p. 71). As such, to initiate contact with legal professionals, personal contacts at Griffith University were first approached to help identify and recruit relevant participants. This resulted in the contact information for several legal professionals being shared. These participants were then contacted via email, explaining the aims of the research and what the interview would involve. The email also referenced the personal Griffith University contact, stating how the legal professional was recommended as a potential participant through a mutual colleague. In one instance, a colleague at the University initiated contact with the Queensland Magistrate Criminal Court to seek assistance in conducting research with Queensland magistrates. This resulted in the research request and participant information sheet (Appendix C) being distributed to over 100 magistrates throughout Queensland, with magistrates contacting the researcher if they wished to participate in the study.

All legal professionals contacted through personal networks agreed to participate in the study (although one defence lawyer was not interviewed due to their busy and conflicting work schedule). Snowball sampling was then employed to gather additional participants. Snowball sampling relies on existing participants to identify further potential participants, which can help gain further access to an organisation (Saunders, 2012). This led to additional interviews with a range of legal professionals within QLA and the ODPP. During the interviews, many participants noted the additional challenges that likely confront legal practitioners working within ATSILS. As no participants working within this organisation had been identified or recruited utilising personal contact or snowball sampling, ATSILS was ‘cold-called’, with no personal networks used to help gain access (Buchanan et al., 2013). This involved sending an email to the organisation that detailed the aims and objectives of the research, requesting access or assistance in recruiting defence lawyers working within ATSILS. Upon request, a copy

of the interview schedule was also sent to the organisation. The organisation then distributed the participant information and interview schedule amongst relevant staff, with defence lawyers contacting the researcher if they wished to participate in the study.

### *3.4.3. Interview Protocol*

Data collection comprised semi-structured interviews with the legal professionals recruited. Semi-structured interviews were chosen because they are positioned between the rigid and "ordered technique of structured interviews and the flexible, free-flowing style of in-depth interviews" (Flynn, 2011b, p. 365). This allowed for the exploration of a defined topic, whilst allowing for the legal participants to answer on their terms and to discuss issues and topics pertinent to them (Evans, 2017). As such, while an interview schedule guided the interview, this approach allowed for the flexibility to digress and probe beyond the questions, seek elaboration or clarification, or improvise follow-up questions based on participants' responses (Blee & Taylor, 2002; Dearnley, 2005; Flynn, 2011b). This provides a greater depth and breadth of information, and the opportunity to explore the participant's own experiences, insights, and perceptions of the phenomenon being studied (Blee & Taylor, 2002).

The interviews were conducted from April to August 2021. Dependent on the participants' preference, the interviews were conducted either in person at their place of work ($n$ = 13), online using the video-conferencing platform Microsoft Teams ($n$ = 12), or over the telephone ($n$ = 2). Prior to the interview, all the legal participants were provided with a participant information sheet (Appendix C) and signed a participant consent form (Appendix D). They were then asked a series of open-ended questions outlined in the interview schedule, which was developed according to the aims of the study and the guiding theoretical perspective (Appendix E). The interview schedule was

broken down into four main categories, which explored the legal participants' (a) general experiences and opinions on resolving cases through a guilty plea, (b) any organisational and structural challenges they may regularly face and how it impacts their work, (c) whether they believe innocent persons are at risk of pleading guilty and what safeguards they believe are in place to protect defendants from making inappropriate plea decisions, and (d) whether they have any experience or opinions on defendants attempting to appeal a guilty plea conviction. The interviews ranged from 21 to 65 minutes ($M$ = 46 minutes), with an hour being considered a reasonable length of time for semi-structured interviews to minimise fatigue for both interviewer and respondent (Adams, 2015). All interviews were audio recorded and transcribed using a speech-to-text service which was manually reviewed and corrected. Ethical clearance for this research was provided by Griffith University's Human Research Ethics Committee (GU Ref No: 2020/370).

#### *3.4.4. Data Analysis*

The interview transcripts were analysed using reflective thematic analysis, a qualitative method for identifying, analysing, and understanding patterns and themes within data (Braun & Clarke, 2022; Clarke & Braun, 2017). This approach was chosen to analyse patterns and meanings across the interview data through the lens of organisational and systems perspectives, capturing how personal experiences and opinions can be located within the wider socio-cultural context (Braun & Clarke, 2021). This theoretical perspective aligns with semi-structured interviews, as it can examine the experiences, meanings, and reality of legal participants' experience in the guilty plea system, as well as how these experiences, realities, and meanings might be informed by institutional, structural, or cultural conditions that exist in wider society (Braun & Clarke, 2006; Evans, 2017).

The analysis followed the six-phase guide for thematic analysis as described by Braun and Clarke (2022), which includes: (1) data familiarisation, (2) generation of initial codes, (3) developing themes, (4) reviewing themes, (5) defining and naming themes, and (6) producing the report. In the first phase of data familiarisation, the speech-to-text transcripts were reviewed and corrected. This involved relistening to each of the interview recordings. The transcripts were then printed and read multiple times, making notes that observed initial trends in the data and highlighting interesting passages in the transcripts (Braun & Clarke, 2022; Byrne, 2022). The second phase involved generating initial codes. Here, the interview transcripts were uploaded to NVivo to assist in the storage, management, and coding of the data.

The coding process for this study involved a combination of inductive and deductive techniques. A deductive approach is theory-driven and involves the researcher approaching the data with a series of pre-conceived concepts, ideas, or topics that are used to code and interpret the data (Braun & Clarke, 2012, 2022). Conversely, an inductive approach is data-driven, where codes and themes are derived directly from the content of the data to better represent meaning as communicated by the participants (Braun & Clarke, 2012, 2022; Byrne, 2022). However, as noted by Braun and Clarke (2022), deductive and inductive approaches are not mutually exclusive, and often reflect points on a spectrum rather than binary choices. For this study, the deductive approach drew upon ideas and concepts central to a systems and organisational perspective. This coded for any system features that may increase the risk of errors or false guilty pleas, system safeguards that may or may not be in place to identify and correct these errors, and any institutional, organisational, and cultural factors that may impact the role and attitudes of legal professionals within the system and how this may contribute to the

occurrence of guilty plea wrongful convictions. This process was also inductive, allowing for codes and themes to arise directly from the interview data themselves.

The coding process also involved a combination of semantic and latent codes. Semantic codes capture the explicit or surface meaning of the data, and the researcher does not examine beyond what a respondent has said or written (Braun & Clarke, 2022; Byrne, 2022). Latent coding goes beyond the descriptive level of the data and focuses on the deeper, more implicit meaning of the data (Braun & Clarke, 2022). Informed by a systems and organisational theoretical perspective, both semantic and latent codes were utilised to capture procedures and practices involved in resolving a case through a guilty plea (semantic/descriptive), and to also critically analyse how the structural, organisational, and cultural aspects of the system may influence attitudes and opinions of those working within it (latent/implicit).

The codes developed were then organised into themes relevant to the research question and guiding theoretical perspective. This involved reviewing and analysing the coded data, combining different codes that have a shared meaning so they may form themes or sub-theme (Byrne, 2022). While themes are often described as 'emerging' from the data, they are instead *generated* by the researcher (Braun & Clarke, 2021, 2022). The coding process is therefore inherently subjective, capturing the researcher's deepening understanding of the data (Braun & Clarke, 2021, 2022). The stages of the thematic analysis process were therefore an iterative process that involved several amendments to the codes and themes developed. The findings from this method are presented in Chapter 5 of this thesis.

### *3.4.5. Limitations*

By conducting interviews with front-line practitioners, Study 2 provides important insights into the opinions and procedures involved in the guilty plea system, a process generally hidden from public view. However, interviews can be prone to 'social disability bias', where participants may choose to provide accounts and opinions that reflect their behaviour and organisation in a more favourable and positive light, underreporting any practices that may not be considered socially desirable (Grimm, 2010). Furthermore, by utilising convenience and snowball sampling to recruit relevant participants, the study may be prone to selection bias and may not be representative of the population under analysis (Etikan et al., 2016; Stratton, 2021). It is also acknowledged that restricting the study to only one jurisdiction may limit the generalisability of the findings and may not represent Australia as a whole. Despite these limitations, by supplementing the quantitative data with qualitative interviews, this study helps provide a better understanding of the processes involved in resolving a case through a guilty plea and provides important insight into the organisational and structural conditions that may be contributing to guilty plea wrongful convictions.

## 3.5. Conclusion

This chapter outlined and justified the methodological framework and research design for each empirical paper in this thesis. By utilising a mixed-methods research design, this thesis allows for a more comprehensive understanding of how guilty plea wrongful convictions may be occurring throughout the Australian criminal justice system. This approach examines both the *immediate* (Study 1) and *underlying* (Study 2) factors contributing to guilty plea wrongful convictions and considers how such wrongful convictions may be *recognised* and *corrected* post-conviction (Study 3). This thesis now turns to presenting the three studies and their findings. As noted, each study

is presented as a published or unpublished journal article, and so contains its own literature review and method before presenting and discussing the findings.

# Chapter 4. The Immediate Causes: Identifying Contributing Factors and Errors that Lead to Guilty Plea Wrongful Convictions

This chapter presents a paper published in *Crime and Delinquency* and provides the first empirical chapter in this thesis that examines the contributing factors that lead to guilty plea wrongful convictions in Australia. By collecting and quantitatively analysing Australian appellate court judgements in which a guilty plea conviction was overturned, this paper provides an important first step in understanding how guilty plea wrongful convictions may be occurring within the Australian criminal justice system. This chapter represents the first empirical research to examine wrongful convictions stemming from a guilty plea in Australia and aims to provide initial insight into their *immediate* causes, addressing the first research question (RQ):

> RQ1: What are the types of errors that contribute to a guilty plea wrongful conviction, and where in the criminal justice process do they occur?

## Statement of Contribution to Co-Authored Published Papers

This chapter includes a co-authored paper. The bibliographic details of the co-authored paper, including all authors, are:

- Nash, C., Dioso-Villa, R., & Porter, L. (2021). Factors contributing to guilty plea wrongful convictions: A quantitative analysis of Australian appellate court judgements. *Crime & Delinquency*. Advanced online publication. https://doi.org/10.1177/00111287211054723

My contribution to the paper involved: conceptualisation and design of the paper, collection of data, analysis of data, writing the manuscript, and managing the process for approval of the manuscript for publication.

Signed: [redacted] Date: 03/02/2023

Caitlin Nash

Signed: [redacted] Date: 03/02/2023

The corresponding author of the paper and supervisor: Rachel Dioso-Villa

Signed: [redacted] Date: 03/02/2023

The corresponding author of the paper and supervisor: Louise Porter

# Factors Contributing to Guilty Plea Wrongful Convictions: A Quantitative Analysis of Australian Appellate Court Judgements

## 4.1. Abstract

Criminal defendants can face significant pressures to plead guilty, but wrongful conviction scholarship has largely overlooked the study of guilty pleas. This study content analysed 139 Australian appellate court judgements in which a guilty plea conviction was overturned, investigating the types of errors involved in these convictions, and the stage of the criminal justice process at which the errors occurred. The findings revealed that errors occurred during the police investigation, pretrial preparations, and formal court procedures, with the most frequent errors involving incorrect or inappropriate charges, inadequate legal representation, and the courts erroneously accepting a guilty plea. The findings raise important implications regarding the adequacy of safeguards to ensure guilty pleas are appropriate or factually and legally accurate.

*Keywords*: Wrongful convictions, miscarriage of justice, guilty pleas, false guilty pleas, system error, erroneous convictions

## 4.2. Introduction

There is increasing recognition that innocent persons are pleading guilty to crimes they did not commit. This issue has been most extensively documented in the United States, where the National Registry of Exonerations has documented 583 exonerees that were convicted by a guilty plea, representing 21% of all national exonerees documented as of July 2021. There is also growing evidence of guilty plea wrongful convictions in Canada, with six of the 23 innocent defendants exonerated by Innocence Canada being convicted by a guilty plea, while in England and Wales, approximately 50 of the 128 cases referred to the Court of Appeal by the Criminal Cases Review Commission as potential miscarriages of justice since 2012 involved defendants who initially plead guilty (Helm, 2019a).

Despite their known occurrence, little empirical research has examined wrongful convictions following a guilty plea. Instead, most of our knowledge on wrongful convictions is based upon cases that followed a contested trial. This does not reflect contemporary criminal justice systems where the majority of cases are resolved by the defendant pleading guilty. For example, guilty pleas account for over 97% of all federal criminal convictions in the United States (United States Sentencing Commission, 2021), 74% of all Crown Court cases in the United Kingdom (Ministry of Justice, 2021), and up to 70% of all adjudicated criminal cases in Australia (Australian Bureau of Statistics, 2014). Whilst guilty pleas are mainly a feature of an adversarial system, a number of inquisitorial criminal justice systems have also implemented procedures for plea negotiations in response to pressure for greater efficiency[8] (Gilliéron, 2003). Given the

[8] Though guilty pleas may not exist in inquisitorial systems, research shows that false confessions (which also involve a false admission of guilt) are a contributing factor to wrongful convictions in both adversarial and inquisitorial criminal justice systems (Huff & Killias, 2010).

lack of procedural protections associated with a guilty plea and their prevalence within the system, it has been argued that wrongful convictions based upon a guilty plea are likely to be much higher than those based upon a trial (Redlich, 2010a).

While legal and psychological scholars have begun to examine reasons why innocent defendants may plead guilty (Redlich, 2010a; Redlich et al., 2017; Sherrin, 2011), the extant literature does not provide an understanding as to how a guilty plea wrongful conviction may occur within the criminal justice system. This study addresses this gap in the literature by collecting and analysing Australian appellate court judgements where a guilty plea conviction was overturned on appeal, examining the types of errors that contributed to these convictions. Guided by a systems perspective, this paper pays particular attention to the stage of the criminal justice process in which the errors were made. This approach aims to provide a greater understanding of how a guilty plea wrongful conviction can occur and to highlight possibilities for preventing or reducing their occurrence.

### *4.2.1. Defining Wrongful Conviction*

It is important to first define a "wrongful conviction". The term wrongful conviction has become largely associated with the conviction of "factually" innocent persons who did not commit the crime (Hughes, 2011). However, wrongful convictions can also describe persons who are legally innocent, in which they had a legally relevant defence that should have resulted in an acquittal (Parkes & Cunliffe, 2015), or were unfairly convicted based on procedural or legal errors that would inform a successful appeal (Roberts & Weathered, 2009). In recent years, scholars have come to criticise the predominant focus on "factual" innocence in wrongful conviction scholarship, arguing that it devalues other forms of innocence and the values of procedural justice (Hughes,

2011; Raymond, 2001).

This study adopts a broad definition of wrongful convictions and includes all cases in which a guilty plea conviction was set aside on appeal, regardless of whether this was a result of factual, legal, or procedural error. This more encompassing definition is particularly important when examining guilty plea convictions, as defendants who plead guilty can waive many procedural protections associated with a trial, such as the presumption of innocence and the requirement for the prosecution to prove the case beyond a reasonable doubt. As most defendants plead guilty, it is critically important to ensure that these convictions are achieved through fair and just procedures and that these convictions are appropriate, not just factually accurate.

#### *4.2.2. Factors Contributing to False Guilty Pleas*

There has been growing recognition that criminal defendants can face significant pressures to plead guilty, regardless of their guilt or innocence. This literature has largely focused on the impact of plea-bargaining, where a number of scholars have raised concerns that innocent persons are pleading guilty to receive the more lenient sentence that is associated with a plea (Blume & Helm, 2014; Bowers, 2008; Sherrin, 2011). This issue is particularly apparent in the United States, where large discrepancies between the likely sentence received at trial compared to the sentence offered in a plea bargain have been shown to unduly compel innocent persons to plead guilty to crimes they did not commit (Covey, 2013; Dervan & Edkins, 2013; Zottoli et al., 2016). While the practice of plea-bargaining is more restrictive in Australia, as prosecutions cannot guarantee sentences in exchange for a guilty plea, some scholars have raised concerns that prosecutors may be using their discretionary powers to “overcharge” a defendant with multiple and/or more serious offences in order to unduly compel them into

pleading guilty to a 'bargained' version of these charges (Flynn & Fitz-Gibbon, 2011, p. 216).

Defence lawyers may also be putting pressure on defendants to plead guilty, with legal advice being shown to have a strong influence over an innocent defendant's decision to plead guilty (Henderson & Levett, 2018; Malloy et al., 2014). Pressure to plead guilty is also argued to be greater for innocent persons accused of minor offences than serious crimes, as the financial, emotional and time costs associated with proceeding to trial can be perceived to outweigh the consequences of a guilty plea (Blume & Helm, 2014; Bowers, 2008; Cheng, 2013; Sherrin, 2011). This is likely exacerbated for defendants held in pre-trial detention, with research finding that defendants who are denied bail are more likely to plead guilty simply to get out of jail (Edkins & Dervan, 2018; Kellough & Wortley, 2002). Research on false guilty pleas also suggests that certain vulnerable populations may be more likely to plead guilty when innocent, such as juvenile defendants (Redlich & Shteynberg, 2016), Indigenous persons (Carling, 2017; Roach, 2015), or those with mental health issues or cognitive impairments (Redlich et al., 2010). Due to their vulnerabilities, these accused persons are likely to face greater pressures to plead guilty without being sufficiently aware of the implications of a guilty plea.

### *4.2.3. Contributing Causes of Wrongful Convictions*

While there is growing recognition that innocent persons can face significant pressures to plead guilty, this issue has been largely overlooked within wrongful conviction scholarship. Studies in the U.S. have generated an extensive dataset of wrongful convictions from which several contributing factors have been identified, including eyewitness misidentifications, false confessions, perjury or false accusation,

false or misleading forensic evidence, official misconduct and incompetent counsel (Garrett, 2011; Gross & Shaffer, 2012; Huff et al., 1986). While care should be taken before applying these same factors to other systems, research suggests that similar issues are also apparent in Australia (Dioso-Villa, 2015), Canada (Roach, 2011), and the United Kingdom (Walker & McCartney, 2008). However, the vast majority of this research is based upon cases that followed a contested trial, and mostly involves convictions for more serious offences of rape and murder that have long prison sentences (Gross, 2017). As a result, relatively little is known regarding the contributing causes of wrongful convictions that follow a guilty plea, particularly for defendants who may be falsely pleading guilty to minor offences.

#### *4.2.4. A Systems Perspective*

The current study examines guilty plea wrongful convictions from a systems perspective. This views the criminal justice system as an organisational system consisting of interrelated, interacting, and independent parts (Doyle, 2010; Luna, 2005). This approach acknowledges that wrongful convictions are not the result of individual or discrete errors, but rather are complex events in which small mistakes combine with each other and with underlying system weaknesses to create a system failure (Doyle, 2010). As observed by Colvin (2009) "[w]rongful accusations do not necessarily lead to wrongful convictions. They lead to wrongful convictions when the safeguards of the criminal justice system fail" (p. 174). Applying this perspective to guilty plea wrongful convictions, it can be argued that, while innocent defendants may face substantial pressures to plead guilty, a more systematic approach is needed to determine how a defendant can falsely plead guilty and receive a criminal conviction without the intervention of numerous criminal justice actors involved in the process. This study adopts a systems perspective to examine guilty plea wrongful convictions by viewing

the potential for error during each stage of the criminal justice process, from the police investigation to pretrial preparations and formal court procedures. It is hoped that studying what, and where, errors occur in the different stages of the criminal justice process will provide a more comprehensive understanding of how guilty plea wrongful convictions can occur.

## 4.3. Method

### *4.3.1. Data*

The data used in this study were Australian appellate court judgements where a conviction based upon a guilty plea was set aside on appeal[9]. The broad definition of wrongful convictions included all cases in which a guilty plea conviction was set aside on appeal, regardless of whether this was a result of factual, legal, or procedural error. This approach removed the need for subjective judgements about case selection. Moreover, in Australia, an accused person can only have a guilty plea conviction set aside if they can demonstrate that a "miscarriage of justice" has occurred (*Meissner v R*, 1995), which already provides a strict definition for which cases can be considered.

Persons who wish to appeal a guilty plea conviction must request for the conviction to be reviewed by a higher court. Persons who plead guilty in the Magistrate Court apply for an appeal against their conviction to be heard in the District or Supreme Court[10], while persons who plead guilty in the District or Supreme Court apply to have their appeal heard in the Court of Appeal. Reported and unreported judgements of these

[9] Whilst this study initially attempted to supplement the data with additional information from other sources, such as media reports, government documents, and other court documents, such supplementary materials were only available in a very small number of cases. Thus, the analysis was limited to the appellate court judgements, which provided the information necessary and ensured uniformity across the cases.

[10] In Queensland, the District Court will only allow an appeal against a guilty plea conviction if it finds that the plea of guilty was unequivocal (*Hennessy v Vojvodic*, 2010, para. 40).

court proceedings are made available in online legal databases. These judgements provide a summary of the case, the arguments presented by the parties as to why the conviction should or should not be set aside, and the reasons provided by the court as to why the conviction was overturned.

Relevant cases were located from the legal databases LexisNexis and AustLII by using the search terms "guilty plea,", "plead guilty", "miscarriage of justice" and "set aside". This returned a search result of 1,256 cases. Each case was quickly reviewed to determine relevance, excluding all cases that did not involve a person successfully appealing a guilty plea conviction. This excluded cases where the defendant appealed only the sentence received, not the conviction, as well as cases in which the defendant appealed to have their guilty plea withdrawn or changed prior to conviction, as these defendants had not yet been convicted. All cases in which an appellant had their guilty plea conviction set aside on appeal were included in the study, resulting in a sample size of 139 cases.

#### *4.3.2. Sample*

All Australian states and territories are represented in the data. Most cases occurred in Western Australia (34%), followed by New South Wales (16.5%), Queensland (15%), South Australia (15%), Victoria (10%), the Australian Capital Territory (5%), the Northern Territory (3%) and Tasmania (1.5%). The date of the judgements ranged from 1966 to 2020, with the majority (78%) occurring after 2001 ($M$ = 2007, $SD$ = 10.101). The majority of the defendants were convicted in the Magistrates Court (57%), while 37% were convicted in the District Court, 6% in the Supreme Court, and 1% were convicted in the Children's Court. The defendants plead guilty to a range of offences; the most serious of each conviction overturned on appeal

is presented in Table 4.1. The majority of the wrongfully convicted defendants were male (83.5%). At least 6.5% of the cases involved Indigenous Australians, while 9% involved persons from another cultural or linguistic background that was not Anglo-Australian or Aboriginal or Torres Strait Islander. Whether the defendant had legal representation at the time of pleading guilty was known in 116 cases, with almost two-thirds (65%) of these being legally represented, while 35% were self-represented.

**Table 4.1**

*The criminal offence overturned on appeal*

| Criminal offence | *n* | % |
|---|---|---|
| Offences against government procedures, security, and operations | 20 | 14.4 |
| Acts intended to cause injury | 18 | 12.9 |
| Illicit drug offences | 18 | 12.9 |
| Traffic and vehicle regulatory offences | 16 | 11.5 |
| Sexual assault and related offences | 12 | 8.6 |
| Dangerous or negligent acts endangering persons | 10 | 7.2 |
| Theft and related offences | 7 | 5.0 |
| Weapons and explosives offences | 7 | 5.0 |
| Robbery, extortion, and related offences | 6 | 4.3 |
| Fraud, deception, and related offences | 6 | 4.3 |
| Unlawful entry, burglary, break and enter | 5 | 3.6 |
| Homicide and related offences | 4 | 2.9 |
| Other | 10 | 7.2 |

*Note.* The offences were coded based on the Australian and New Zealand Standard Offence Classification. In cases that involve multiple convictions, only the most serious were coded.

### *4.3.3. Data Coding and Analytic Strategy*

The data were content analysed for the types of errors that contributed to the

guilty plea wrongful conviction, and the stage of the criminal justice process the error occurred. Cases were initially analysed using codes based upon previous literature on factors that are believed to contribute to wrongful convictions and false guilty pleas (Dioso-Villa, 2015; Gross & Shaffer, 2012; Sherrin, 2011). Within the course of analysis, these codes were modified, and additional codes were added based upon the primary data, allowing new categories to emerge inductively (Zhang & Wildemuth, 2017). As this study adopted a broad definition of wrongful conviction, each case was also categorised by type of wrongful conviction, distinguishing between convictions overturned on the basis of factual, legal or procedural error. The case and defendant characteristics of each case were also recorded, such as the defendants' gender, the crimes they plead guilty to, and the original court the defendant was convicted[11]. In total, 30 variables were extracted from the data. The full coding dictionary outlining the variables and their definitions can be found in Appendix A.

All 139 cases were coded by the first author using the developed coding dictionary. The types of errors contributing to guilty plea wrongful convictions and the stage in which they occurred were not mutually exclusive; cases could involve more than one error committed at more than one stage of the process. These were therefore coded dichotomously as to whether or not each was present in a given case (1 = present, 0 = not present). Errors were only recorded if they were identified as a contributing factor to the wrongful conviction by the appellate court. This was to ensure objectivity and to avoid making subjective inferences about what "caused" the wrongful conviction. Similarly, when coding for the type of wrongful conviction, the categories were distinguished based upon the reasons given by the appellate court as to why the

[11] The defendants' characteristics were not always mentioned in the judgements, and variables measuring the defendant's age, criminal history and remand status were excluded due to missing data.

conviction was overturned. These variables were mutually exclusive; a case could only represent one type of wrongful conviction.

The data were primarily analysed descriptively, examining the frequencies of the variables recorded within the dataset to show the range and prevalence of errors and the stages at which they occurred. However, since this study adopted a broad definition of wrongful conviction, while most wrongful conviction scholarship focuses upon factual innocence, chi-square tests were conducted to determine whether any significant differences existed across the types of wrongful convictions with respect to the types of errors and the stage of the process the errors occurred. Where expected frequencies were less than five, Fisher's exact test was employed to test for significance. Adjusted standardised residuals were examined to identify the cells contributing to significance (residuals exceeding +/- 1.96).

### 4.4. Findings

Table 4.2 shows the case-level frequencies of error that contributed to the guilty plea wrongful convictions, and the stage of the process the errors occurred (i.e., the proportion of the 139 cases that involved the errors and stages). Cases most frequently involved the court erroneously accepting a guilty plea (33%), charging errors (29%), and inadequate defence representation (28%). In two (1%) cases, the accused falsely pleaded guilty based upon their own free choice and knowledge of the consequences, with no identifiable error within the criminal justice system contributing to the wrongful conviction[12]. The majority (70%) of cases involved errors that occurred during pretrial preparations, followed by formal court proceedings (54%), while only 8% of cases had

[12] This included one case where the defendant plead guilty because he mistakenly believed he was the perpetrator of the crime (*R v Davies*, 1993), while another involved a female defendant pleading guilty to protect her partner who was the real perpetrator of the crime (*Lysaght v Youlden*, 2018)

errors occurring during the police investigation. In total, the cases involved 216 separate errors. Figure 4.1 shows the error-level frequencies; that is, how often each type of error occurred in the different stages of the criminal justice process. The frequency patterns of errors at each stage are described below.

**Table 4.2**

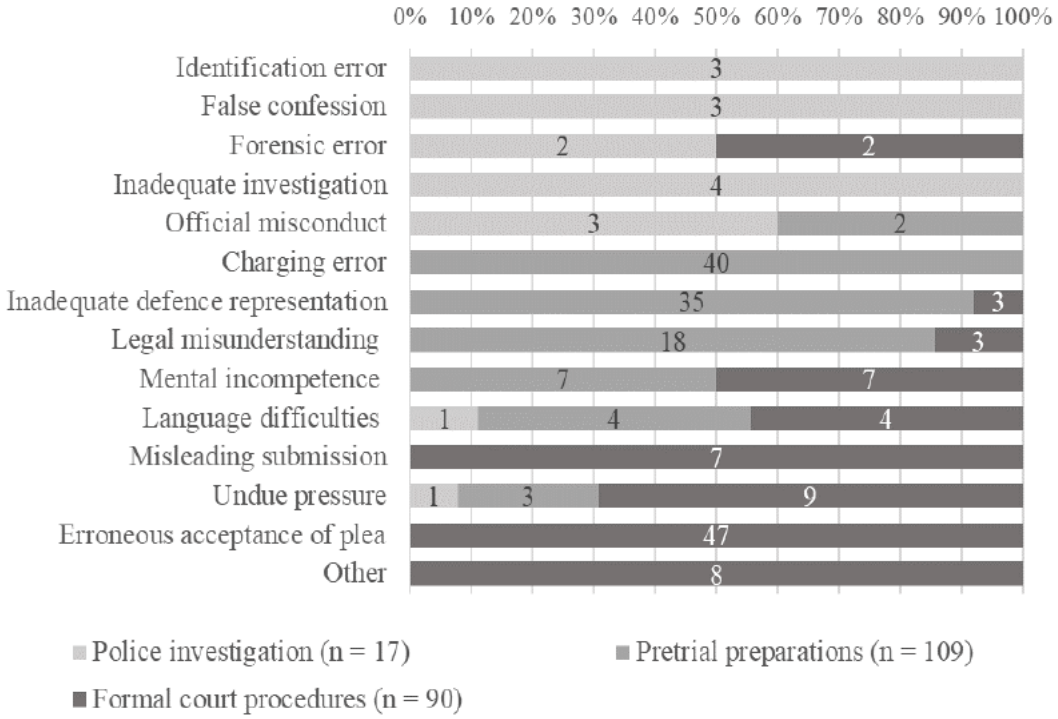
*The number of errors contributing to the guilty plea wrongful convictions and the stage of the criminal justice process the errors occurred (N = 139)*

| Variable | *n* | % |
|---|---|---|
| Type of error | | |
| Erroneous acceptance of plea | 46 | 33.1 |
| Charging error | 40 | 28.8 |
| Inadequate defence representation | 38 | 27.3 |
| Legal misunderstanding | 21 | 15.1 |
| Mental incompetence | 14 | 10.1 |
| Undue pressure | 13 | 9.4 |
| Language difficulties | 7 | 5.0 |
| Misleading submission | 7 | 5.0 |
| Forensic error | 4 | 2.9 |
| Inadequate investigation | 4 | 2.9 |
| Official misconduct | 4 | 2.9 |
| Identification error | 3 | 2.2 |
| False confession | 3 | 2.2 |
| No error | 2 | 1.4 |
| Other | 8 | 5.8 |
| Stage of the process | | |
| Police investigation | 11 | 8.1 |
| Pretrial preparations | 95 | 69.9 |
| Formal court procedurals | 74 | 54.4 |

*Note.* Percentages add up to more than 100 as some cases involved more than one error committed during more than one stage.

**Figure 4.1.**

*Total number of errors (N = 216) by the stage of the criminal justice process in which they occurred*




### *4.4.1. The Police Investigation*

In total, 8% ($n$ = 17) of all errors were made during the police investigation process. These mostly involved errors in the collection and analysis of evidence, resulting in the police identifying and arresting the wrong person (who did not commit the crime). This included cases where witnesses or the victim mistakenly or falsely identified the defendant as the perpetrator of the crime, the accused person falsely confessed to the crime, or forensic evidence falsely incriminated the accused person as the perpetrator of a crime[13]. In four (3%) cases, the wrongful conviction was the result of an inadequate police investigation. This mostly involved charging defendants despite

[13] One case involved forensic scientists mistakenly matching a DNA sample to the wrong person, while another involved preliminary testing of a powder falsely indicating the presence of illicit drugs.

available evidence demonstrating they were not guilty of the offence, while one case involved poor police practices that raised concerns as to the validity of the evidence gathered. Four (3%) cases involved overt police misconduct, committed during the police investigation and/or pretrial stage. Misconduct during the police investigation included coercing confessions through verbal threats or physical acts of violence, excessive use of force, and laying false charges, while misconduct during pretrial preparations included the police prosecution making false statements or the police exaggerating a defendant's criminal history to deny them bail.

### *4.4.2. Pretrial Preparations*

Pretrial preparation refers to the prosecution process following the arrest or summons of a defendant. This category captures errors that occurred during informal pretrial procedures that occurred outside of the courtroom, with no judicial oversight or involvement. Half (50.5%, $n$ = 109) of all errors were made during this stage of the process, and mostly involved the defendant being incorrectly or inappropriately charged, receiving inadequate legal representation, or not having the legal knowledge, mental capability, or linguistic understanding to make an informed and appropriate plea decision. These are discussed in detail below, but it should be noted that errors associated with official misconduct and undue pressure also occurred at this stage, but with lower frequency (see Figure 4.1).

**4.4.2.1. Charging Errors.** Nearly a third (29%, $n$ = 40) of the cases involved charging errors at the pre-trial stage, in which incorrect or inappropriate charges laid by the prosecution contributed to the guilty plea wrongful conviction. The majority of these involved the defendant being incorrectly charged with the wrong offence, in which the facts of the case did not fulfil the elements of the charge/s laid, and the defendant was

convicted of a crime they legally did not commit. It also included cases in which the defendant was inappropriately charged with more offences than they committed, resulting in double punishment, or cases in which charges were not properly presented or particularised.

A typical example of a charging error is illustrated in the case of *Nelson v Haynes* (2003), where the defendant was convicted of storing pornographic material on his work computer after receiving an unsolicited email. He pleaded guilty to using a computer service to obtain possession of an article, knowing it to be objectionable material, and was fined $1,000. However, the admitted facts of the case did not constitute the offence of which the applicant was convicted, as it was accepted that the defendant did not know it to be objectional material at the time. The Western Australia Court of Appeal, therefore, set aside the defendant's conviction, finding that the defendant had "been convicted of an offence of which he was not guilty" (*Nelson v Haynes*, 2003, para. 65).

**4.4.2.2. Inadequate Defence Representation.** Inadequate defence representation at the pretrial stage contributed to the guilty plea wrongful conviction in one-quarter ($n$ = 35) of the cases. This most often involved the defendant pleading guilty on the basis of insufficient or erroneous legal advice. In these cases, a defence lawyer either incorrectly informed the defendant that they were guilty of the charge, or they failed to adequately explain the charges against the defendant, to consider or explain relevant defences, or to adequately explain the processes of the court. For example, in *R v Williamson* (2012), the female defendant pleaded guilty to torture in relation to her alleged treatment of a foster child. However, she did not understand that her guilty plea meant that she intentionally inflicted severe pain and suffering on the child. The Queensland Court of Appeal found that Williamson's misapprehension was

due to incompetent legal advice from her solicitors, who failed to explain in straightforward language the nature of the charge, the effect of the plea, and the court process (*R v Williamson*, 2012). Three cases (2%) also involved inadequate defence representation during formal court proceedings, in which the defence failed to adequately challenge the prosecution's case or to provide a vigorous defence. For example, in *R v Wilkes* (2001), an Indigenous defendant pleaded guilty during his murder trial based upon legal advice that it was "virtually certain" that he would be found guilty on the basis of eyewitness evidence (para. 23). However, his counsel conceded that he could have cross-examined witnesses on various aspects of their evidence, and the New South Wales Court of Appeal concluded that several issues could have been further explored or tested (*R v Wilkes,* 2001).

**4.4.2.3. Legal Misunderstandings.** Fifteen per cent ($n$ = 21) of cases involved a guilty plea from a defendant that had a poor or mistaken understanding of the law and the legal process. In 18 (13%) cases, the defendant did not have their legal misunderstandings addressed before proceeding to court, and they entered a guilty plea without fully understanding the charges against them, were unaware they had an arguable defence to the charge, or they lacked a general understanding of the implications of a guilty plea. For instance, in *Vulin v Kirkman* (2012), the female defendant entered a plea of guilty for possessing an oleoresin capsicum spray on the "basis of a material misunderstanding of the law" (para. 47), as she was unaware that possessing a weapon for her own protection presented a defence to the charge. In three (2%) cases, the defendant initially pleaded not guilty and intended to contest the charge but became confused during formal court proceedings and changed their plea to guilty.

Interestingly, 71% (*n* = 15) of the 21 cases featuring legal misunderstandings involved a self-represented defendant[14].

**4.4.2.4. Mental Incompetence.** Ten per cent (*n* = 14) of cases involved a guilty plea from a mentally incompetent defendant who was unable to make a free and informed decision to plead guilty. This involved mentally ill or cognitively impaired defendants who were either unfit to plead guilty, were not of sound mind at the time of committing the offence or entering the plea or lacked the capacity to fully understand the charges against them and the implications of their guilty plea. In half (*n* = 7) of these cases, the appellate court placed responsibility on the defendant's legal representation for not recognising or addressing the defendant's mental impairment during pretrial procedures, while in the other half (*n* = 7) of the cases, the appellate court placed this responsibility on the judge during formal court procedures. In five of the cases featuring mental incompetence, the person's mental impairment was recognised before they entered the guilty plea, but they did not receive the support or assistance required to make an informed plea and no mental health assessment was conducted. However, in nine cases, the defendant's mental vulnerability was recognised only *after* they had pleaded guilty and were convicted.

**4.4.2.5. Language Difficulties.** A total of nine instances of language difficulties were identified across the cases, occurring during the police investigation (*n* = 1), pretrial preparations (*n* = 4) as well as formal court procedures (*n* = 4). Language difficulties contributed to seven (5%) wrongful convictions and involved linguistic or translation issues for accused persons where English was not their first language. This included the police interviewing a defendant without an interpreter present, defence

[14] Of the cases that did involve legal representation, the appellate court did not find that the legal advice given by the defence lawyers in these cases was insufficient or erroneous.

lawyers struggling to effectively communicate with the defendant pretrial, and the defendant not understanding formal court proceedings, resulting in an uninformed and misunderstood guilty plea.

### *4.4.3. Formal Court Procedures*

In total, 42% ($n$ = 90) of all errors were made during formal court proceedings, including court hearings conducted before a case proceeded to trial, after a case had proceeded to trial, or during a sentencing hearing. These errors mostly involved the prosecution or defence submitting false or misleading statements to court, judicial officers exerting undue pressure on defendants to plead guilty, and the court erroneously accepting a plea and recording a conviction. Errors associated with forensic evidence, inadequate defence representation, and legal misunderstandings also occurred at this stage, but with lower frequency, while mental incompetence and language difficulties occurred equally across both pretrial preparations (discussed above) and formal court procedures (see Figure 4.1).

**4.4.3.1. Misleading Submissions.** Five per cent ($n$ = 7) of cases involved false or misleading submissions, all occurring during formal court proceedings. This included cases where the defence or prosecution unintentionally presented incorrect facts or laws of the case, leading the court into error. Three of these cases involved the prosecutor or defence lawyer misinterpreting the law and erroneously stating that the defendant's actions constituted the alleged offence, while four involved the prosecution unintentionally presenting false facts of the case.

**4.4.3.2. Undue Pressure.** While undue pressure was also identified to have been exerted by a police officer during a police interview ($n$ = 1) and by the prosecution during plea-negotiations pretrial ($n$ = 2), this study found that undue pressure was most

often exerted by judicial officers during formal court proceedings (*n* = 9, 6% of all cases). This included three cases in which judicial officers were found to have unduly influenced a defendant's decision to plead guilty by expressing their opinion on the strength of the case and likelihood of conviction, while two cases involved magistrates putting pressure on defendants to change their plea of not guilty to guilty during a court hearing. In another three cases, magistrates put undue pressure on defendants to plead guilty through the threat of remand, giving them the option to either plead guilty and avoid or be released from custody, or plead not guilty and be sent to jail.

**4.4.3.3. Erroneous Acceptance of a Plea.** One-third (33%, *n* = 46) of the cases involved the erroneous acceptance of a plea, where the appellate court found that the original court had erroneously accepted a guilty plea and recorded a conviction in circumstances in which it was inappropriate to do so. This included cases where the facts or laws of the case, as it was known by the court at the time of the plea, showed that the defendant was not guilty of the charged offence, had an arguable defence to the charge, or had pleaded guilty to inappropriate charges. It also included cases where the court failed to make the necessary inquiries of the accused person, such as ensuring the defendant understood the charges against them, had an opportunity to receive legal advice, or accepted a guilty plea in cases where evidence suggested the defendant was mentally unfit to be tried.

An example of an erroneous acceptance of a plea is illustrated in *R v GV* (2006), where the defendant pleaded guilty to the dangerous operation of a motor vehicle causing grievous bodily harm for speeding through a red light and colliding with another car, seriously injuring his passenger. In sentencing, the prosecution set out the facts of the case which raised the defence of "sudden or extraordinary emergency", as the young driver had been speeding to escape an aggressive group of "skinheads" who

had been shouting abuse, making threats, and throwing bottles at the car, pursuing the defendant and his passengers for more than 11 kilometres. The Queensland Court of Appeal found that the sentencing judge should not have accepted the plea of guilty, as the facts of the case raised an arguable defence to the charge, unfairly denying the defendant a fair opportunity of an acquittal (*R v GV,* 2006).

#### *4.4.4. Type of Wrongful Conviction*

The majority (58%, *n* = 81) of cases were legal wrongful convictions, where the conviction was overturned on the basis that the defendant may not have been legally culpable for the offence convicted. This included convictions of persons who had an arguable defence to the charge, were charged with a more serious offence than they committed, or their actions did not constitute the offence for which they were charged. Nearly a third (30%, *n* = 42) were procedural wrongful convictions, where the guilty plea conviction was overturned on the basis of a procedural error. This included cases where the defendant was unfairly pressured to plead guilty or did not receive the support and assistance required to make an informed and appropriate plea decision. Twelve per cent (*n* = 16) of cases were factual wrongful convictions, where the conviction was overturned on the basis that the defendant may not have committed the crime and was factually innocent.

Table 4.3 shows comparisons of the different types of wrongful convictions by the types of errors involved and the stage in which the errors occurred. Chi-square analysis and examination of the adjusted standardised residuals showed that cases involving identification errors, false confessions, official misconduct, and errors made during the police investigation process were all significantly over-represented amongst factual wrongful convictions. Charging errors, legal misunderstandings and errors made

during pretrial preparations were significantly over-represented among legal wrongful convictions, while mental incompetence, undue pressure, erroneous acceptance of a plea and errors made during formal court hearings were significantly over-represented amongst procedural wrongful convictions. These findings suggest that different types of errors contribute to different categories of wrongful convictions.

**Table 4.3**

*Chi-square comparisons (df = 2) of the different types of wrongful convictions by the type of errors involved and the stage of the process the errors occurred*

| | Factual (n=16) | Legal (n=81) | Procedural (n=42) | |
|---|---|---|---|---|
| Variable | *n* (%) | *n* (%) | *n* (%) | $\chi^2$ |
| Type of error | | | | |
| Identification error | 3 (100) | 0 (0) | 0 (0) | 11.39[a]** |
| False confession | 3 (100) | 0 (0) | 0 (0) | 11.39[a]** |
| Forensic error | 2 (50) | 2 (50) | 0 (0) | 4.80[a] |
| Inadequate investigation | 2 (50) | 2 (50) | 0 (0) | 4.80[a] |
| Official misconduct | 3 (75) | 0 (0) | 1 (25) | 10.41[a]** |
| Charging error | 0 (0) | 33 (82.5) | 7 (17.5) | 16.27[a]*** |
| Inadequate defence representation | 4 (10.5) | 26 (68.4) | 8 (21.1) | 2.36[a] |
| Legal misunderstanding | 0 (0) | 17 (81.0) | 4 (19) | 5.73[a]* |
| Mental incompetence | 2 (14.3) | 4 (28.6) | 8 (57.1) | 6.19[a]* |
| Language difficulties | 2 (28.6) | 1 (14.3) | 4 (57.1) | 6.55[a*] |
| Misleading submission | 1 (14.3) | 5 (71.4) | 1 (14.3) | 1.02[a] |
| Undue pressure | 2 (15.4) | 2 (15.4) | 9 (69.2) | 11.75[a]** |
| Erroneous acceptance of plea | 1 (2.2) | 26 (56.5) | 19 (41.3) | 8.04* |
| Other | 0 (0) | 5 (62.5) | 3 (37.5) | 0.70[a] |
| Stage of the process | | | | |
| Police investigation | 8 (72.7) | 3 (27.3) | 0 (0) | 26.70[a]*** |
| Pretrial preparation | 6 (6.3) | 68 (71.6) | 21 (22.1) | 22.69*** |
| Formal court procedure | 4 (5.4) | 37 (50.0) | 33 (44.6) | 17.81*** |

[a] Fisher's exact test used.

*p < .05. **p < .01. ***p < .001.

## 4.5. Discussion

Although most criminal cases are resolved by a guilty plea, there is limited research on wrongful convictions stemming from a guilty plea. This study provides an important contribution to the literature by analysing appellate court judgements in which a guilty plea conviction has been overturned on appeal, revealing the factors contributing to these erroneous convictions and at what stage in the process errors are likely to occur. Findings also revealed important differences between factual, legal, and procedural guilty plea wrongful convictions.

The police investigation largely contributed to factual wrongful convictions, with mistakes or misconduct in the collection and analysis of evidence contributing to the identification and arrest of a factually innocent person who did not commit the crime. However, rather than proceeding to trial to contest their innocence, these cases were resolved by the defendant pleading guilty, with some acknowledging that they could not effectively challenge the evidence against them and pleading guilty to receive a lesser sentence. These findings align with guilty plea wrongful convictions documented in Canada (Roach, 2011) and the United States (Covey, 2013), and support concerns that innocent persons plead guilty when presented with what appears to be strong evidence in order to avoid risking a harsher penalty following a trial (Sherrin, 2011). The results also highlight the lack of safeguards in the plea process, as the errors or misconduct in the police investigation did not undergo any scrutiny or challenge and were, therefore, not identified and corrected (Redlich, 2010a)

Errors during pretrial preparations were found to have largely contributed to legal wrongful convictions where the defendant may not have been legally culpable for the charge. This appeared to be mostly a result of a misapprehension or

misinterpretation of the law from both the legal professionals and defendants involved in the cases. For instance, many of the wrongful convictions were the result of incorrect charges being laid, where the agreed facts of the case did not fulfil the elements of the offence. However, these charging errors were not identified or corrected by any of the parties involved, resulting in the defendant being wrongfully convicted of a crime they did not in law commit.

While previous scholars have raised concerns that prosecutors may be using their discretionary powers to "overcharge" defendants in order to compel them into pleading guilty (Flynn & Fitz-Gibbon, 2011), this was not apparent in the appellate court judgements. Instead, the findings support anecdotal reports from legal professionals that attribute erroneous charges to the inexperience and lack of legal training among the police, rather than a deliberate or malicious tactic of the prosecution (Flynn & Freiberg, 2018a). However, these charging errors were not recognised or corrected before the defendant pleaded guilty and was convicted, raising concerns regarding the adequacy of safeguards to ensure defendants are being convicted of appropriate charges. While prosecutors are expected to review cases and ensure the charges laid are appropriate, the majority of prosecutions in Australia are run by police prosecutors, who are not required to hold a legal qualification. As such, they may lack the legal knowledge required to ensure the charges laid by police are the correct legal charges applicable to a set of facts. Furthermore, police prosecutors deal with a high-volume workload, which may hinder their ability to thoroughly review a case before accepting a guilty plea (Yang, 2013). With nearly a third of the cases being overturned on the basis of erroneous charges, this suggests a need for additional legal training for both police and police prosecutors to ensure that the charges laid accurately and appropriately reflect the agreed facts of the case, and for increased attention and

scrutiny of the charges laid before a guilty plea is accepted.

The findings also suggest that defendants are not receiving the support or assistance required to make an informed and knowledgeable plea decision. While legal representation is often recognised as an important safeguard, not all persons that appear before the courts have this benefit. In this study, nearly one-third of defendants were self-represented, and they were more likely to enter a guilty plea without fully understanding the charges against them, the availability of potential defences, or the implications of a guilty plea. However, legal representation did not always ensure defendants received the legal advice and guidance needed. Instead, inadequate defence representation frequently contributed to the guilty plea wrongful conviction, supporting concerns that defendants may be receiving substandard legal advice over plea decisions (Sherrin, 2011).

The limitations on effective access to legal assistance may pose a particular problem for vulnerable suspects who may require additional support and assistance to make an appropriate and informed plea decision. While only a small proportion of cases in this study involved persons who were not mentally competent to plead guilty, the findings showed how they were processed through the criminal justice system without receiving the support and assistance required, or even having their vulnerabilities recognised. The Australian Human Rights Commission (2014) found that persons with mental illness or intellectual disability are more likely to be "pleaded out" by duty lawyers who do not have sufficient time available to identify the disability, concluding that systematic approaches to identify disabilities do not exist within the courts (p. 25). The current study findings reiterate the need for additional provisions for the assessment and identification of vulnerable defendants to ensure they receive the support and assistance required for effective access to justice. It is also recommended that accused

persons presenting with such mental vulnerabilities have access to adequate legal representation that can assist them throughout the criminal justice process.

The results from this study also underscore the need for courts to recognise circumstances in which a defendant may be entering a guilty plea inappropriately. A third of the cases were overturned on the basis that the plea was erroneously accepted, suggesting that an important safeguard to ensure guilty pleas are appropriately entered is not being properly or consistently implemented. Instead, in many instances, the appellate court acknowledged that magistrate judges operate in a busy court and are under pressure to deal with cases speedily, which may hinder their ability to adequately fulfil their duties. As stated by Justice Layton in *Nguyen v Police* (2007) "…I bear in mind that Magistrates are under the pressure of a very heavy workload, and that [certain] precautions may occasionally be imperfectly observed when they are busily dispatching their business" (para. 21). This raises an important question of whether the judiciary can even provide a safeguard against an inappropriate guilty plea, as "expecting them to perform this task effectively in a busy court setting would be well-nigh impossible" (Peay & Player, 2018, p. 951).

Due to a growing backlog of cases, courts are facing increasing pressures to quickly resolve cases and reduce court dockets. While this may hinder their ability to ensure guilty pleas are appropriately entered, the findings from this study also suggest that it may encourage judges to influence a defendant's decision to plead guilty. Previous Australian research has found that magistrates used a variety of strategies to encourage guilty pleas that maintained an image of judicial neutrality (Roach Anleu & Mack, 2009). Similar findings were observed here, where judges influenced the decision to plead guilty by commenting on the strength of the case, encouraging the defendant to change their plea of not guilty during a court hearing, or by suggesting the

defendant will avoid being held in pretrial detention. Research has shown that reducing caseloads allows judges to invest more time and resources in resolving a case (Engel & Weinshall, 2020). Therefore, in order to allow magistrates to conduct their role effectively (and fairly), the findings from this study suggest a need to reduce the number of cases proceeding through the courts or to increase the number of magistrates and judicial staff that can manage the workload.

By adopting a more expansive definition of a wrongful conviction, this study differs from previous wrongful conviction scholarship that tends to focus solely on cases involving factual innocence. Comparing the different categories of wrongful convictions revealed that the definition influenced the types of errors involved, with factual, legal and procedural wrongful convictions involving different errors committed at different stages of the process. Factors associated with factual innocence identified in the current study are frequently cited causes of wrongful convictions in both international and Australian literature (Dioso-Villa, 2015; Garrett, 2011; Gross & Shaffer, 2012), showing that these same factors are also apparent in wrongful convictions involving factually innocent persons who plead guilty. However, by adopting a broader definition, this study was able to capture a wider range of errors that may frequently occur in guilty plea convictions. It has been argued that the narrow focus on factual innocence "deflect[s] attention from unidentified miscarriages of justice" (Parkes & Cunliffe, 2015, p. 219), and the current study highlights the benefits of adopting a more encompassing definition. By allowing a wider range of wrongs to be recognised, this study provided a more comprehensive insight into erroneous guilty plea convictions, which can inform reform strategies to help prevent or reduce their occurrence.

The study of wrongful convictions is notoriously difficult, as they are an

inherently hidden problem. By analysing appellate court judgements in which a guilty plea conviction was overturned on appeal, this study was able to identify relevant cases that had previously undergone legal scrutiny. However, it is acknowledged that convictions overturned on appeal do not represent the total number of wrongful convictions. Defendants can face numerous legal and practical difficulties in having their guilty plea conviction reviewed and overturned on appeal, and there are likely many erroneous guilty plea convictions that continue to go unrecognised. The lack of documented cases also creates difficulties in identifying and examining a comparison group, which could have identified systematic differences between guilty pleas that result in a wrongful conviction and those that escape conviction. For example, while persons can apply to have their guilty plea withdrawn or vacated before receiving a conviction, there are only a small number of cases in which this is successful. The study was also limited due to its reliance on the information provided in appellate court judgements for analysis. As appellate courts are generally limited to legal errors, they may not record information that may be relevant to this study, and the study may have overlooked some important factors that were not clearly identified or discussed. Lastly, the findings only highlight the immediate causes of wrongful convictions and do not reveal any underlying structural or "root" causes that may contribute to these errors (Leo, 2005). To address these limitations, future research might build on these findings by interviewing criminal justice professionals that are directly involved in resolving cases through a guilty plea. This could capture additional errors and provide insight into the underlying structural or organisation features of the criminal justice system that may contribute to this issue.

## 4.6. Conclusion

By analysing appellate court judgements in which a guilty plea conviction was

overturned, this paper provided an important first step to understanding how guilty plea wrongful convictions may occur within the criminal justice system. The study shows a lack of adequate procedural protections and safeguards throughout the guilty plea process, allowing errors to proceed through the criminal justice system without being identified or corrected. Relying on defence lawyers and the courts to protect against inappropriate and uninformed guilty pleas is currently insufficient, suggesting a need for increased scrutiny and investigation of cases throughout each stage of the criminal justice process before a guilty plea is accepted. The findings also have important implications for post-conviction processes, as defendants can face significant difficulties in appealing a conviction based upon a guilty plea. Unlike our international counterparts, Australia has not implemented any significant governmental bodies or other legal mechanisms for the identification and correction of wrongful convictions, and there are limited options for errors to be discovered and corrected (Weathered, 2013). It is therefore recommended that Australia introduce a Criminal Cases Review Commission like those established in the United Kingdom and New Zealand, in which an independent body has the power to investigate claims of miscarriages of justice and to refer matters back to the Court of Appeal. This would allow for increased appellate access and ensure claims of wrongful convictions are systemically investigated, which is not guaranteed under the current mercy provisions available. With the criminal justice system's current reliance on resolving cases through a guilty plea and the constraints placed on appealing those convictions, there may be many more erroneous guilty pleas that remain hidden and uncorrected, with the wrongful convictions identified in this study likely representing the 'tip of the iceberg'.

# Chapter 5. The Underlying Causes: Structural Barriers and the Experiences of Legal Professionals

Chapter 4 presented a published manuscript that examined the types of errors contributing to guilty plea wrongful convictions in Australia. This found that errors occurred throughout the criminal justice process, from the police investigation to pretrial preparations and formal court procedures, raising implications regarding the adequacy of safeguards to ensure guilty pleas are appropriate or factually and legally accurate. However, as this first study was dependent on secondary data sources, it was only able to capture errors identified and recorded by appellate courts and overlooked any underlying structural or root causes that may be contributing to these errors. Chapter 5, therefore, provides a continuation of the thesis in exploring the contributing causes of guilty plea wrongful convictions, considering the *underlying* conditions of the criminal justice system that might be leading to these issues. This chapter presents a manuscript submitted to *Social and Legal Studies* and involves semi-structured interviews with legal professionals that work in the Queensland criminal justice system. By interviewing those directly involved in the guilty plea process, this study provides valuable insight into the processes and procedures involved in resolving a case through a guilty plea, and how structural and organisational conditions of the criminal justice system may contribute to guilty plea wrongful convictions. This chapter addresses the second research question (RQ):

> RQ2: What are the organisational and structural conditions of the criminal justice system that may contribute to the occurrence of guilty plea wrongful convictions?

## Statement of Contribution to Co-Authored Published Papers

This chapter includes a co-authored paper. The bibliographic details of the co-authored paper, including all authors, are:

- Nash, C., Dioso-Villa, R., & Porter, L. (Submitted). Efficiency over justice?: Exploring front-line practitioners' experiences and opinions on the "guilty plea system". *Social and Legal Studies*.

My contribution to the paper involved: conceptualisation and design of the paper, collection of data, analysis of data, and writing the manuscript.

Signed: [redacted] Date: 03/02/2023

Caitlin Nash

Signed: [redacted] Date: 03/02/2023

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Signed: [redacted] Date: 03/02/2023

The corresponding author of the paper and supervisor: Louise Porter

# Efficiency over Justice?: Exploring Front-Line Practitioners' Experiences and Opinions on the "Guilty Plea System"

## 5.1. Abstract

While most criminal cases are resolved by a guilty plea, little empirical research has examined guilty plea wrongful convictions. This study explored this issue through semi-structured interviews with legal professionals in Queensland, Australia ($n$ = 16 defence lawyers; $n$ = 7 prosecutors; $n$ = 4 magistrates). Driven by a systems and organisational perspective, we conducted a thematic analysis exploring the structural and organisational features that may systematically contribute to erroneous guilty plea convictions. We found an overarching emphasis on efficiency and pressure to quickly resolve cases, with practical constraints limiting the capacity for legal professionals to ensure guilty pleas are appropriate and accurately entered. There was also a general acceptance of false guilty pleas through the justification of "choice." The findings illustrate the routine nature of erroneous guilty plea convictions and raise important implications regarding the current validity of a guilty plea, as they do not always reflect actual guilt.

*Keywords:* false guilty pleas, wrongful convictions, pleas of convenience, pressure, organisation

## 5.2. Introduction

Most of our knowledge of wrongful convictions is based upon known exonerations that typically involve serious violent offences with long prison sentences (Gross, 2017; Hamer, 2022; Zalman & Norris, 2021). However, such cases represent only a small proportion of offences prosecuted in adversarial criminal justice systems. Instead, the vast majority of criminal cases are resolved by the defendant pleading guilty, with increasing recognition that innocent persons are pleading guilty to lesser sentences to avoid the costs and time associated with a trial (Blume & Helm, 2014; Erentzen et al., 2021; Roach, forthcoming; Sherrin, 2011; Webster, 2022). Given the prevalence of guilty pleas within the system, wrongful convictions resulting from a guilty plea are likely much higher than those resulting from a trial, with Hamer (2022) stating they are likely "symptomatic of broader system issues" (p. 15). Indeed, rather than being viewed as a rare event or accident, Roach (forthcoming) argues how guilty plea wrongful convictions should be examined as the "predictable costs of operating in a high-volume criminal justice system that places a premium on efficiency."

While there is a growing number of documented wrongful convictions stemming from guilty pleas in the US (National Registry of Exonerations, 2023), Canada (Roach, forthcoming), and the UK (Evidence-Based Justice Lab, 2023), little empirical research has investigated their occurrence. In a previous study conducted by the authors, we examined the factors contributing to guilty plea wrongful convictions in Australia through a quantitative analysis of 139 appellate court judgments in which a guilty plea conviction was overturned (Nash et al., 2021). While this represented an important first step in understanding how erroneous guilty plea convictions may occur throughout the criminal justice process, it was subject to two key limitations. First, relying on cases where a guilty plea conviction was overturned does not represent the true extent of the

problem. Defendants who plead guilty face numerous legal and practical barriers that make having their convicting reviewed and overturned notoriously difficult (Alschuler, 2016; Zalman & Norris, 2021), and most erroneous guilty plea convictions are likely never recognised or corrected. Second, the study only revealed the "immediate" or "legal" causes of guilty plea wrongful convictions and did not capture the systemic or "root" causes that may contribute to these errors being made in the first place (Leo, 2017, p. 94).

The current study, therefore, builds on this research through interviews with legal professionals that work directly in the guilty plea system. Guided by a systems and organisational perspective, this study aimed to direct attention toward the structural and organisational conditions of the criminal justice system that may systematically contribute to erroneous guilty plea convictions. As the guilty plea process can often be hidden from public view, the use of interviews provides important insights into the "real" processes involved in resolving cases through a guilty plea (Flynn & Freiberg, 2018a, p. 16). As noted by Flynn and Fitz-Gibbon (2011), interviews with those who work within the system offers "a way to capture the variation between what should happen according to internal policy and what does happen in practice" (p. 909). As such, the use of interviews can provide important insights into the role that criminal justice professionals are expected to perform, what actually occurs, and how their procedures, beliefs, and attitudes may be impacted by various organisational and structural features of the criminal justice system.

### *5.2.1. A Systems and Organisational Perspective*

An organisational perspective places individual decision-making within the broader organisational, cultural, and environmental context in which it occurs, focusing

on how overarching structural rules and norms can shape individual perceptions, decisions, and behavior (Lofquist, 2001; Thompson, 2008). Rather than examining individual errors or "bad apples" (Brockman, 2010, p. 123; Thompson, 2008, p. 1028), this approach considers the wider environment and incentive structure of those working within the system, conceptualizing wrongful convictions as "the product of organisational pressures to achieve organisational goals" (Kauzlarich et al., 2002, p. 188). A system perspective further recognises that a wrongful conviction cannot adequately be explained by the failures of a "single component or lone operator" (Doyle, 2016, p. 897), but rather are complex events in which small mistakes combine with each other and with latent system weaknesses to create a "system failure" (Doyle, 2010, 2016; Thompson, 2008, p. 1031). Drawing these perspectives together, this study aims to explore both the structural and organisational conditions that may contribute to guilty plea wrongful convictions and the system weaknesses that allow errors and false guilty pleas to proceed undetected and uncorrected.

### *5.2.2. System Features Encouraging Guilty Pleas*

Viewing the criminal justice system from an organisational perspective, we can examine how wider system values can impact legal professionals and defendants within the system. This is particularly relevant when examining guilty plea convictions, as they are recognised as a vital contribution to the efficient operation of an under-resourced system (Ward, 2016). Indeed, due to growing austerity measures, common-law jurisdictions have seen a rise in managerialism, where values such as efficiency, timeliness, and economy have arguably become the primary objectives for criminal justice systems (Flynn & Freiberg, 2018b; Freiberg, 2005; Hodgson, 2020; MacFarlane & Stratton, 2016). Within these "pragmatic" systems of justice (Flynn & Freiberg, 2018b, p. 1), there has been a growing reliance on resolving cases through a guilty plea,

with a common consensus being that courts simply could not function if all cases proceeded to trial (Blume & Helm, 2014; Cheng, 2013; Nobles & Schiff, 2019).

This has resulted in a global spread of plea bargaining and other trial waiver systems, where criminal defendants are offered direct incentives to admit guilt to free up court time and resources (Fair Trials, 2017, 2021). In Australia, criminal defendants are encouraged to plead guilty through the promise of a reduced sentence, either through a sentencing discount or plea discussions between the prosecution and Defence. However, by actively encouraging defendants to plead guilty, inducements to plead are argued to prioritize efficiency and cost-effectiveness over just and fair outcomes (Nobles & Schiff, 2019), and to put undue pressure on defendants to plead guilty, particularly the many vulnerable persons that appear before the courts (Baldwin & McConville, 1977; Flynn & Freiberg, 2018b; Helm, 2019a; McConville & Marsh, 2014).

In addition to direct inducements, criminal defendants can also face several indirect pressures to plead guilty, with some scholars outlining how the day-to-day operations of adversarial justice systems can create an ideal environment for eliciting guilty pleas, true or false (Erentzen et al., 2021; Roach, forthcoming; Webster, 2022). This includes pretrial detention and lengthy and costly legal procedures, with research showing how defendants can plead guilty simply to get out of jail (Euvrard & Leclerc, 2017; Kellough & Wortley, 2002) and to avoid the time, emotional, and financial costs of proceeding to trial (Blume & Helm, 2014; Cheng, 2013; Leclerc & Euvrard, 2019). These pressures are also argued to be exacerbated by continuing constraints on legal aid services, with reduced funding to legal aid services leaving many defendants to navigate the complex legal processes alone (Flynn & Hodgson 2017; Flynn & Freiberg, 2018b).

While prior literature has highlighted numerous pressures defendants can be under to plead guilty, the expanding emphasis on efficiency can also impact the role of legal professionals within the justice system, who can be "co-opted into the managerialist objectives of the criminal process" (Hodgson, 2020, p. 54). With the current reliance on resolving cases through a guilty plea, defence lawyers, prosecutors, and trial judges can all have an implicit interest to move cases along without serious inquiry into the basis of a guilty plea (Roach, forthcoming). For instance, prosecutors can face efficiency-driven pressures to obtain convictions and reduce the court backlog (Flynn, 2016; Hessick & Saujani, 2002), while high caseloads and lack of adequate resources are also suggested to create strong incentives for defence lawyers to resolve cases through a guilty plea (Bibas, 2004; Hessick & Saujani, 2002; Koppl & Sacks, 2013; Sherrin, 2011). Judges can also have an implicit interest to accept guilty pleas to avoid time-consuming formal adjudication processes and to address backlogs on court dockets (Hessick & Saujani, 2002).

Although these pressures are widely acknowledged, little research has explored the guilty plea process from the perspective of frontline practitioners and how institutional and structural pressures are experienced by different legal actors. While prior research in Australia has examined legal practitioner's experiences of plea negotiations (Flynn, 2016; Flynn & Freiberg, 2018a), this study focuses on the guilty plea system as a whole, explicitly examining how system-wide features and processes may contribute to erroneous guilty plea convictions. Guided by a systems and organisational perspective, we aimed to examine the typical behaviours of relevant actors in the guilty plea process and how their behaviours, perceptions, and attitudes may be influenced by the structural and organisational conditions in which they work.

## 5.3. Method

This study involved 27 semi-structured interviews with legal professionals working within the Queensland[15] criminal justice system. Queensland is the third most populated state in Australia with approximately 5.3 million people. Between 2020-21, approximately 189,500 criminal defendants were finalised in Queensland criminal courts, with roughly 96% finalised in the lower courts and 4% in the higher courts (Australia Productivity Commission, 2022). In Queensland, three levels of court hear criminal matters: The Magistrate's Court, the District Court, and the Supreme Court. The Magistrates' Court hears less serious summary offences, and all matters are heard by a single magistrate with no jury. The District and Supreme Court hears more serious indictable offences, and all matters are tried before a judicial officer and a jury. Prosecutions in the Magistrates Court are conducted by police prosecutors employed by the Queensland Police Service (QPS). Prosecutions for more serious offences in the District and Supreme Court are conducted by Crown prosecutors working within the Office of the Director of Public Prosecutors (ODPP).

### *5.3.1. Participants*

The legal participants consisted of defence lawyers ($n$ = 16), prosecutors ($n$ = 7), and magistrates ($n$ = 4). They represented different experiences and seniority within various organisations, including nine defence barristers working within Queensland Legal Aid (QLA), four solicitors and regional managers working within Aboriginal and Torres Strait Islander Legal Service (ATSILS), three instructing solicitors for private defence firms, one civilian prosecutor working within the QPS[16], five Crown

[15] As legislation, policies, and procedures vary between each Australian jurisdiction, this study chose to focus on only one Australian jurisdiction rather than attempt to gather a nationally representative sample of criminal justice professionals. Queensland was chosen as the researchers are based in this jurisdiction, improving accessibility to study participants and allowing for more face-to-face interviews.

[16] Police prosecutors are not necessarily required to be legally qualified. They can be either civilian prosecutors who are admitted lawyers or sworn police officers who have completed the Prosecutors Training Course.

prosecutors and one legal officer working within the ODPP, and four magistrates. The participants were aged between 27 and 69 years old ($M$ = 46 years, $SD$ = 2.37), with 17 (63%) identifying as male. The length of time the legal professionals had been employed in their current position ranged from four months to 31 years ($M$ = 10 years, $SD$ = 1.87), while the length of time working within the criminal justice system ranged from six to over 50 years ($M$ = 22 years, $SD$ = 2.32).

### *5.3.2. Procedure*

The participants were recruited using a combination of convenience and snowball sampling strategies. First, personal contacts at the authors' affiliated University were utilized to identify potential study participants, with the recommended legal professionals contacted via email to request participation in the study. Referrals were then used to gather additional participants within various organisations. This resulted in the research request being distributed throughout QLA and all magistrates in Queensland, with participants contacting the first author if they wished to contribute to the study. A Crown prosecutor also enabled further access to participants working within the ODPP by organising additional interviews with prosecutors who represented a range of different roles and experiences. The organisation ATSILS was contacted via email, with the research request being distributed amongst the organisation and lawyers contacting the first author if they wished to participate in the study.

The interviews were conducted by the first author from April to August 2021. Depending on the participants' preference, the interviews were conducted either in person at their place of work ($n$ = 13), online using the video-conferencing platform Microsoft Teams ($n$ = 12), or over the telephone ($n$ = 2). The semi-structured interviews covered four main topics, which explored participants' (a) general experiences and

opinions on resolving cases through a guilty plea, (b) any organisational and structural challenges they may regularly face and how it impacts their work, (c) whether they believe innocent persons are at risk of pleading guilty and what safeguards they believe are in place to protect against false or inappropriate guilty pleas, and (d) whether they have any experience or opinions on defendants attempting to appeal a guilty plea conviction. The duration of the interviews ranged from 21 to 65 minutes, with an average of 46 minutes. All interviews were audio recorded and transcribed using a speech-to-text service, with the transcripts reviewed and corrected by the first author. To maintain confidentiality, all participants were assigned a pseudonym based on their profession and organisation, followed by a randomly assigned sequential letter (e.g., Crown Prosecutor A, Legal Aid C, Magistrate B). The project was conducted in accordance with ethical approval from Griffith University.

### *5.3.3. Analytic Process*

All interviews were analysed by the first author using reflective thematic analysis as described by Braun and Clarke (2022). This approach was chosen to analyse patterns or meaning across the interviews through the lens of a systems and organisational perspective, capturing how personal experiences and opinions can be located within the wider socio-cultural context (Braun and Clarke, 2021). This involved examining and coding the data for any system features that may increase the risk of errors or false guilty pleas, system safeguards that may or may not be in place to identify and correct these errors, and any institutional, organisational, and cultural factors that may impact the behaviours and attitudes of legal professionals. The codes developed were then organised into themes relevant to the research aims and guiding theoretical perspective, focusing on structural, organisational, and cultural factors that may increase the risk of erroneous guilty plea convictions. Overall, three main themes

were generated from the data, which related to (a) the emphasis on efficiency and the pressure legal professionals can be under to quickly resolve cases, (b) resource limitations and practical constraints limiting their ability to perform their role effectively, and (c) a general acceptance of false guilty pleas through the justification of defendant autonomy and choice.

## 5.4. Findings

### *5.4.1. The Emphasis on Efficiency*

The interview data confirmed the current focus on efficiency and economy, with the criminal justice system noted to be "increasingly designed towards saving resources and achieving an end as quickly as possible" (Defence A). In this context, guilty pleas were recognised as a vital function of the criminal justice process, with the legal participants acknowledging how they are needed to cope with the overburdened legal system. As stated by one participant, without the dominant rate of guilty pleas, "the system [would] just grind to a halt" (Legal Aid B), while another explained, "[w]e would simply be overwhelmed, the delay would be impossible, and the cost of appointing judges and everybody would bankrupt the community" (Crown Prosecutor A).

In this context of an overburdened court system, the interviews revealed the efficiency pressures criminal justice actors can be under to resolve cases as quickly as possible. This pressure was noted to impact most extensively in the Magistrates Court, which a few participants characterised as a "sausage factory," outlining how a high volume of defendants are simply being "processed" through the system. Consistent with prior research of lower courts in other common-law jurisdictions (Barrett, 2017; Natapoff, 2016; Newman, 2013; Ward, 2016), this illustrated a system primarily geared

towards producing an "output", with less time or attention reserved towards investigation or just outcomes. As stated by one defence lawyer,

> the legal system seeks an outcome and a conclusion. It does not necessarily seek, in every case, the most just outcome, or the most examined outcome…A momentum is generated towards outcomes, not towards investigation. And in a context where there are many, many people being charged and brought through the system, that momentum will establish a pressure which is applied by courts on accused persons and their lawyers to resolve matters, expeditiously. (Legal Aid C)

This focus on "output" was also reflected in organisational goals and incentive structures, where legal participants highlighted the values placed on generating "statistics" and rapidly disposing of criminal cases. For example, Crown Prosecutor C explained how the courts are "motivated by statistics", observing that resolving a case through a guilty plea is "going to please the courts, because… they're also motivated by statistics and getting things dealt with quickly." Legal Aid C also observed how organisations within the justice system fall within this same "momentum" and "reward people who deal with lots of cases," stating

> statistics seem to be important to certain people who operate these organisations, and their masters in various other government departments, like treasury, to the point where…people who generate statistics more than others, can be rewarded and accorded…worth, more than someone who actually operates according to their ethical principles. (Legal Aid C)

This priority on generating statistics accords with Hodgson's (2020) analysis of changes taking place within criminal justice systems in Britain and France and the rise of

efficiency and security in the criminal justice process, where she concluded that the government's desire for speed and cost-saving has "redefined justice in quantitative terms" (p. 75), and how criminal justice actors can be "required to replace motivations of justice and fairness with concerns around the effective management of case disposal" (p. 79).

These structural demands for efficiency were sometimes noted to be at odds with the required role and obligations of legal professionals, with the interviews indicating a conflict between conducting legal roles effectively versus efficiently. For instance, the high-volume workload of the Magistrates Court was recognised as putting considerable time pressure on lawyers and magistrates to deal with cases speedily, hindering their ability to ensure fair treatment or just outcomes. As stated by Magistrate B "magistrates are always under pressure to get matters through… magistrates should not be asked to treat people like a sausage machine", while Magistrate A expressed feeling pressure from the courtroom environment:

> If you're a magistrate, ninety-nine times out of a hundred, somebody says the name, you pick up the file, you've got to read it then and there, while a hundred and fifty people sitting waiting for you to read it. You tend [to] try to do things very quickly.

The pressures experienced by the courts were then explained to have a flow-on effect on lawyers and defendants within the system, with ATSILS C stating, "there's pressure from the courts to resolve matters in a timely way, [and] that pressure is brought on the lawyers." This was noted to undermine the ethical obligations of defence lawyers, with Legal Aid C explaining how the courts "want you to try and resolve the matter, fast," and that the "legal principles upon which we operate can be, and I think

are, often refracted by the momentum of the system in that way." Similar sentiments were expressed by Defence C, who explained:

> They've got one hundred cases on in the Magistrates Court…they want you to move through justice really really quickly, and all your ethical obligations fall under the weight of the pressure of the justice system. You just got to pull all that back, and sometimes you might have to piss off the Magistrate or piss off your opponent by saying, well, wait a minute I've got to discharge my obligations properly and ethically.

Such rhetoric reflects similar findings in the United Kingdom, where a Transform Justice report found that the pressures lawyers can face to achieve a quick resolution hamper them in defending their clients, concluding that "lawyers who want to do a good job face a constant battle to do so" (Gibbs and Ratcliffe, 2019, p. 34). Legal Aid C also explained how these pressures can impact the attitudes and practices of lawyers, who can begin to work for the benefit of the system:

> instead of a defence lawyer thinking, how can I best act in this person's best interests according to his or her lawful competent and proper instructions…they [also] think other things…including how can I best resolve this matter in the interests of the system and in my interests. Some lawyers will say they have an overriding duty, and it's true, a paramount duty to the administration of justice, but that should never subvert a legitimate role you have directly to the client in acting in their best interests, on their instructions, and that does happen.

To cope with the high workload, both defence lawyers and prosecutors indicated a personal and shared focus on quickly resolving matters, with Crown Prosecutor C explicitly stating that "if a file comes to me for trial, I'm not opening that file thinking,

how am I going to run this trial, I'm opening that file thinking, how can I resolve this." Consistent with Flynn's (2016) research on plea negotiations in Victoria, the illustrated the efficiency-driven pressures lawyers can be under to resolve cases through plea negotiations, with Legal Aid B stating how conducting plea discussions "is crucial to getting through the work."

This may be putting pressure on criminal defendants to plead guilty, as the legal participants outlined tactics they can employ to help facilitate more time resolutions. This included the informal use of sentence indications, where the prosecution and defence can discuss the sentencing range to be recommended to the court. As explained by Legal Aid B when discussing their time as a prosecutor, "the way I can encourage that [a guilty plea] is to give a sentence range. You might contact the defence and say, 'look, I'm asking for a wholly suspended sentence'." Legal Aid G also acknowledged how giving a client information about the likely penalty "can be the thing that causes them to want to plead guilty", while Legal Aid F distinguished between defendants who "want to plead from the outset" to those that can "become attracted to the idea once they learn of all the pros and cons [about reduced charges and sentence indications]." This illustrates how guilty pleas can be the direct result of intervention by legal practitioners and provides support for a "guilty plea culture" (McConville, 1998, p. 572), where resolving cases through a guilty plea has become assumed and standardised.

### *5.4.2. Resource Limitations and Practical Constraints*

Confronted with high caseloads and insufficient resources, the interview data also described a system where errors and false guilty pleas can go overlooked, as criminal justice actors were noted to lack the time or resources required to adequately investigate or scrutinise the individual merits of a case. This illustrated weaknesses in

the checks and balances throughout the legal process, with the practical constraints reducing the capacity of legal professionals to recognise and correct erroneous guilty pleas. Again, this risk was noted to be more pronounced in the Magistrates' Court given their high-volume workload and fast-paced decision-making, with Legal Aid E stating:

> there's more risk of people pleading guilty when they shouldn't in the Magistrates' Court because that's like a sausage factory, it's very quick, very fast-moving, and there are different levels of quality of legal services that you get.

These resource limitations and practical constraints were observed to impact multiple actors throughout the legal process, including prosecutors, defence lawyers, and magistrates, with each described below. The implications for vulnerable persons are also discussed, as they were observed to be more likely to "slip through the cracks" of the system (ATSILS C).

**5.4.2.1. Prosecutors.** While prosecutors are expected to review cases to ensure charges are accurate and there is sufficient evidence for the prosecution, the interview data revealed how the "sausage factory" approach to justice can impact the capacity of police prosecutors to effectively screen police decision-making and ensure charges are appropriately made out. Given the high-volume workload of the Magistrates Court, police prosecutors were observed to lack the time and staff required to review cases before proceeding to court. This was observed to impact their knowledge of a matter, with Legal Aid F explaining how police prosecutors adopt a "mechanistic" approach to resolving cases, stating "the police prosecution is very mechanistic, they rely entirely on a briefing note that they get from the arresting officer, and they just read that out in

court." Magistrate A further explained how charges and allegations made by the police are not being adequately screened in this process, maintaining:

> the investigating officer is supposed to [prepare the court brief] straight away, it then goes to their shift supervisor, and then it goes to the prosecutor. All three are supposed to read it before we get to court. Doesn't happen. The shift supervisors clearly never read them because they're just so obviously junk…And prosecutors are often not looking at them until that morning. Nowhere near enough time to go back and go, hang on, you've charged this offence, what's the evidence for that offence?

Rather than conducting an independent investigation, several legal participants explained how police prosecutors tend to base their decisions on the opinions of the arresting officer, supporting concerns previously raised in the literature that police prosecutors can lack sufficient independence and impartiality from the police (Beck, 2006). While this was not reflected in the interview with the police prosecutor, who indicated a greater degree of scrutiny, this may reflect that participant being an admitted lawyer rather than a sworn police officer, reducing the likelihood of developing and maintaining a "police culture" within the prosecution service (Amagnya, 2023, p. 197; Beck, 2006, p. 151). Indeed, Crown prosecutors in the higher courts were observed to demonstrate increased discretion and scrutiny, with ATSILS D attributing this to the increased resources of the DPP and being "staffed by lawyers, as opposed to a combination of civilian prosecutors and police."

Without providing a thorough and independent check on the merits of a case, police prosecutors may not be providing an effective mechanism to identify and correct inappropriate or erroneous charges, and any problems with a case may be overlooked. It

also raises concerns over the possibility highlighted by Abel (2017, p. 1769) of "bad arrests" becoming "bad convictions", where inappropriate or questionable arrests may not be overruled. The possibility of this was indicated by Legal Aid F, who noted that "some of the 'obstruct police' charges and things are just bogus, they're the police justifying some of their own bad behaviour. But by nine o'clock the next morning, no one cares that much."

**5.4.2.2. Defence.** While access to legal representation is considered an important protection against false or inappropriate guilty pleas, the legal participants observed how the lack of funding for legal assistance services has resulted in a growing number of unrepresented defendants in the Magistrates' Court, with most defendants explained to be "wholly unrepresented or only represented by a duty lawyer on the day" (Legal Aid F). Given the complexity of the law and the legal process, unrepresented defendants can face numerous disadvantages in the legal system (Law Council of Australia, 2018), with prior research raising concerns over the potential for unrepresented defendants to enter "coerced or misunderstood" guilty pleas (Flynn & Freiberg, 2018a, p. 138). In the current study, some participants acknowledged how unrepresented defendants lack the legal knowledge required for effective participation within the legal system, with Crown Prosecutor A raising concerns over "whether injustice is being done in Magistrates' Court... because of the huge rate of unrepresented people who plead guilty quickly."

Without access to legal aid, many defendants in the Magistrates' Court who seek legal advice are reliant on the duty lawyer system, which can provide free access to legal advice for anyone appearing in court that day. However, duty lawyers were characterised as overworked, inexperienced, and severely restricted in the amount of time they can spend with each defendant. Instead, the duty lawyer system was explained as facilitating "quick turnaround guilty pleas," where the only assistance they can

provide people is “either adjourning the matter or pleading guilty to it” (Legal Aid G). This supports concerns that many defendants may be receiving “substandard” plea advice (Sherrin, 2011, p. 19), as duty lawyers are simply unable to provide the necessary due care and attention to each case. As stated by Crown Prosecutor A, duty solicitors “can’t give the level of concentration to each case it deserves, because they’ve got another one in five minutes”, while Magistrate B highlighted how things can be overlooked in this context, explaining:

> people that rely on the duty lawyer service can sit there all day, and it's a bit rushed, and duty lawyers aren’t always the most experienced lawyers in the situation, and when you got high volumes, I’m sure you all miss things.

Such sentiments are consistent with the “meet ‘em and plead ‘em” system in the United States, where public defenders can meet with their clients for the first time at a court hearing during which a guilty plea is offered, accepted, and entered (Natapoff, 2016). This likely increases the risks of inappropriate or false guilty pleas, as duty lawyers do not have the time to ensure “all of the issues are being ventilated” (Legal Aid G). For instance, when asked whether they believe innocent persons are at risk of pleading guilty, Magistrate D responded that “there is a risk. You’d be naïve not to think so”, explaining, “there’s a risk that in the time frames, their story isn’t fully explored. For a skilled lawyer, that can take hours. So, you're not drawing out a lot of the story.”

**5.4.2.3. Magistrates.** While judicial officers are expected to ensure that a guilty plea represents a free and informed choice and there is a factual basis for the conviction, the interviews support concerns that the high-volume workload reduces the capacity of magistrates to provide an effective safeguard against false or inappropriate guilty pleas (Nash et al., 2021; Peay & Player, 2018). This was explicitly acknowledged by

Magistrate A who, when asked what they believe are the safeguards within the system, responded "it all boils down to the magistrate in the end. And we're really too busy", explaining that "if we took the time to do it as well as we could and should, we would need ten times the number of magistrates." Magistrate D also referred to the "sheer weight" of cases as the most significant challenge confronting magistrates, explaining, "remaining focused when you've got a hundred and twenty people to get through is a very significant challenge." Magistrate B further explained how they may not be "picking things up that [they] should pick up", indicating how inappropriate guilty pleas may be going overlooked in this busy environment:

> we can't have magistrates sitting straight through until two o'clock with no breaks, because at the end of the day, their mental acuity is also not that good, you're not picking things up that you should pick up.
>
> ….
>
> Sometimes you're not as alert as you should be…you might not inquire as much… and you think later on, oh jeez, that may have raised a defence.

**5.4.2.4. Vulnerable Defendants "Slip Through the Cracks."** The "sausage factory" approach to justice and the lack of access to effective representation poses particular problems for defendants with vulnerabilities, who were observed to be more likely to "slip through the cracks" of the system (ATSILS C). While vulnerable defendants require additional time and support to ensure they are making appropriate and informed plea decisions, the interviews suggested a failure of the legal system to pick up on widespread mental health difficulties and systemic inequalities, particularly when a case is viewed as less serious. For instance, Legal Aid F explained a case where

a female defendant had several convictions overturned on appeal after it was discovered she was never fit to plead guilty, stating:

> if that person had committed a murder, then there would have been lots of psychiatrists looking into her state of mental health. But they were all nuisance offences…that sausage machine approach, particularly in the Magistrates' Court, can lead to cases like that not being picked up.

Similar observations were made by ATSILS C, who explained:

> There's pressure in busy Magistrates' Courts, where they have got hundreds of defendants to deal with a day. And lawyers are busy, and sometimes people with those significant mental health issues can slip through the cracks, especially when they're just pleading to something quite minor, where they are just going to get a fine.

This issue is likely more pronounced for marginalised and disadvantaged persons in remote or regional communities, who can face difficulties in accessing well-prepared defence representation due to distance, time, and understaffing (MacFarlane & Stratton, 2016). Indeed, a common issue raised by many participants was the structural challenges associated with "circuit courts" that sit only a few times a year, where lawyers and judges must deal with a high volume of cases within a limited timeframe. This was frequently remarked to impact the quality of legal representation and access to justice in regional communities, as lawyers are unable to meet clients until they arrive on circuit. The specialised legal agency ATSILS was also explained to be "grossly underfunded" (Legal Aid I) and "stretched very thin" (Crown Prosecutor D), increasing the risk of Indigenous defendants receiving insufficient legal advice. As maintained by Legal Aid H, ATSILS have "an obviously demanding job," and this "feeds into this

process that the quality of the advice sometimes is not what it should be, despite their best efforts." This was observed to put Indigenous persons at an increased risk of inappropriate or false guilty pleas, as they were indicated to be less likely to understand the legal process and to plead guilty simply to go along with it:

> That's probably an additional weakness in the system, is people who are disadvantaged…particularly I've seen it with Aboriginal clients [in the communities], they don't really understand it, so they just [plead guilty to] go along with it. (Legal Aid F)

> … a lot of them [Indigenous clients] have pleaded guilty to things because they thought they had to…and they didn't get proper advice. I say it's a regional issue because…you've got a situation where the court visits on circuit maybe six or eight times a year…[and lawyers] may not have a lot of contact with them because they might be in custody. (Legal Aid G)

### *5.4.3. Pleas of Convenience and the Justification of "Choice"*

Consistent with prior Australian research (Flynn & Freiberg, 2018a; Roach Anleu & Mack, 2001), the legal participants outlined several features of the legal system that can pressure defendants into a guilty plea. This included the certainty of a lesser punishment, particularly if it would allow defendants to avoid imprisonment, lengthy pretrial detention, the financial costs involved in going to trial, as well as the emotional toll involved. Indeed, given the time and costs associated with a trial, many participants noted how defendants can often plead guilty simply to get the matter over and done with, with Defence A explaining "the amount of money that it can cost, the amount of time involved and the amount of stress it has on people is enormous, I don't blame them for wanting to try to come to a quick resolution." This was also observed by

Legal Aid F, who stated "that's a phraseology I hear all too frequently, 'I just want to get it out of the way'", while Legal Aid C described it as the defendant, and indeed lawyers, being "beaten down by the system."

Given these external pressures, the participants outlined how guilty pleas are not always based on actual guilt. Instead, nearly all spoke of 'pleas of convenience' (also referred to as a 'Meissner plea', as explained below), explaining how defendants can plead guilty for practical or pragmatic reasons. Convenience pleas were noted to be a common occurrence in Magistrates Courts, as the potential penalty can be perceived as less onerous than going to trial. This supports the contention that the process is the punishment, where pretrial detention, missing work for court appearances, and lawyer fees can outweigh formal sanctions (Cheng, 2013; Feeley, 1979; Kohler-Hausmann, 2014). This also illustrated how more serious cases in the higher courts can be subjected to greater scrutiny and procedural protections, with the legal participant expressing that guilty pleas in the higher courts are more likely to be based upon actual guilt:

> when they learn that they're going to get a three hundred dollar fine or six-month good behaviour bond or something, versus having to come back and miss a day's work to go to court, they often just plead [guilty]…when you end up in the superior courts with legal representatives, those sorts of matters of convenience are far less relevant, and so the usual reason for pleading guilty is guilt. (Legal Aid F)

> You'll rarely have someone who genuinely believes that they are innocent of murder pleading guilty to murder. I think you will quite regularly have someone who genuinely believes they're innocent of speeding plead guilty and pay the

> fine. There's a scale, and I think the courts are a lot more careful with the more serious the charge. (Police Prosecutor A)

Guilty pleas not based upon actual guilt were explained to be readily allowed and accommodated within the legal system due to the high court authority in *Meissner* v *R* (1995, para 141), in which the majority stated a "person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty." This rule contributed to a widespread acceptance and permissibility of false guilty pleas, with lawyers explaining that "the higher court has said that's a legitimate plea, you can plea for other reasons than your actual guilt" (Legal Aid F), and that "the Meissner principle allows someone to plead guilty when he says he's not" (Legal Aid C), while ATSILS B indicated how this legal mechanism can be adopted into the routine practices of lawyers, explaining "[d]aily people plead guilty after they've said they're not guilty." Instead, the main priority is on ensuring a guilty plea is a free and informed decision rather than a true indication of guilt, with one participant explaining "a person can enter a plea of guilty for whatever reason… as long as it's voluntary and informed, it doesn't really matter what the underlying reasons are" (Crown Prosecutor E). Another maintained, "people can plead guilty for all sorts of reasons, including cost and convenience, they are free to make that choice" (Crown Prosecutor A).

As such, despite recognising the structural pressures defendants can be under to plead guilty, such pleas were consistently justified on the basis that the defendant is making a voluntary and informed "choice." This ultimately frames criminal defendants as autonomous actors capable of making free and informed decisions, neglecting the inherent pressures and constraints within the system that can undermine their voluntary nature (Cheng, 2013; Helm, 2019a; Helm et al., 2022; Mack & Roach Anleu, 2000). It

also portrays the occurrence of false guilty pleas as an acceptable outcome, where ideals of autonomy are valued over the accuracy of the conviction or the avoidance of a wrongful conviction. As stated by one lawyer,

> I've had many cases where clients plead guilty when they probably weren't guilty, and I've also had many cases where I've had clients plead guilty when I thought they shouldn't… I'm not critical of my clients and their decisions about pleading guilty or not guilty because…so long as they are aware of all their options and risks and they understand them, then my job is basically done. (Defence A)

This assumption of "choice" can be particularly problematic for vulnerable populations, such as Indigenous defendants and those with cognitive impairments or mental health issues, as they can be at a greater risk of succumbing to pressures without being sufficiently aware of the implications of a guilty plea (Bressan & Coady, 2017; Peay & Player, 2018). As outlined in the theme above, such defendants are likely not receiving the assistance and support they require to make an informed and appropriate plea decision, undermining their ability to consent knowingly. Disadvantaged and marginalised defendants can also confront systemic inequalities that further constrain their autonomy and ability to make a free choice (Helm, 2019a). For instance, some participants acknowledged how some defendants simply lack the resource for a trial, with ATSILS B stating how they make "a commercial decision. I can't afford this, I'll just plead guilty." Indigenous defendants and those disadvantaged through poverty, homelessness, and prior criminal history were also noted to be disproportionately affected by pre-trial detention, which was acknowledged to increase their risk of pleading guilty to get out of jail:

> a lot of [Indigenous] clients won't get bail, and they are left with, well, I can sit here and wait however many months to defend the matter, I want to plead not guilty, or I can just deal with it as a plea of guilty and get out sooner. (ATSILS D)

Rather than providing adequate protections against false guilty pleas, defence lawyers can also contribute to pleading pressures, with research showing how legal advice can have a strong impact on an innocent defendant's decision to plead guilty (Baldwin & McConville, 1977; Henderson & Levett, 2018; Leclerc & Euvrard, 2019). In the current study, defence lawyers explained how they are obliged to provide "robust" legal advice that stresses the benefits of a guilty plea and the risks inherent in proceeding to trial. While Seifman & Frieberg (2001) suggest how such legal advice may "inadvertently [provide an] inducement to the accused to plead guilty" (p. 67), lawyers often discounted the pressures they may exert on defendants to plead guilty, instead stressing that decisions to plead guilty rest solely on the defendant and how their role is merely to provide advice. As maintained by Legal Aid B, "we can't make decisions for them, some of them think that's what you are there for, to make a decision. You say, no, no, all I do is give you information, you make the decision." Such sentiments are consistent with prior research in Hong Kong, where lawyers distanced themselves from any potential allegations of pressuring clients into a guilty plea by emphasising their role as advisors and acting on instructions (Cheng, 2014). In Australia, Roach Anleu & Mack (2001) have also argued how this assertion of choice and defendant autonomy can "absolve the defence lawyer from taking direct responsibility for the defendant's decision to plead guilty" (p. 166). For example, Legal Aid D insisted that defendants voluntarily plead guilty despite viewing it as their "only real choice," stating:

> I've never forced a client to plead guilty…if I've ever asked a client, 'what do you want to do?,' and they say, 'well, I have no choice,'…nine times out of ten they'll turn…around and say, 'oh, yeah, sorry, I know I do, but really, considering all the circumstances, in my mind, I don't think I have a choice. You know, the only real choice is this.' (Legal Aid D)

There was also an indication that legal professionals approach cases with a preconceived notion that defendants are generally guilty, with many legal participants discounting claims of innocence. For instance, some participants justified Meissner pleas on the basis that it accommodates defendants who want to plead guilty without "accepting responsibility" (Crown Prosecutor D) while others maintained that the evidence tends to support guilt and that the police generally "get it right" (Legal Aid D). Along with the justification of choice, this assumption may help alleviate pressures from lawyers who could otherwise face difficulties in entering guilty pleas from those who maintain their innocence. For instance, Legal Aid A explained how the *Meissner* principle operates on the philosophy that "we don't know where the truth lies," stating:

> you can't plead someone guilty to something if you know they didn't do it… [it] would be unethical. But in these circumstances, we're pleading someone guilty where we don't actually know that they didn't do it. They're telling us they didn't. But you've got someone else saying something else.

While guilty pleas not based upon actual guilt were explained to be allowed, the participants outlined an accepted process for entering such a plea, as defendants are not able to plead guilty whilst also claiming innocence or without formally admitting the substance of the offence. As such, it was illustrated how both lawyers and magistrates can operate to "sanitise the record" (McConville et al., 1994, p. 263), as they must

remove any degree of contention or equivocality from the defendant's account, instead presenting the decision as a formal acceptance of guilt. This ultimately hides the occurrence of false guilty pleas, with Legal Aid B stating "we do [Meissner pleas] all the time. It's just no one's supposed to know that they are done that way. So, for the purposes of the court, they don't know it's a Meissner plea."

However, the magistrates interviewed also indicated how they can be willing to accept guilty pleas that do not constitute a real admission of guilt. For instance, Magistrate D stated they cannot accept a plea of guilty from someone who maintains they did not commit the offence but explained how they can accept such a plea if the defendant "does not say anything" and they "don't personally scrutinise them." Magistrate C further illustrated how they can coach defendants to withdraw elements of equivocality, explaining

> occasionally people will go…'I just want it over and done with.' I'll say, 'that's fine, but…you have to accept the allegations.' Now if you don't want to contest it, there's a special way of pleading guilty, without actually formally saying I'm guilty of the offence…that's what I explain to people, 'if you're going to plead guilty, then you got to accept the facts.'

In the United Kingdom, Horne (2016, p. 237) has argued that presenting guilty pleas as a genuine acceptance of guilt ultimately "obscure[s] the reality that systemic and other pressures are causing defendants to enter unreliable guilty pleas." It also demonstrates the tension between court efficiency and expectations of justice, where legal actors can be willing to accept false guilty pleas for the benefit of efficiency. While the *Meissner* principle was recognised by some legal participants as "helping the administration of justice" (Legal Aid A), others highlighted the risks associated with a principle that

allows accused persons to plead guilty for practical reasons. As stated by one legal aid lawyer, by "taking down barriers which support the validity of a plea of guilty, then the whole system is prone to being subverted" (Legal Aid C).

### 5.5. Discussion

By interviewing criminal justice professionals that work within the Queensland criminal justice system, this study provides important insights into the organisational and structural conditions of the Australian criminal justice system that may contribute to guilty plea wrongful convictions, and how such conditions can impact the procedures, beliefs, and opinions of those working within the system. The findings challenge the view that the administration of justice can be efficiently executed; rather, due to high caseloads and limited resources, it reveals how criminal justice actors can be under pressure to quickly resolve cases, with little opportunity or incentives to effectively investigate or scrutinise matters. While the criminal justice system is increasingly reliant on resolving cases through a guilty plea, the study illustrated a lack of effective safeguards to ensure guilty pleas are accurate and appropriate, with false guilty pleas being legitimised through the fallacy of "choice."

The structural demands for efficiency were observed to impact the role and ethical obligations of legal practitioners in the study, who expressed feeling pressure to quickly resolve cases at the expense of other judicial values. These pressures and incentives towards quick resolution can put pressure on defendants to plead guilty, with legal practitioners identifying a reliance on "state-induced" guilty pleas to manage the workload (McConville & Marsh, 2014). Government underfunding and the "sausage factory" approach to justice were also identified as increasing the risk of inaccuracies and errors throughout the legal process. This undermines the reliability of a guilty plea

conviction, as criminal justice actors can lack to time or resources required to ensure guilty pleas are accurate and appropriate, and may instead unknowingly contribute to pleading pressures. This risk is heightened for the vast majority of defendants who plead guilty in the Magistrates Court, as the high-volume workload and low-stakes criminal offences were observed to pass through the system with little advocacy or investigation. While most wrongful conviction scholarship tends to focus on more serious criminal offences, this demonstrates the more routine injustices that can be associated with low-profile cases deemed less worthy of scrutiny or due process.

The study also demonstrates a normalisation and acceptance of false guilty pleas through the legitimising function of the *Meissner* principle, where goals of accuracy have been displaced through the justification of defendant autonomy and "choice." This raises important concerns regarding the current validity of a guilty plea, which can be the result of structural and systemic pressures to plead guilty rather than a reliable indication of actual guilt. Further, the restrictive access to legal aid and the high number of unrepresented defendants raises important questions as to whether these defendants are in a position to knowingly forfeit their right to trial, with this study indicating how many defendants may be rushed through the court process without receiving adequate legal advice. This likely puts vulnerable persons at an increased risk of guilty plea wrongful convictions, as they can be more susceptible to pleading pressures but frequently observed to "slip through the cracks" of the system.

The reliance on guilty pleas and the fallacy of choice embedded within the legal system raises important implications for the post-conviction process, as defendants can face significant difficulties in having a guilty plea conviction reviewed and overturned on appeal (Alschuler, 2016; Zalman & Norris, 2021). Despite the limited safeguards associated with the guilty plea process, legal systems treat all convictions as formally

identical, with little consideration given to the potential pressures that lead to the plea (Gilchrist, 2011). The *Meissner* principle further operates to obscure the numerous pressures that can cause a defendant to enter a false or unreliable guilty plea, with lawyers and judges pressuring defendants to formally admit all elements of the offence. This complicates our views of justice where guilty plea convictions are generally understood as being equal to committing the act and undermines the accuracy of the legal system.

While interviews with legal professionals provided unique insights into the opinions and procedures involved in the guilty plea system, there are limitations to acknowledge. First, due to the COVID-19 pandemic, the QPS was not accepting research applications for the duration of this study, limiting access to police prosecutors. As police prosecutors conduct most prosecutions in busy Magistrates' Courts, increased consultation with this group could have exposed unique challenges confronting everyday criminal justice and provided an alternative view to those voiced in this sample. Other voices were also overlooked due to the convenience sampling strategy adopted, and the study could have benefitted from including additional duty lawyers and judicial officers that preside in higher courts. The focus on Queensland may also limit the generalisability of the findings and may not represent Australia as a whole. However, as many of the issues identified in this study were related to insufficient resources, high caseloads, and managerial policies, they are likely applicable throughout Australia and other common-law jurisdictions that are subjected to these same pressures and constraints.

## 5.6. Conclusion

This research has provided insight into legal practitioners' experiences and perceptions of the guilty plea system, examining how organisational and structural features of the criminal justice system may contribute to erroneous guilty plea convictions. While most wrongful conviction scholarship tends to focus on the more serious cases that follow a contested trial, this study provides initial insights into the more routine nature of erroneous guilty plea convictions. The findings suggest that they are likely the result of the normal operation of everyday criminal justice that puts pressure on both legal actors and defendants to resolve cases through a guilty plea for the sake of efficiency and economy, with few protections in place to ensure the resulting conviction is appropriate. The study also outlined how routine injustices can be normalised within the legal system, with false guilty pleas legitimised through the *Meissner* principle and assumption of choice. This has implications for the post-conviction process, with the legal system creating conditions that can make it difficult to appeal a guilty plea conviction. This creates difficulties in measuring wrongful convictions and the accuracy of the criminal justice system, as many erroneous guilty pleas are likely to remain undetected and uncorrected. This has important implications for a criminal justice system in which the vast majority of cases are resolved through a guilty plea and demonstrates a need for increased research attention towards false guilty pleas within wrongful conviction scholarship.

# Chapter 6. Recognising and Correcting Guilty Plea Wrongful Convictions: An Analysis of the Australian Appeals Process as a Safeguard Against False Guilty Pleas

The previous chapters in this thesis have focused on the factors contributing to guilty plea wrongful convictions. In analysing the types of errors involved in Australian appellate court judgements, Chapter 4 (Study 1) provided insights into the *immediate* causes of guilty plea wrongful conviction, highlighting the types of errors contributing to guilty plea wrongful convictions and the stages of the criminal justice process the errors occurred. Chapter 5 (Study 2) then supplemented this quantitative data with qualitative research. By interviewing criminal justice professionals that work within the Queensland criminal justice system, this study provided insight into the *underlying* structural and organisational conditions of the criminal justice system that can increase the risk of guilty plea wrongful convictions. The current chapter presents a manuscript accepted for publication in *Criminal Justice Policy Review*. This represents the third and final study in this thesis, and directs attention to the post-conviction process, examining how guilty plea wrongful convictions may be *recognised* and *remedied* in the Australian criminal justice system. In conducting a comparative analysis of Australian appellate court judgements, comparing successful appeals that were overturned against unsuccessful appeals that were dismissed, this study addresses the third research question (RQ):

RQ3a: Why are guilty plea convictions overturned in appellate courts?

RQ3b: Do successful guilty plea conviction appeals differ in grounds of appeal, defendant, case, and appeal characteristics from unsuccessful guilty plea conviction appeals?

**Statement of Contribution to Co-Authored Published Papers**

This chapter includes a co-authored paper. The bibliographic details of the co-authored paper, including all authors, are:

- Nash, C., Dioso-Villa, R., & Porter, L. (Accepted). Identifying a "Miscarriage of Justice": Factors Influencing a Successful Appeal Against a Guilty Plea Conviction in Australia. *Criminal Justice Policy Review*.

My contribution to the paper involved: conceptualisation and design of the paper, collection of data, analysis of data, writing the manuscript, and managing the process for approval of the manuscript for publication.

Signe [redacted] Date: 03/02/2023

Caitlin Nash

Signed: [redacted] Date: 03/02/2023

The corresponding author of the paper and supervisor: Rachel Dioso-Villa

Signed: [redacted] Date: 03/02/2023

The corresponding author of the paper and supervisor: Louise Porter

# Identifying a "Miscarriage of Justice": Factors Influencing a Successful Appeal Against a Guilty Plea Conviction in Australia.

## 6.1. Abstract

While the difficulties of appealing a guilty plea conviction are widely acknowledged, little research has investigated how appellate courts handle guilty plea convictions. This study addresses this gap by examining Australian appellate court judgements in which a guilty plea conviction was contested, comparing successful appeals where a guilty plea conviction was overturned ($n$ = 193) against unsuccessful appeals where a guilty plea conviction remained ($n$ = 375). Hierarchical multiple logistic regression analysis revealed that, independent of other case characteristics, legal representation on appeal and support from legal actors significantly predicted a successful appeal, while significant predictors of an unsuccessful appeal included male defendants, defendants who received a term of imprisonment, and those who argued they were pressured to plead guilty. The findings highlight the significant influence of legal and extra-legal factors on appellate decision-making beyond the grounds of appeal raised by the defendant, raising important policy implications for the post-conviction process.

*Keywords:* guilty plea, criminal appeal, post-conviction review, miscarriage of justice, wrongful conviction

## 6.2. Introduction

While the popular notion of an adversarial criminal justice system is a contested trial, trials have become increasingly rare, and most cases are resolved by the defendant pleading guilty. Guilty pleas account for over 98% of all US federal criminal convictions (United States Sentencing Commission, 2022), 68% of all Crown Court cases in the United Kingdom (Ministry of Justice, 2022), and over 80% of criminal cases adjudicated in Australian higher courts (Australian Bureau of Statistics, 2012). The main justification for the high number of guilty pleas is to improve court efficiency and reduce court delays, with many claiming that the court system simply could not function if all cases proceeded to trial (Blume & Helm, 2014; Helm et al., 2022; Walsh, 2017a). As a result, there has been a global spread of plea bargaining and other trial waiver systems, with a growing number of countries offering criminal defendants direct incentives to plead guilty in order to avoid the costs and time associated with a trial (Fair Trials, 2017; Langer, 2021). Such incentives can put substantial pressures on criminal defendants to plead guilty and have been argued to undermine the safety of a guilty plea conviction (Nobles and Schiff, 2020), diminishing the traditional account of a guilty plea as a voluntary and informed choice (Helm, 2019b; Horne, 2016).

With most defendants pleading guilty, it is important to ensure that appellate courts can provide an effective mechanism to recognise and respond to miscarriages of justice stemming from a guilty plea. However, while it is widely acknowledged that defendants who plead guilty can face considerable challenges in having their conviction reviewed and corrected on appeal (Alschuler, 2016; King, 2014; Wilford & Khairalla, 2019), little empirical research has examined how appellate courts respond to convictions resulting from a guilty plea and the reasons why such convictions may be overturned. Although scholars in the United Kingdom have begun to consider how

appellate caselaw justifies a guilty plea conviction (Horne, 2016; Nobles & Schiff, 2020), few studies, if any, has yet quantitatively analyzed appellate court judgements in which a guilty plea conviction is contested. Such an approach can provide a more objective and systematic analysis of how appellate courts handle a guilty plea conviction and the reasons why they may be either upheld or overturned on appeal.

Using Australia as a case study, this study analyzed Australian appellate court judgments in which a guilty plea conviction was contested, quantitatively comparing "successful" appeals where the guilty plea conviction was overturned against "unsuccessful" appeals where the conviction remained. By exploring the differences between successful and unsuccessful appeals, the study aimed to examine the reasons why a guilty plea conviction is overturned and other salient factors influencing judicial decision-making in the appeal process. While this can provide insight into the types of cases appellate courts may be more likely to identify and perceive as a "miscarriage of justice" (the successful appeals), it can also reveal the challenges and difficulties applicants may face in having their guilty plea conviction overturned (the unsuccessful appeals).

### *6.2.1. Challenges in Appealing a Guilty Plea Conviction*

As defendants who plead guilty waive their right to a trial and many of the associated procedural protections, it might be thought that appellate courts would be more open to reviewing a guilty plea conviction "because the case has not previously been subjected to a comprehensive review by the courts" (Horne, 2013, p. 6). However, this is not the case, and it is widely acknowledged that defendants who plead guilty can face numerous legal and practical barriers in having their conviction reviewed and overturned on appeal (see Alschuler, 2016, pp. 930-931). As a guilty plea is an acceptance of all elements of the offence, it essentially represents a "judicial

confession" (Horne, 2013, p. 3). This provides compelling evidence in support of the prosecution case and can be difficult to later withdraw, particularly if the defendant had the benefit of legal advice at the time of pleading guilty. Defendants who plead guilty can also waive many of their rights to appeal or challenge their conviction, which can limit their avenues for post-conviction relief (Hoyle & Sato, 2019; Reimelt, 2010). They are also less likely to have forms of evidence necessary for exoneration (Wilford & Khairalla, 2019), and without a detailed trial record, the strength of the prosecution's case and the evidence they may have presented at trial remains untested and unknown (Alschuler, 2016).

While the difficulties in appealing a guilty plea conviction are widely recognised, little empirical research has examined how appellate courts approach guilty plea convictions. In the United Kingdom, Horne (2016) conducted a doctrinal analysis of appellate caselaw that examined how appellate courts responded to challenges to guilty plea convictions and the accounts of the guilty plea they provided to justify these responses. She found that, despite the risk of injustice, appellate courts resisted challenges to guilty plea convictions, and instead relied upon unsupportable accounts of the guilty plea as a confession and viewed defence lawyers as providing adequate protection against pleading pressures (Horne, 2016). Nobles & Schiff (2020) have also explored "judicial reluctance" towards undoing guilty plea convictions, considering the justifications provided for restricting the right to appeal a guilty plea conviction in England and Wales (p. 514). They argued that the Court of Appeal is unable to provide a remedy for miscarriages of justice following a guilty plea, instead justifying guilty plea convictions as being "so safe that there is little or no need for review" (p. 513). While this prior scholarship in the United Kingdom has considered the justifications provided in appellate caselaw, the extant literature does not provide an empirical

understanding as to how appellate courts handle guilty plea convictions and the reasons why such convictions may be overturned.

### *6.2.2. Overturning a Guilty Plea Conviction in Australia*

In Australia, there is no automatic right for an appeal against a conviction for defendants who plead guilty. Instead, defendants who plead guilty must request for their conviction to be reviewed by a higher court. Persons who plead guilty in the Magistrate Court apply for an appeal against their conviction to be heard in the District or Supreme Court[17], while persons who plead guilty in the District or Supreme Court apply to have their appeal heard in the Court of Appeal. Defendants are only given a limited time to appeal their case; A notice to appeal must generally be made within one month from the date of conviction, with defendants who fail to appeal within the time limit required to show substantial reasons why an extension to appeal should be granted.

As a guilty plea is taken to be an admission of all the elements of the offence, the court's approach to overturning a guilty plea conviction is said to be "one of caution bordering upon circumspection" due to the "high public interest in the finality of legal proceedings" (*R v Liberti*, 1991, para. 122). The opportunities to appeal a guilty plea conviction are therefore limited, and a guilty plea conviction can only be overturned if the appellate court is satisfied that a "miscarriage of justice" has occurred (*Meissner v R*, 1995). While the categories of a miscarriage of justice are not closed, there are three well-recognised grounds for allowing a change of plea: (1) where the applicant did not understand the charge or did not intend to plead guilty; (2) where on the admitted facts the applicant could not in law be guilty of the offence; and (3) where the plea of guilty

[17] In Queensland, the right to appeal a guilty plea conviction from the Magistrate Court is restricted, as the Queensland District Court will only allow an appeal against a guilty plea conviction if it finds that the plea of guilty was unequivocal (*Hennessy v Vojvodic*, 2010, para. 40).

has been obtained by inducement, fraud or intimidation (*Vella v The State of Western Australia*, 2006).

However, legal authorities have established that persons are allowed to plead guilty for reasons that extend beyond their belief in their guilt. As noted by Dawson J in *Meissner v R* (1995), a person may plead guilty "to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty" (para. 157). As long as the plea is entered in the exercise of a free choice by a person in possession of all relevant facts, it "nevertheless constitutes an admission of all the elements of the offence" (*Meissner v R*, 1995, para. 157). This restrictive requirement for appealing a guilty plea conviction could potentially create significant hurdles for defendants to have their guilty plea conviction set aside.

### *6.2.3. Factors Influencing Appeal Outcomes*

While appellate courts hear the grounds of appeal raised by defendants arguing why their conviction should be overturned, the outcome of a criminal appeal can also be influenced by a range of factors extrinsic to the legal arguments raised. This has been demonstrated in several studies, conducted mostly in the United States, which have empirically examined factors that may be correlated with a successful appeal, finding that judicial decision-making can be influenced by a range of legal and extra-legal factors (e.g., see Chapper & Hanson, 1989; Heise et al., 2017; King & Heise, 2019; Kuang & Liang, 2015). For instance, research suggests that defendant characteristics may influence the outcome of an appeal, with the race of the appellant (Williams, 1995a) and criminal history (Ruddell & Kmiech, 2000) being found to be significantly associated with the outcome of an appeal. Examining the influence of defendant characteristics may be particularly relevant for appeals involving guilty plea

convictions, as prior literature suggests that certain vulnerable populations may be at risk of pleading guilty inappropriately, such as juvenile defendants (Redlich & Shteynberg, 2016), Indigenous defendants (Carling, 2017), and those with mental health issues (Redlich et al., 2011). Due to their vulnerabilities, these accused persons are suggested to face greater pressures to plead guilty without being sufficiently aware of the implications of a guilty plea (Peay & Player, 2018), and appellate courts may be more willing to set aside their convictions.

Having legal representation at the time of pleading guilty may also present an important factor in appeals against a guilty plea conviction, as defence lawyers are generally considered adequate protection against pleading pressures or inappropriate guilty pleas (Flynn & Freiberg, 2018a, p. 134). Given the complexities of laws and legal systems, defence lawyers play a pivotal role in ensuring defendants are making principled, informed, and appropriate plea decisions. Without access to legal advice, self-represented defendants can be disadvantaged within the legal system, and research suggests they are at an increased risk of pleading guilty without fully appreciating the nature of the charges, the availability of potential defences, or the consequences of pleading guilty (Flynn & Freiberg, 2018a; Gibbs, 2016; Nash et al., 2021). As such, it may be expected that appellate courts are more likely to set aside a guilty plea conviction from someone who lacked this important safeguard and appeared self-represented at the time of pleading guilty.

The presence of legal representation on appeal is also suggested to increase the likelihood that a case will succeed, as lawyers can play an important role in advising their clients on how to raise appeal grounds (Kuang & Liang, 2015, see also Heise et al., 2017; Hodgson & Horne, 2009). However, there are inconsistent findings regarding the *type* of legal representation on appeal and case outcome. While it is often assumed that a

privately retained lawyer may have greater success than public defenders given their increased resources and incentives (Chapper & Hanson, 1989; King & Heise, 2019), only one study in New York City provides support for this contention (Wasserman, 1990). Other studies in the United States have found no significant differences between the type of counsel and appeal outcome (Buller, 2015; King & Heise, 2019; Williams, 1995b), while Heise et al. (2017) found that publicly funded defence lawyers consistently achieved more favourable results on appeal than private defence lawyers.

Existing literature also suggests a relationship between the type of offence and the outcome of an appeal, with research finding that more serious offences that entail more severe sentences are generally less likely to win on appeal (Chapper & Hanson, 1989; Davies, 1982; Heise et al., 2017; King & Heise, 2019; Neubauer, 1991; Ruddell & Kmiech, 2000). Based on interviews with the intermediate court of appeal judges in the United States, Davies (1982) suggests that appellate judges may be reluctant to overturn more serious offences due to a fear of adverse public reaction, while Chapper & Hanson (1989) suggest that such findings may reflect greater care and attention paid by trial judges in more serious cases.

#### *6.2.4. The Present Study*

This study empirically examines how appellate courts handle guilty plea convictions and the reasons why such convictions may be either upheld or overturned on appeal. Using Australian appellate court judgments in which a guilty plea conviction was contested, we quantitatively compared “successful” appeals where a guilty plea conviction was set aside against “unsuccessful” appeals that were dismissed and the conviction remained. The primary objective was to examine the grounds of appeal more or less likely to result in a successful appeal, and the extent to which other legal and extra-legal factors may influence judicial decision-making in the appeal process.

## 6.3. Method

### *6.3.1. Sample*

The study used 548 Australian court judgements in which a defendant appealed a guilty plea conviction, involving a total of 568 applicants. The individual applicant represented the unit of analysis. Of the 568 applicants, 193 (34%) successfully had their guilty plea conviction set aside on appeal, while 375 (66%) were unsuccessful and the guilty plea conviction remained. Of the 193 successful applicants, 32 (16%) received an acquittal, 65 (34%) had the conviction quashed, and 96 (50%) were set to a retrial or remitted back to court. All Australian states and territories were represented in the data. The majority of appeals were heard in Queensland (28%), followed by Western Australian (24%), New South Wales (20%), Victoria (12%), South Australia (11%), Australian Capital Territory (2%), Northern Territory (2%) and Tasmania (1%). The year of the appellate court judgment ranged from 1916 to 2021[18], with the majority (81%, $n$ = 458) occurring after 2000 ($M$=2007, $SD$=10.76).

### *6.3.2. Data Collection*

Cases were located from the legal databases LexisNexis and AustLII by using the search string ("guilty plea" or "plead guilty" or "plea of guilty") and ("miscarriage of justice"), limiting the search to cases heard in the District/County Court, the Supreme Court, the Court of Appeal, and the Criminal Court of Appeal. After removing duplicates, this returned a search result of 4,538 cases. Each case was quickly reviewed to determine relevance, excluding all cases that did not involve a person contesting a

[18] No date restriction was applied due to the limited number of appeals involving guilty plea convictions. Most cases occurred after 1990, with only 32 (6%) occurring between 1916 to 1990. The possibility that these earlier cases may skew the results was considered, and statistical analyses were applied to the cases that occurred after 1995 (the year of the *Meissner* decision). However, only minor differences in the bivariate analyses were found, and the significant variables emerging from the logistic regression remained consistent.

guilty plea *conviction*. This excluded cases where the defendant appealed only the sentence received, not the conviction ($n$ = 1,199), cases where the defendant applied to have their guilty plea withdrawn *prior* to conviction ($n$ = 113), and appeals that were initiated by the Crown, not the defendant ($n$ = 57). It also excluded legal judgements that were not direct appeals against a conviction, excluding appeals against a previous judgment ($n$ = 21), judicial reviews ($n$ = 6), inquiries into a conviction ($n$ = 8), and cases referred to the Court of Appeal following a petition to the Attorney-General ($n$ = 4)[19]. Data were gathered mainly from the appellate court judgements, although any gaps regarding the defendant or case characteristics were filled with information from media articles or other court documents, where available.

### *6.3.3. Case Coding*

**6.3.3.1. Dependent Variable.** The dependent variable was case outcome, coded dichotomously: a successful appeal (1) or an unsuccessful appeal (0). For this study, a successful appeal captured all cases in which a guilty plea conviction was set aside. This included cases where the appellate court set aside the conviction and entered an acquittal, where the conviction was set aside and the case remitted back to court or set to a trial, or where the conviction was quashed without an acquittal or retrial entered. An unsuccessful appeal included cases where the appeal was dismissed, and the guilty plea conviction remained.

**6.3.3.2. Independent Variables.**

***6.3.3.2.1. Grounds of Appeal.*** To examine the reasons why a guilty plea conviction may be overturned, the study coded the grounds of appeal raised by the

[19] Several unrelated cases were also excluded, including defendants who contested a conviction received following a trial ($n$ = 1,920), cases where the defendant was a company ($n$ = 15), and other unrelated legal judgements (e.g., applications for bail, applications for costs, stay of proceedings, etc) ($n$ = 647).

defendant. As mentioned, there are three well-recognised grounds for allowing an appeal against a guilty plea conviction: (a) the applicant did not understand the charge or did not intend to plead guilty; (b) the applicant could not in law be guilty of the offence; and (c) the plea of guilty was obtained by inducement, fraud, or intimidation. Therefore, to code the grounds of appeal, the first author initially approached the data with these three recognised grounds. Additional codes were then developed during the analysis based on the primary data, resulting in a total of 12 grounds of appeal (see Table 6.1). Each case was then coded as to whether or not the defendant raised the ground of appeal (raised vs. not raised).

**Table 6.1**

*The grounds of appeal raised and their description*

| Ground of appeal | Description |
|---|---|
| Did not understand charge | The defendant argued that they did not understand or appreciate the nature of the charge, or that they did not mean to plead guilty to the charge |
| Not in law guilty | The defendant argued that, based upon the admitted facts of the case, they could not in law be guilty of the offence. Includes cases where the facts of the case did not fulfill the required elements of the charge, that the evidence available did not support the charge or could not establish guilt, or that the offence was not known in law during the period in which it was committed |
| Induced to plead | The defendant argued they were unduly pressured to plead guilty or that the guilty plea was obtained by inducement, fraud, intimidation, or other impropriety |
| Available defence | The defendant argued they had a relevant defence to the charge, that they were denied the opportunity to defend the charge, that there was an issuable question of the defendant's guilt or a real issue to be tried |
| Erroneous acceptance of plea | The defendant argued that the court erroneously accepted the guilty plea and recorded a conviction. Includes cases where the plea was equivocal, the facts or laws of the case showed that the defendant was not guilty of the charged offence, the court did not conduct necessary inquiries into the case or did not have the jurisdiction to convict the defendant |

| | |
|---|---|
| Inadequate legal advice | The defendant argued that they plead guilty based on inappropriate, inadequate, or incorrect legal advice |
| Unfit to plead guilty | The defendant argued they were unfit to plead guilty, either due to cognitive impairments or mental illness |
| New/fresh evidence | The defendant argued that new or fresh evidence demonstrated they were not guilty of the offence or raised a reasonable doubt as to their guilt |
| Erroneous ruling | The defendant argued that there was an erroneous ruling in the original proceedings, such as an erroneous decision to admit evidence, refusing to adjourn proceedings, or rejecting an application to withdraw the guilty plea |
| Procedural error | The defendant argued that the case involved a procedural error or irregularity |
| Misconduct/ abuse of process | The defendant argued that the case involved misconduct or an abuse of process by the police or prosecution |
| Other | The defendant raised another ground of appeal that does not easily fit within the categories above |

***6.3.3.2.1. Defendant Characteristics.*** To examine whether appellants who successfully appeal a guilty plea conviction differ from those who are unsuccessful, several demographic characteristics were also compared. This included gender, age at the time of the plea, Indigenous status, being born overseas, a history of mental illness, an intellectual or cognitive impairment, and criminal history[20]. Being born overseas was considered a proxy variable for defendants who may lack a linguistic or legal understanding of the Australian criminal justice system. All defendant variables were dichotomized (male vs. female/yes vs. no), including age, which was measured as adult (≥18) vs. minor[21].

***6.3.3.2.1. Case Characteristics.*** Several characteristics associated with the case and original proceedings were also coded. This included the year the defendant was

[20] Variables measuring Indigenous status, being born overseas, and mental vulnerabilities were only coded if explicitly mentioned in the appellate court judgement or media articles.
[21] Age was measured dichotomously due to large amounts of missing data, as the defendant's age in years was known in only 256 (45%) cases.

convicted and the Australian state or territory in which the appeal was heard. This also compared the type of offence contested on appeal (summary vs. indictable), the primary offence contested[22] (homicide, violent offence, sexual offence, property offence, drug offence, traffic offence, and offence against government), and the severity of the sentence the defendant originally received (imprisonment, community sentence, fine, and not yet sentenced). We also measured whether the defendant was held in remand at the time of pleading guilty (yes vs. no), as well as the type of legal representation provided to the defendant at the time of pleading guilty (private, duty lawyer/legal aid, and self-represented).

***6.3.3.2.1. Appeal Characteristics.*** Characteristics associated with the appeal were also coded to examine the impact that procedural differences during the appeal process may have on case outcome. This included the year of the appellate court judgment, the type of legal representation the defendant had on appeal (private, legal aid/pro bono, and self-represented), whether the prosecution conceded the appeal (yes vs. no), whether there was a dissenting judgment amongst the judges[23] (yes, no, and single judge), whether the defendant appealed out of time (yes vs. no), and whether the defendant had previously attempted to withdraw their guilty plea prior to conviction (yes vs. no). We also examined the type of innocence argued in the appeal, coding whether the defendant argued they were factually innocent and did not commit the crime (factual), legally innocent and not legally culpable for the offence (legal), or that the case involved a procedural error (procedural).

We also wanted to examine whether the defendant introduced any evidence to support their argument on appeal and whether this influenced the outcome of the appeal.

[22] If the defendant contested multiple offences, only the most serious was coded.
[23] An appeal to a District Court involves one judge sitting alone, while appeals to the Supreme Court and the Court of Appeal comprises of three judges.

This coded whether the appeal involved "new" or "fresh" evidence not available or discovered in the original proceedings but was claimed to demonstrate the defendant's innocence or raise a reasonable doubt as to their guilt (accepted by the court, rejected by the court, and no new/fresh evidence)[24]. We also coded whether the defendant adduced "additional" evidence that was not new or fresh, but instead was relevant to the original proceeding in which the appeal arose, explaining the circumstances in which the guilty plea was entered (introduced vs. not introduced). If the case involved new, fresh, or additional evidence, the type of evidence introduced was also coded.

### *6.3.4. Analytic Strategy*

Bivariate analyses were first conducted to examine significant associations between the outcome ("successful" or "unsuccessful") of the appeal by the grounds of appeal raised, defendant, case, and appeal characteristics. Chi-square analyses were primarily employed to examine these associations, with Fisher's exact test used to test for significance when expected frequencies were less than five (Fisher et al., 2011). Adjusted standardized residuals (ASR) were examined to identify the cells contributing to significance (residuals exceeding ±1.96). Where variables were continuous, independent samples t-tests were employed to test for differences between the successful and unsuccessful appeals.

Following the bivariate analyses, statistically significant ($p$ <.05) variables were then included in a series of multiple logistic regression models to further examine which factors may predict a successful (compared to an unsuccessful) appeal. The first model included the grounds of appeal raised, considering which arguments presented by the

[24] Fresh evidence refers to evidence that was not available at the time of pleading guilty, while new evidence is evidence was available in the exercise of reasonable diligence. Fresh evidence is admissible on appeal if it represents fresh evidence (i.e., was not available at the time), appears credible or plausible, and has sufficient relevance and cogency.

defendant may predict case outcome. The second model then added defendant characteristics, the third model added case characteristics, and the fourth and final model added appeal characteristics. Multiple regression was chosen because including several variables simultaneously allows testing of the effects of each variable while accounting, or controlling, for the other variables in the model. Further, entering the variables progressively in a series of models enabled the examination first of the effects of grounds of appeal on case outcome, and then whether these relationships still hold while accounting for defendant, case, and appeal characteristics. By entering the different types of factors incrementally in the models, their contribution to explaining the outcome can be discerned. This, therefore, examines the extent to which various legal and extra-legal factors may influence the outcome of an appeal in addition to the actual grounds of appeal presented. The benefit of this approach is that it can quantify the magnitude of each variable's influence on the appeal outcome, revealing which factors significantly predict a "successful" or "unsuccessful" appeal while holding all other predictive variables constant (Cioci et al., 2021). As per the accepted conventional standard, a *p*-value of $<0.05$ was considered statistically significant. SPSS 27 was employed to conduct all analyses.

## 6.4. Findings

### *6.4.1. Bivariate Analysis*

**6.4.1.1. Grounds of Appeal.** Table 6.2 shows that the most common grounds of appeal raised included defendants who argued they were not in law guilty of the offence charged (34%), that they were pressured or induced to plead guilty (28%), that they had an arguable defence (23%), that they did not understand the charge against them or did not mean to plead guilty (22%) or that they received inadequate or incorrect legal advice

(20%). Chi-square analyses revealed that defendants who successfully appealed their guilty plea conviction were significantly more likely to argue that they were not in law guilty of the offence charged and that the court erroneously accepted the guilty plea. In contrast, defendants who unsuccessfully appealed their guilty plea conviction were significantly more likely to argue that they were induced to plead guilty, that they received inadequate legal advice, that a judicial officer made an erroneous ruling, that they had new or fresh evidence demonstrating innocence, or that the case involved misconduct or an abuse of process.

**Table 6.2**

*Bivariate analysis examining the differences in the ground of appeal raised by case outcome*

| | | Case outcome | | |
|---|---|---|---|---|
| | Total (n=568) | Successful (n=193) | Unsuccessful (n=375) | |
| Grounds of appeal raised | *n* (%) | *n* (%) | *n* (%) | $\chi^2$ |
| Not in law guilty | 191 (34) | 93 (48) | 98 (26) | 27.77*** |
| Induced to plead | 159 (28) | 26 (13.5) | 133 (35.5) | 30.58*** |
| Available defence | 129 (23) | 35 (18) | 94 (25) | 3.49 |
| Did not understand charge | 125 (22) | 42 (22) | 83 (22) | 0.01 |
| Inadequate legal advice | 112 (20) | 26 (13.5) | 86 (23) | 7.20** |
| Erroneous acceptance of plea | 87 (15) | 45 (23) | 42 (11) | 14.42*** |
| Erroneous ruling | 55 (10) | 6 (3) | 49 (13) | 14.45*** |
| Fresh/new evidence | 38 (7) | 7 (4) | 31 (8) | 4.39* |
| Misconduct/abuse of process | 38 (7) | 5 (3) | 33 (9) | 7.87** |
| Unfit to plead guilty | 31 (5.5) | 11 (6) | 20 (5) | 0.03 |
| Procedural error | 28 (5) | 7 (4) | 21 (6) | 1.06 |
| Other | 11 (2) | 1 (0.5) | 10 (2.7) | 3.10 |

*p < .05. **p < .01. ***p < .001.

**6.4.1.2. Defendant Characteristics.** Table 6.3 reveals that female defendants and defendants with cognitive or intellectual impairment were significantly more likely to have their guilty plea conviction set aside on appeal, whilst defendants with a history of mental health issues were significantly more likely to unsuccessfully appeal their guilty plea conviction. No significant differences between the defendant's age, Indigenous status, or place of birth were identified.

**Table 6.3**

*Bivariate analysis examining the differences in defendant characteristics by case outcome*

| | | Case Outcome | | |
|---|---|---|---|---|
| | Total (n=568) | Successful (n=193) | Unsuccessful (n=375) | |
| Defendant characteristics | *n* (%) | *n* (%) | *n* (%) | $\chi^2$ |
| Gender | | | | 7.01** |
| Male | 502 (88) | 161 (83) | 341 (91) | |
| Female | 66 (12) | 32 (17) | 34 (9) | |
| Age | | | | 0.46 |
| Adult (≥18) | 546 (96) | 187 (97) | 359 (96) | |
| Minor | 22 (4) | 6 (3) | 16 (4.3) | |
| Indigenous Australian | | | | 1.31 |
| Yes | 35 (6) | 15 (8) | 20 (5) | |
| No | 533 (94) | 178 (92) | 355 (94) | |
| Born overseas | | | | 4.21 |
| Yes | 66 (12) | 15 (8) | 51 (14) | |
| No | 502 (88) | 178 (92) | 324 (86) | |
| History of mental illness | | | | 5.10* |
| Yes | 109 (19) | 27 (14) | 82 (22) | |
| No | 459 (81) | 166 (86) | 293 (78) | |
| Cognitive impairment | | | | 5.88* |
| Yes | 27 (5) | 15 (8) | 12 (3) | |
| No | 541 (95) | 178 (92) | 363 (97) | |
| Criminal history ($n$ = 364) | | | | 0.07 |
| Yes | 260 (71) | 76 (72) | 184 (71) | |
| No | 104 (29) | 29 (28) | 75 (29) | |

*p <.05. **p <.01.

**6.4.1.3. Case Characteristics.** Table 6.4 shows the comparisons between case characteristics and case outcome. Significant differences were identified between case outcome and Australian jurisdiction, with an examination of the ASR showing that cases heard in Western Australia were more likely to result in a successful appeal (ASR 3.8) as were cases in the Australian Capital Territory (ASR 2.1), whilst cases heard in Queensland were more likely to be unsuccessful (ASR 4.4).

There were also significant differences between the type of offence contested on appeal and case outcome, with defendants who appealed less serious summary offences being more likely to have their guilty plea conviction successfully set aside on appeal. An examination of the ASR also revealed that defendants who appealed traffic offences (ASR 2.4) and offences against the government (ASR 2.4) were significantly overrepresented in successful appeals, whilst defendants who appealed a sexual offence were significantly overrepresented in unsuccessful appeals (ASR 2.1). There were also significant differences in the severity of the sentence received, with an examination of the ASR revealing that defendants who received a term of imprisonment were more likely to be unsuccessful in their appeal (ASR 4.8), whilst defendants who received a fine were more likely to be successful (ASR 4.0).

Remand status also emerged as significant. Of the 393 (65%) cases in which remand status was known, defendants who were held in pre-trial detention at the time of pleading guilty were significantly more likely to be unsuccessful. Legal representation at the time of plea was also significant, with an examination of the ASR revealing that self-represented defendants were significantly overrepresented in successful appeals

(ASR 5.4), whilst defendants with private representation were overrepresented in unsuccessful appeals (ASR 4.4).

**Table 6.4**

*Bivariate analysis examining the differences in case characteristics by case outcome*

| | | Case Outcome | | |
|---|---|---|---|---|
| | Total (n=568) | Successful (n=193) | Unsuccessful (n=375) | |
| Case characteristics | *n* (%) | *n* (%) | *n* (%) | $\chi^2$ |
| Year of conviction (*n* = 545), Mean (SD) | 2006 (9.81) | 2006 (10.29) | 2006 (9.57) | *t*(543) -.55 |
| Jurisdiction | | | | 32.28[a]*** |
| Queensland | 157 (28) | 31 (16) | 126 (34) | |
| Western Australian | 137 (24) | 65 (34) | 72 (19) | |
| New South Wales | 112 (20) | 36 (19) | 76 (20) | |
| Victoria | 70 (12) | 22 (11) | 48 (13) | |
| South Australia | 63 (11) | 25 (13) | 38 (10) | |
| Australian Capital Territory | 11 (2) | 7 (4) | 4 (1) | |
| Northern Territory | 10 (2) | 5 (3) | 5 (1) | |
| Tasmania | 8 (1) | 2 (1) | 6 (2) | |
| Type of offence | | | | 49.76*** |
| Summary | 182 (32) | 99 (51) | 83 (22) | |
| Indictable | 386 (68) | 94 (49) | 292 (78) | |
| Primary offence (*n* = 567) | | | | 27.51*** |
| Violent offence | 135 (24) | 45 (23) | 90 (24) | |
| Property offence | 112 (20) | 32 (17) | 80 (21) | |
| Sexual offence | 104 (18) | 26 (13.5) | 78 (21) | |
| Drug offence | 82 (14.5) | 29 (15) | 53 (14) | |
| Traffic offence | 44 (8) | 22 (11.5) | 22 (6) | |
| Offence against government | 34 (6) | 22 (11.5) | 12 (3) | |
| Homicide | 23 (4) | 4 (2) | 19 (5) | |
| Other | 33 (6) | 12 (6) | 22 (6) | |
| Type of sentence (*n* = 536) | | | | 25.77[a]*** |
| Imprisonment | 366 (68) | 99 (55) | 267 (75) | |
| Community | 56 (10) | 23 (13) | 33 (9) | |
| Fine | 93 (17) | 48 (26.5) | 45 (13) | |
| Not yet sentenced | 17 (3) | 8 (4) | 9 (2.5) | |
| Other | 4 (1) | 3 (2) | 1 (0.3) | |

| | | | | |
|---|---|---|---|---|
| Held in remand ($n$ = 393) | | | | 4.94* |
| Yes | 183 (47) | 54 (45) | 156 (57) | |
| No | 210 (53) | 66 (55) | 117 (43) | |
| Representation at plea ($n$ = 509) | | | | 29.96*** |
| Private | 358 (70) | 88 (57) | 270 (76) | |
| Legal aid | 70 (14) | 22 (14) | 48 (14) | |
| Self-represented | 81 (16) | 45 (29) | 36 (10) | |

[a] Fisher's exact test was used due to expected cell counts being less than 5.

*p <.05. ***p <.001.

**6.4.1.4. Appeal Characteristics.** Table 6.5 shows the comparisons between the appeal characteristics and case outcome. Legal representation at the time of appeal was significantly associated with case outcome, with an examination of ASR showing that defendants represented by a private law firm were significantly overrepresented in successful appeals (ASR 4.6), as were those represented by legal aid (ASR 5.7), whilst self-represented defendants were overrepresented in unsuccessful appeals (ASR 9.0). Unsurprisingly, there were significant differences in whether the prosecution conceded the appeal, with the prosecution accepting that a miscarriage of justice occurred in over a third (39%) of all successful appeals. There were also significant differences between dissenting judgements and case outcome, with an examination of the ASR revealing that successful appeals were more likely to involve a single judge (ASR 6.4) or have a judge disagree with the majority verdict (ASR 3.2), whilst unsuccessful appeals were more likely to have no dissenting judgment (ASR 7.4). Defendants who unsuccessfully appealed their conviction were also significantly more likely to have previously attempted to withdraw their guilty plea prior to conviction.

Significant differences were also identified between new or fresh evidence and case outcome, with an examination of the ASR showing successful appeals were more

likely to have new or fresh evidence accepted by the court (ASR 2.4), while defendants who had new or fresh evidence rejected by the court were significantly more likely to be unsuccessful (ASR 2.7). While there were no significant differences between cases that introduced additional evidence that was not new or fresh, two different types of evidence introduced to support the appeal emerged as statistically significant. This included an affidavit from the original defence lawyer supporting the appeal, as well as a confession or conviction of the real perpetrator that committed the crime, with both being significantly overrepresented in successful appeals. No significant differences between other types of evidence were identified. There were also no significant differences between case outcome and the year of an appellate court judgment, appealing out of time, and the type of innocence argued.

**Table 6.5**

*Bivariate analysis examining the differences in appeal characteristics by case outcome*

| | | Case outcome | | |
|---|---|---|---|---|
| | Total (n=568) | Successful (n=193) | Unsuccessful (n=375) | |
| | *n* (%) | *n* (%) | *n* (%) | $\chi^2$ |
| Year of judgment, Mean (SD) | 2007(10.8) | 2007(12.2) | 2008(9.9) | *t*(566)-1.25 |
| Representation at appeal (*n* = 560) | | | | 89.35*** |
| Private | 260 (16) | 112 (60) | 148 (40) | |
| Legal aid | 87 (15.5) | 52 (28) | 35 (9) | |
| Self-represented | 213 (38) | 22 (12) | 191 (51) | |
| Prosecution conceded | | | | 170.48*** |
| Yes | 76 (13) | 76 (39) | 0 (0) | |
| No | 492 (87) | 117 (61) | 375 (100) | |
| Dissenting judgment | | | | 57.04*** |
| Yes | 17 (3) | 12 (6) | 5 (1) | |
| No | 391 (69) | 94 (49) | 297 (79) | |

| | | | | |
|---|---|---|---|---|
| Single judge | 160 (28) | 87 (45) | 73 (19.5) | |
| Appealed out of time | | | | 0.12 |
| Yes | 268 (47) | 93 (48) | 175 (47) | |
| No | 300 (53) | 100 (52) | 200 (53) | |
| Previously tried to withdraw plea | | | | 10.25** |
| Yes | 55 (10) | 8 (4) | 47 (12.5) | |
| No | 513 (90) | 185 (96) | 328 (87.5) | |
| Type of innocence argued | | | | 4.15 |
| Factual | 99 (17) | 25 (13) | 74 (20) | |
| Legal | 369 (65) | 131 (68) | 238 (63.5) | |
| Procedural | 100 (18) | 37 (19) | 63 (17) | |
| New/fresh evidence | | | | 14.02[a]*** |
| Accepted | 27 (4.8) | 15 (8) | 12 (3) | |
| Rejected | 14 (2.5) | 0 (0) | 14 (4) | |
| Not introduced | 527 (93) | 178 (92) | 349 (93) | |
| Additional evidence | | | | 0.69 |
| Introduced | 307 (54) | 109 (56.5) | 198 (53) | |
| Not introduced | 261 (46) | 84 (43.5) | 177 (47) | |
| Type of evidence | | | | |
| Defendant affidavit | 271 (48) | 91 (47) | 180 (48) | 0.04 |
| Witness statement | 65 (11) | 22 (11) | 43 (11.5) | 0.00 |
| Psychiatric/psychological report | 31 (5.5) | 14 (7) | 17 (4.5) | 1.83 |
| Defence lawyer affidavit | 30 (5) | 22 (11) | 8 (2) | 21.87*** |
| Expert witness | 13 (2) | 3 (2) | 10 (3) | 0.71[a] |
| Confession/conviction | 4 (0.7) | 4 (2) | 0 (0) | 7.83[a]* |
| Official police inquiry | 3 (0.5) | 2 (1) | 1 (0.3) | 1.44[a] |
| Forensic evidence | 2 (0.4) | 2 (1) | 0 (0) | 3.90[a] |
| Other evidence/material | 45 (8) | 12 (6) | 33 (9) | 1.17 |

[a] Fisher's exact test was used due to expected cell counts being less than 5.

*p < .05. **p < .01. ***p < .001.

### *6.4.2. Multivariate Analysis*

Statistically significant variables from the bivariate analyses were then included in a series of multiple logistic regression models to further examine which of these factors may predict a "successful" or "unsuccessful" guilty plea conviction appeal (see

Table 6.6). Model 1 included only the grounds of appeal raised by the defendant and was statistically significant, $\chi^2(7) = 54.351$, $p < .001$. This model explained 15.4% of the variance and correctly classified 71.9% of cases. Two grounds of appeal emerged as statistically significant in this model, with defendants who argued that the court erroneously accepted the guilty plea being 2.45 times more likely to successfully appeal their conviction, while the odds of a successful appeal were 65% less likely when the defendant argued they were unfairly pressured or induced to plead guilty.

Defendant characteristics were then added to Model 2, $\chi^2(10) = 74.350$, $p < .001$. The additional factors increased the explanatory value of the model to 20.7% and correctly classified 73.6% of cases. In addition to the grounds of appeal remaining significant from Model 1, gender emerged as significant in the second model, with the odds of successfully appealing a guilty plea conviction being 73% less likely for male defendants. Having a history of mental illness or cognitive impairment did not emerge as significant.

Case characteristics were then added in Model 3, $\chi^2(21) = 116.102$, $p < .001$. To correspond with the variables identified by the ASR to have significant differences by case outcome, jurisdiction was reduced to four categories (1=Western Australia, 2=Queensland, 3=Australian Capital Territory, 0=other), the offence contested on appeal was reduced to four categories (1=sexual offence, 2=traffic offence, 3=offence against government, 0=all other offences), and the type of sentence to three categories (1= imprisonment, 2=fine, 0=other). The addition of the case characteristics increased the explanatory value of the model further to 31% and correctly classified 77.2% of cases. In addition to the variables that were significant in Model 2, the defendant characteristic cognitive impairment emerged as significant in this model, with defendants with a cognitive or intellectual impairment being 2.93 times more likely to

have their guilty plea conviction set aside than those without. Only one case characteristic emerged as significant, with the odds of a successful appeal being 57% less likely for defendants that received a term of imprisonment compared to other sentences.

Appeal characteristics were then added to Model 4, with the final model being statistically significant, $\chi^2(27) = 192.455$, $p < .001$. Dummy variables were created for dissenting judgment and new/fresh evidence, collapsing no dissenting judgment and single judge together (1=dissenting judgment, 0=no dissenting judgment/single judge), and collapsing new/fresh evidence rejected by the court and no new/fresh evidence together (1=new/fresh evidence accepted, 0=new/fresh evidence rejected/no new/fresh evidence). The final model explained 48% of the variance, and correctly classified 81% of cases. While the ground of appeal erroneous acceptance of a plea significantly predicted case outcome when controlling for defendant and case characteristics, it was no longer significant when controlling for appeal characteristics. Only one ground of appeal had a consistent impact on case outcome, with the odds of a successful appeal being 63% less likely for defendants who argued they were induced to plead guilty. Gender also consistently remained significant, with the odds of a successful appeal being 72% less likely for male defendants. Although the defendant characteristic cognitive impairment emerged as significant in Model 3, it was no longer significant when controlling for appeal characteristics.

Two case characteristics not significant in Model 3 emerged as significant in the complete model. This included the type of offence contested on appeal, with the odds of a successful appeal being 55% less likely for defendants who contested indictable offences, while defendants who contested offences against the government were 4.07 times more likely to successfully appeal their conviction compared to other offences.

The sentence received also remained significant, with the odds of a successful appeal being 58% less likely for defendants who received a term of imprisonment.

Four appeal characteristics emerged as significant in the final model. While legal representation at the time of pleading guilty was not significant in the model, legal representation at the time of appeal was significant, with defendants who were represented at appeal by private law firms being 7.70 times more likely to successfully appeal their conviction compared to self-represented defendants, while defendants represented on appeal by legal aid were 12.25 times more likely to successfully appeal their conviction. Appeals that had a dissenting judgment were 6.31 times more likely to result in a successful appeal, while defendants who supported their appeal with an affidavit from their original lawyer were 4.77 times more likely to successfully appeal their guilty plea conviction

**Table 6.6**

*Logistic regression models assessing impacts of the grounds of appeal raised, defendant, case, and appeal characteristics on case outcome (N = 474)*

| | Model 1 | | Model 2 | | Model 3 | | Model 4 | |
|---|---|---|---|---|---|---|---|---|
| | OR | 95% CI | OR | 95% CI | OR | 95% CI | OR | 95% CI |
| Model 1: Grounds of appeal | | | | | | | | |
| Not in law guilty[a] | 1.35 | 0.84 – 2.16 | 1.30 | 0.80 – 2.11 | 1.25 | 0.74 – 2.11 | 0.89 | 0.49 – 1.63 |
| Induced to plead[a] | 0.35*** | 0.20 – 0.60 | 0.33*** | 0.19 – 0.56 | 0.27*** | 0.15 – 0.50 | 0.37** | 0.18 – 0.77 |
| Inadequate legal advice[a] | 0.72 | 0.42 – 1.25 | 0.69 | 0.39 – 1.22 | 0.77 | 0.42 – 1.42 | 0.71 | 0.36 – 1.40 |
| Erroneous acceptance of plea[a] | 2.45** | 1.44 – 4.15 | 2.73*** | 1.58 – 4.71 | 2.20* | 1.20 – 4.02 | 1.50 | 0.75 – 3.01 |
| Erroneous ruling[a] | 0.41 | 0.15 – 1.09 | 0.42 | 0.16 – 1.15 | 0.48 | 0.17 – 1.37 | 0.34 | 0.09 – 1.30 |
| New/fresh evidence[a] | 0.61 | 0.24 – 1.58 | 0.68 | 0.26 – 1.79 | 1.05 | 0.37 – 2.95 | 0.36 | 0.08 – 1.57 |
| Misconduct/abuse of process[a] | 0.45 | 0.15 – 1.35 | 0.45 | 0.15 – 1.40 | 0.41 | 0.13 – 1.31 | 0.61 | 0.16 – 2.31 |
| Model 2: Defendant characteristics | | | | | | | | |
| Gender[b] | | | 0.27*** | 0.14 – 0.51 | 0.31** | 0.15 – 0.63 | 0.28** | 0.13 – 0.62 |
| History of mental illness[c] | | | 0.58 | 0.32 – 1.03 | 0.73 | 0.39 – 1.37 | 0.66 | 0.32 – 1.36 |
| Cognitive impairment[c] | | | 1.97 | 0.76 – 5.10 | 2.93* | 1.09 – 7.86 | 2.30 | 0.76 – 6.94 |
| Model 3: Case characteristics | | | | | | | | |
| Jurisdiction[d] | | | | | | | | |
| *Western Australia* | | | | | 0.83 | 0.45 – 1.50 | 0.78 | 0.39 – 1.58 |
| *Queensland* | | | | | 0.55 | 0.30 – 1.00 | 0.94 | 0.47 – 1.87 |
| *Australian Capital Territory* | | | | | 1.90 | 0.41 – 8.80 | 3.74 | 0.73 – 19.28 |
| Type of offence[e] | | | | | 0.55 | 0.28 – 1.09 | 0.45* | 0.21 – 0.97 |
| Primary offence[f] | | | | | | | | |
| *Sexual offence* | | | | | 1.05 | 0.51 – 2.11 | 0.75 | 0.33 – 1.68 |
| *Traffic offence* | | | | | 0.59 | 0.24 – 1.43 | 1.04 | 0.37 – 2.94 |
| *Offence against government* | | | | | 2.90 | 0.94 – 8.96 | 4.07* | 1.21 – 13.63 |
| Type of sentence[g] | | | | | | | | |
| *Imprisonment* | | | | | 0.43* | 0.22 – 0.86 | 0.42* | 0.19 – 0.91 |
| *Fine* | | | | | 0.72 | 0.31 – 1.67 | 0.82 | 0.32 – 2.15 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Representation at plea[c] | | | | | | |
| *Private* | | | | 0.63 | 0.30 – 1.34 | 0.45 | 0.19 – 1.06 |
| *Legal aid* | | | | 1.03 | 0.42 – 2.53 | 0.86 | 0.30 -2.45 |
| Model 4: Appeal characteristics | | | | | | | |
| Representation at appeal[c] | | | | | | | |
| *Private* | | | | | | 7.70*** | 3.72 – 15.91 |
| *Legal aid* | | | | | | 12.25*** | 4.81 – 31.20 |
| Dissenting judgement[c] | | | | | | 6.31** | 1.69 – 23.56 |
| Tried to withdraw plea[c] | | | | | | 0.69 | 0.22 – 2.19 |
| New/fresh evidence[c] | | | | | | 3.79 | 0.95 – 15.15 |
| Defence lawyer affidavit[c] | | | | | | 4.77** | 1.65 – 13.84 |
| Model-level information | | | | | | | |
| Nagelkerke Pseudo-R2 | .154 | | .207 | | 0.309 | | 0.475 |
| F (df) | 7 | | 10 | | 21 | | 27 |
| p-value of model | <.001 | | <.001 | | <.001 | | <.001 |

*Note.* OR=odds ratio. CI=confidence interval. Some significant variables were excluded from the analysis. This included remand status due to large amounts of missing data ($n$ = 175, 31%), prosecution conceding appeal as it can only be associated with successful appeals, and confessional/conviction evidence due to the small sample size in which this evidence was adduced ($n$ = 4).

[a] Ground not raised is the reference category. [b] female is the reference category. [c] None is the reference category. [d] The reference category is all other Australian jurisdictions. [e] Summary offence is the reference category. [f] The reference category is all other types of offences. [g] The reference is all other sentence types.

*p < .05. **p < .01. ***p < .001

## 6.5. Discussion

While the difficulties of appealing a guilty plea are widely acknowledged, limited research has examined how appellate courts handle guilty plea convictions. By systematically collecting and comparing Australian appellate court judgments in which a defendant contested a guilty plea conviction, this study provides important insight into the reasons why a guilty plea conviction may be overturned on appeal and the salient factors influencing judicial decision-making in the appeal process. Utilizing logistic regression models, we found only one ground of appeal to significantly predict case outcome, with defendants arguing they were pressured to plead guilty being significantly more likely to result in an unsuccessful appeal. Instead, the findings reveal the significant influence of other legal and extra-legal factors on appellate decision-making, demonstrating the importance of having legal representation of appeal, support from other legal actors, as well as the gender of the applicant and offence contested. The study underscores the restrictive access to appeal for defendants who plead guilty, raising important policy implications for the post-conviction process.

### *6.5.1. Why Are Guilty Plea Convictions Overturned on Appeal?*

This study found that the three well-recognised grounds of appeal were frequently raised in the appellate court judgements, with many defendants arguing that they were not in law guilty of the offence, that they did not understand the charges against them, or that they were induced to plead guilty. However, additional grounds of appeal were also frequently raised, including defendants who argued that they had an arguable defence to the charge, that they received inadequate or incorrect legal advice, or that the original court erroneously accepted the guilty plea. While arguing that the original court erroneously accepted a guilty plea emerged as a significant predictor of a

successful appeal when controlling for gender and case characteristics, it was not significant when controlling for appeal characteristics. As such, no grounds of appeal significantly predicted a guilty plea conviction successfully being set aside.

According to the bivariate analysis, only two grounds of appeal were significantly overrepresented amongst the successful appeals: (1) applicants who argued they were not in law guilty of the offence, and (2) that the original court erroneously accepted the guilty plea. As such errors are documented and easily identifiable, this may support criticisms that appellate courts are more effective in recognizing and correcting legal or procedural errors rather than factual issues or cases with limited evidence to support their argument (Hamer, 2014). For instance, appellate courts can refer to relevant legislation and case law to determine whether the actions of the defendant constituted the offence or they can review transcripts from the original court proceedings to determine whether the court made an error. This can present a particular barrier for defendants who plead guilty, as pleading guilty is a largely hidden process, and errors or misconduct are more likely to go undocumented.

In contrast, defendants arguing they were induced or pressured to plead guilty was a significant predictor of an unsuccessful appeal, even when controlling for defendant, case, and appeal characteristics. In cases where this ground was unsuccessfully raised, defendants often referred to the inherent pressures of the system. This included pleading guilty to receive a lesser punishment, to get out of jail, from strongly worded legal advice, or to avoid financial and emotional costs. While these pressures are often cited in the literature to put innocent persons at risk of pleading guilty (e.g., see Sherrin, 2011), the appellate court consistently found such pressures do not constitute a miscarriage of justice, and that the defendant made a free and informed decision to plead guilty.

As mentioned in the introduction, the appellate caselaw established in *Meissner v R* (1995) explicitly stated such inherent pressures to plead guilty do not give rise to a miscarriage of justice, and that a guilty plea only needs to be a free and informed decision. While this authority ensured consistency across the appellate court judgments, the resulting decisions likely overlook the context in which many false guilty pleas are being made, where many defendants face numerous pressures and incentives to plead guilty that can undermine their voluntary and consensual nature (Helm, 2019a). It also shows a disconnect between what criminal defendants view as potential coercion compared to what is considered undue pressure by the legal system, with appellate courts not viewing such pressures as an error needing to be corrected. This demonstrates the high legal threshold established by *Meissner*, with Australian appellate courts likely not providing an effective mechanism to identify miscarriages of justice resulting from a guilty plea. Consistent with the findings by Horne (2016) in the United Kingdom, this suggests that Australian appellate courts prioritize finality and efficiency over fairness and accuracy in their treatment of guilty pleas and continue to rely on guilty pleas as a confession.

### *6.5.2. The Role of Legal Representation*

Having legal representation during the appeal process emerged as the most significant predictor of having a guilty plea conviction set aside, with applicants represented by legal aid having the highest likelihood of success. While scholars often assume that privately retained lawyers would have greater success on appeal than public defenders (Chapper & Hanson, 1989; King & Heise, 2019), these findings support prior literature that shows publicly funded Defence lawyers can provide more effective representation on appeal (Heise et al., 2017). Although the bivariate analyses supported our assumption that self-represented defendants at the time of pleading guilty would be

more likely to successfully appeal their conviction, this did not emerge as significant when controlling for other factors in the multivariate analysis. This may suggest that appellate courts do not rely upon defendant lawyers as providing strong protection against erroneous guilty pleas.

While the statistical analysis does not explain *why* legal representation on appeal significantly predicts a successful outcome, appeals with legal representation are likely of better quality, with lawyers being able to identify and articulate grounds of appeal more likely to result in a successful appeal (Hodgson & Horne, 2009). However, it may also reflect the strength of the defendant's case, as lawyers may also divert away unmeritorious applications. For instance, legal aid will only assist with an appeal if the case passes a "merits test" that demonstrates a reasonable prospect of success. However, such a requirement can represent a high threshold for applicants to meet, and it is acknowledged that denial of legal aid for an appeal is not conclusive of the absence of merit (Malcolm, 2000). This may explain why legal aid representation produced a higher likelihood of success on appeal than private representation, as legal aid may be using strict requirements that limit access to legal support on appeal. With legal representation being the most significant predictor of a successful appeal, this study demonstrates a need for greater access to legal support post-conviction.

### *6.5.3. Support From Legal Actors*

Successful appeals against guilty plea convictions were also significantly more likely to involve support from other legal actors, such as the prosecution conceding that a miscarriage of justice occurred or the original Defence lawyer supporting the appeal, either by providing evidence that supported the defendant's version of events or by acknowledging their advice was incorrect or inadequate. While such concessions can provide strong support for the defendant, it may be a relatively rare occurrence, as it

generally involves the prosecution or Defence admitting they made an error in the original proceedings. Such support would likely not be available for the majority of defendants who plead guilty, with the legal profession often criticized for being closed to criticism and reluctant to acknowledge error (Hamer, 2015; Levenson, 2015). Indeed, while many of the appellate court judgments involved evidence from the original Defence lawyer, this was most often presented by the prosecution to contest the defendant's version of events, rather than in support of the defendant. These findings may suggest a potential bias in favor of cases where legal professionals are supportive of the appeal. Such support can be seen as giving the appeal legitimacy and may influence the appeal decision beyond the actual merits of the case.

#### *6.5.4. Extra-Legal Factors Influencing Case Outcome*

The findings also reveal several extra-legal factors influenced case outcome, with the odds of a successful appeal being dependent on both *who* appeals their conviction and which *offence* is contested, suggesting the presence of bias or judicial heuristics in the appeal process. In particular, the study suggests the presence of gender bias, with male defendants being 70% less likely to have their guilty plea conviction set aside on appeal even when controlling for other factors. Sentencing literature suggests that female defendants tend to receive more lenient treatment than male defendants (Doerner & Demuth, 2014), and this leniency may also be reflected in the appellate court judgments.

Consistent with previous research (Davies, 1982; Neubauer, 1991; Ruddell & Kmiech, 2000), this study also found that appellate courts were less likely to overturn convictions involving more serious indictable offences and those that involved a term of imprisonment. This may support the contention that appellate courts can fear community backlash for overturning convictions of serious crimes (Davis, 1982),

particularly for those who have previously admitted guilt. However, it may also reflect the increased scrutiny more serious offences tend to undergo during the original court proceedings, and it may be assumed that errors or mistakes are more likely to be identified and corrected in this process (Chapper & Hanson, 1989).

### *6.5.5. Limitations And Future Research*

This study provides an important first step in understanding how appellate courts may handle guilty plea convictions and the reasons why they may be overturned on appeal. However, there are limitations to acknowledge. First, the analysis was limited in its reliance on the information available in the appellate court judgments. While attempts were made to use supplementary materials to provide more complete information, this was only possible in a small number of cases. Further, since there is no way to determine whether a defendant is guilty or not, it is unknown whether there were undetected miscarriages of justice in the "unsuccessful" appeals or whether the system was working as it should. Lastly, while a quantitative approach allowed for a systematic and objective comparison between "successful" and "unsuccessful" appeals, this does not provide insight into the justifications or rationalizations underpinning judicial decision-making. To provide a more comprehensive understanding of how appellate courts handle guilty plea convictions, future research could conduct a qualitative, in-depth analysis of the reasoning provided by the appellate courts as to why the guilty plea conviction was set aside or upheld on appeal. Future research could also explore the salient factors identified to influence judicial decision-making in further depth, including the impact of legal representation on appeal, the role of legal actors supporting the appeal, and the differential treatment by gender and offence.

## 6.6. Conclusion

This study provided a comparative analysis of Australian appellate court judgments in which a guilty plea conviction was contested on appeal, providing important insights into the reasons why a guilty plea conviction may be upheld or overturned on appeal. This confirmed the restrictive access to appeal for defendants who plead guilty, with Australian appellate courts failing to address inherent pressures that can put innocent persons at risk of pleading guilty. It also revealed the importance of having legal representation on appeal and the support of legal actors in having a guilty plea conviction set aside, with such support likely not being available to many defendants who plead guilty. This has important implications for the post-conviction process and highlights a need for greater access to appellate courts for defendants who plead guilty. This could include reviewing the *Meissner* decision and recognizing that it may unduly restrict access to appellate courts for defendants who plead guilty. There could also be increased funding towards legal assistance services to allow for expanded access to legal representation during the post-conviction process, with legal aid found to be most effective in assisting defendants contest guilty plea convictions. The findings also provide support for a Criminal Cases Review Commission like the one established in the United Kingdom, in which an independent body has the power to investigate claims of miscarriages of justice. While the Criminal Cases Review Commission has been criticized for its reluctance in referring guilty plea cases back to the Court of Appeal (Hoyle & Sato, 2019), such a body would allow for increased appellate access and ensure claims of wrongful convictions are systemically investigated. Overall, with the pressures criminal defendants can be under to plead guilty and the high threshold for appealing such convictions, the current appellate process may perpetuate rather than rectify many miscarriages of justice resulting from a guilty plea.

# Chapter 7. Discussion and Conclusion

## 7.1. Introduction

Although the vast majority of criminal cases are resolved by defendants pleading guilty, little empirical research has examined wrongful convictions resulting from a guilty plea. Instead, most of what we know regarding wrongful convictions has been based on the more serious cases that typically involve long prison sentences and follow a contested trial (Gross & Shaffer, 2012). These cases represent only a small proportion of offences prosecuted in adversarial criminal justice systems and disregard the more routine criminal cases that present many opportunities and pressures for innocent persons to plead guilty (Natapoff, 2012; Roach, forthcoming). This thesis intended to address this research void and to provide empirical knowledge on the factors contributing to wrongful convictions stemming from a guilty plea, considering how the Australian criminal justice system may contribute to, recognise, and respond to such wrongful convictions. Grounded in a systems and organisational perspective, the thesis sought to examine the structural and organisational features of the Australian criminal justice system that may systematically contribute to guilty plea wrongful convictions and to consider how errors and false guilty pleas may proceed throughout the criminal justice process without being identified and corrected.

To address these research aims, the thesis asked three overarching research questions that were addressed in three studies (Chapters 4, 5, and 6). The first study (Chapter 4) sought to provide initial insight into the *immediate* factors contributing to guilty plea wrongful convictions. By conducting a quantitative content analysis of Australian appellate court judgements in which a guilty plea conviction was overturned, this study addressed the first research question:

RQ1: What are the types of errors that contribute to guilty plea wrongful convictions, and where in the criminal justice process do they occur?

The second study (Chapter 5) built on these findings to provide further insight into the context in which these errors may occur and considered the *underlying* organisational and structural features of the criminal justice system that may make the occurrence of guilty plea wrongful convictions more likely. This study supplemented the quantitative data with qualitative research and, through semi-structured interviews with criminal justice actors that work within the Queensland criminal justice system, this study addressed the second research question:

RQ2: What are the organisational and structural conditions of the criminal justice system that may contribute to the occurrence of guilty plea wrongful convictions?

While the first two studies examined the factors contributing to guilty plea wrongful convictions, the third and final study (Chapter 6) considered how guilty plea wrongful convictions may be *recognised* and *corrected* within the Australian criminal justice system. Through a quantitative comparative analysis of Australian appellate court judgements that compared successful guilty plea conviction appeals against unsuccessful guilty plea conviction appeals, this study addressed the third overarching research question:

RQ3a: Why are guilty plea convictions overturned in appellate courts?

RQ3b: Do successful guilty plea conviction appeals differ in grounds of appeal, defendant, case, and appeal characteristics from unsuccessful guilty plea conviction appeals?

This discussion chapter will first outline the unique contributions the thesis provides to the literature and wrongful conviction scholarship. It will then assimilate the

findings from the three studies to provide a comprehensive understanding of how guilty plea wrongful convictions occur throughout the criminal justice process and how Australian appellate courts are likely not providing an effective mechanism to identify and correct such wrongful convictions. Applying the systems and organisational perspective, this will present guilty plea wrongful convictions as a 'system failure', outlining how errors and false guilty pleas proceed throughout the criminal justice process without being identified or corrected and the structural pressures and constraints that contribute to their occurrence. It will also argue how false guilty pleas are considered an acceptable outcome, with legal professionals and appellate courts both failing to address the inherent pressures defendants can be under to plead guilty, instead maintaining the myth of autonomy and choice. Implications of these findings for policy and practice are discussed as well as limitations and directions for future research.

## 7.2. Key Findings and Their Contribution to Wrongful Conviction Scholarship

The thesis makes three key contributions to the literature and wrongful conviction scholarship. The first contribution is in the form of new knowledge of an important and understudied field of research, with the thesis providing the first empirical research to investigate guilty plea wrongful convictions in Australia and how Australian appellate courts handle guilty plea convictions. The second is the theoretical contribution, with the thesis being the first to apply a systems and organisational perspective to explore guilty plea wrongful convictions. The third contribution is the broader definition adopted, with the thesis expanding beyond the traditional focus of "factual" innocence and capturing a wider range of wrongs that may frequently occur. Each contribution and the key findings are discussed below.

### *7.2.1. New Knowledge for an Important Research Gap*

This thesis provides the first empirical research to investigate wrongful convictions stemming from a guilty plea in Australia, an issue also largely overlooked within international scholarship. The research was empirically rigorous in its scale, collecting and analysing a comprehensive dataset of erroneous guilty plea convictions overturned on appeal (Chapter 4), supplemented with qualitative interviews with legal professionals directly involved in the guilty plea process (Chapter 5). It also provided the first empirical study to quantitatively analyse how appellate courts handle guilty plea convictions (Chapter 6), providing important insights into the post-conviction process and whether appellate courts operate effectively to identify and correct guilty plea wrongful convictions.

Using Australian appellate court judgements in which a guilty plea conviction was overturned on appeal, Study 1 (Chapter 4) provided the first opportunity to empirically examine how guilty plea wrongful convictions may occur throughout the criminal justice process. This uncovered a wide range of errors that may frequently contribute to erroneous guilty plea convictions, including the prosecution proceeding on incorrect or inappropriate charges, inadequate legal representation, courts erroneously accepting guilty pleas, and a general lack of assistance and support for defendants who lack the legal knowledge, mental capacity, or linguistic capabilities to make appropriate and informed plea decisions. This confirmed the current lack of safeguards within the guilty plea system, with our reliance on defence lawyers and the courts to protect against inappropriate or false guilty pleas demonstrated to be insufficient.

The interviews with legal professionals then placed the quantitative findings within the greater context of the criminal justice system, with Study 2 (Chapter 5) exploring the underlying organisational and structural features that make false guilty pleas and guilty plea wrongful convictions more likely. This demonstrated the

efficiency-driven pressures criminal justice actors can be under to quickly resolve cases, with limited resources and practical constraints impacting their ability to ensure guilty pleas are accurate and appropriately entered. There was also a general acceptance and normalisation amongst the legal professionals that guilty pleas are not required to be based upon actual guilt, with the justification of "choice" allowing them to be complicit in entering false guilty pleas through the system. This raised important concerns regarding the current validity of a guilty plea, which does not always represent a reliable indicator of actual guilt.

Study 3 (Chapter 6) then revealed the reasons why a guilty plea conviction may be either overturned or upheld on appeal and other salient factors influencing judicial decision-making during the appeal process. While it is widely acknowledged that defendants can face significant challenges in having their guilty plea conviction reviewed and overturned on appeal (Alschuler, 2016; Norris et al., 2020), this study represented the first empirical research to investigate how appellate courts handle guilty plea convictions and the factors influencing a successful or unsuccessful outcome. Multivariate analysis found that successful appeals were significantly more likely to involve legal representation on appeal and the support of other legal actors, while male appellants, those who contested more serious offences, and appellants who argued they were pressured to plead guilty were significant predictors of an unsuccessful appeal. This study underscored the restrictive access to appeal and the difficulties defendants can face in having their guilty plea conviction set aside. It also illustrated how Australian appellate courts disregard inherent pressures that can put innocent persons at risk of pleading guilty, likely overlooking the context in which many false guilty pleas are being made.

### *7.2.2. Theoretically Informed and Methodologically Sophisticated*

The second contribution of the thesis is the application of a systems and organisational theoretical perspective. Wrongful conviction scholarship has frequently been criticised for lacking a "theoretically informed and methodologically sophisticated field of study within the discipline of criminology" (Leo, 2017, p. 86). In particular, it is often criticised for being limited to narrative methodologies and case studies that tend to focus on the immediate or legal causes of wrongful conviction, neglecting the root causes from which erroneous convictions emerge (Gould & Leo, 2010; Leo, 2005, 2017; Lofquist, 2014). By adopting a mixed-methods research design that was theoretically guided by a systems and organisational perspective, this thesis was able to provide a more comprehensive understanding of how guilty plea wrongful convictions may occur throughout the criminal justice process.

Utilising a system perspective, the thesis examined how errors may occur throughout the criminal justice system, from the police investigation to the post-conviction process. This perspective was first applied in Study 1, where the potential for error was examined in three distinct stages: the police investigation, pretrial preparations, and formal court hearings. While prior literature has attributed guilty plea wrongful convictions to coercive plea-bargaining practices (e.g., see Bibas, 2014; Edkins & Dervan, 2013), this approach demonstrated that erroneous guilty plea convictions are not just limited to mistakes or misconduct by the prosecution and defence, but instead involve a range of criminal justice actors throughout the legal process. By interviewing legal professionals that work directly in the guilty plea system, Study 2 was then able to extend the focus beyond the immediate causes of guilty plea wrongful convictions to also consider the underlying structural and organisational conditions that contribute to their occurrence, exploring how these conditions can impact the attitudes and behaviours of legal professionals within the system.

Taken together, the systems and organisational perspective provided a useful framework for understanding the larger, system-wide failures that contribute to guilty plea wrongful convictions. This theoretical contribution is discussed in further detail below, where guilty plea wrongful convictions are conceived as a 'system failure'. This helps explain how errors compound and combine throughout each stage of the criminal justice process, and the structural pressures and constraints that contribute to their occurrence. This approach helps advance our understanding of wrongful convictions and can better inform reform strategies and preventative measures, clearly delineating system weaknesses and safeguards that need strengthening throughout each stage of the legal process to better prevent their occurrence.

### *7.2.3. Broader Definition Capturing a Wider Range of Wrongs*

The third contribution is the wider definition of a wrongful conviction adopted. While most wrongful conviction scholarship tends to limit their analysis to cases of 'factual' innocence (for example, see Bedau & Radelet, 1987; Gould et al., 2014; Gross & Shaffer, 2012; Poveda, 2001; Risinger, 2007), this study was unique in examining wrongful convictions resulting from factual, legal, and procedural errors. Scholars have previously criticised the predominate focus on factual innocence in wrongful conviction literature (Hughes, 2011; Raymond, 2001), with Parkes and Cunliffe (2015) arguing that such a narrow focus "deflect[s] attention from unidentified miscarriages of justice" (p. 219). This thesis demonstrates the utility of adopting a broader definition, as it was able to capture a much wider range of wrongs that may frequently occur. The different categories of wrongful convictions were also quantitatively compared, revealing significant differences between the types of errors contributing to factual, legal, and procedural wrongful convictions. This has important methodological implications for wrongful conviction research, illustrating how the definition adopted impacts the range

and frequencies of errors captured. Overall, by expanding the pool of wrongfully convicted persons, this thesis has provided a more complete view of erroneous guilty plea convictions, capturing the more routine injustices that are typically not on the radar of wrongful conviction scholarship. This more accurate or fulsome picture of miscarriages of justice can in turn help improve the overall reliability of the criminal justice system by recognising and targeting a broader range of errors that likely occur in day-to-day criminal justice.

### 7.3. Guilty Plea Wrongful Convictions as a System Failure

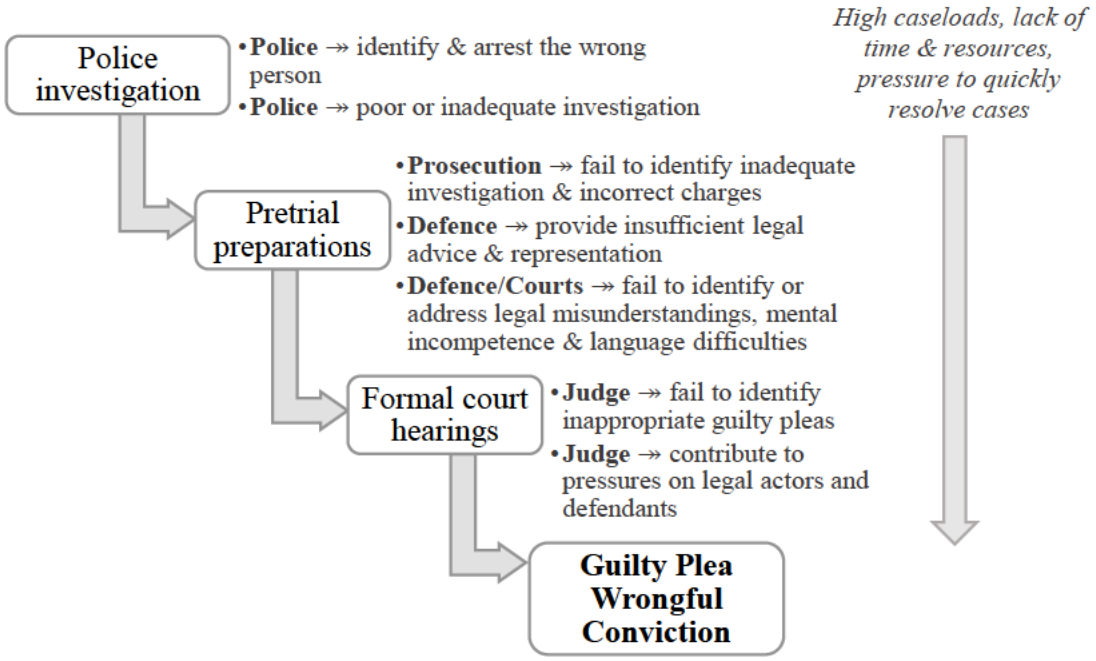
Taken together, the findings from this thesis reveal how guilty plea wrongful convictions can be considered a 'system failure', as errors combine and compound throughout the criminal justice process without being identified and corrected, with structural pressures and constraints contributing to their occurrence (see Figure 7.1). While the criminal justice system is increasingly reliant on resolving cases through a guilty plea, this demonstrates a lack of procedural protections or safeguards to ensure guilty pleas are factually or legally accurate or appropriately entered. Instead, given the pressures associated with overwhelming caseloads and resource constraints, the capacity of the system to self-correct is diminished throughout each stage of the criminal justice process, ultimately allowing errors and false guilty pleas to result in a guilty plea wrongful conviction. These failures then proceed through the post-conviction process, with the system creating conditions that can make it difficult to appeal a guilty plea conviction.

Drawing on the findings from Studies 1 and 2, this section will review the typical errors associated with each stage of the criminal justice process and the system-wide failures that contribute to their occurrence. In particular, it will outline the limited opportunities available for defendants to contest police evidence, the resource

constraints and time limitations hindering effective investigation or scrutiny of individual matters, systemic barriers to effective legal representation, and the pressures of an overburdened court system. Rather than being an accident or rare event, this will highlight how erroneous guilty plea convictions can be generated by the everyday routines and structures in which legal professionals work, where few protections are in place to ensure the resulting convictions are appropriate and accurate.

**Figure 7.1.**

*A system failure: How errors and structural features lead to guilty plea wrongful convictions*




### *7.3.1. Limited Opportunities to Contest Police Evidence*

Study 1 (Chapter 4) demonstrated how errors and misconduct in the police investigation contributed to innocent persons entering the criminal justice system, with errors in the collection and analysis of evidence leading police to identify and arrest the wrong person who did not commit the crime. However, rather than proceeding to trial

and contesting their innocence, these cases were resolved by the defendant pleading guilty. This was often a result of legal advice that informed the defendant they could not successfully challenge the evidence against them or defend the charge, with the defendant pleading guilty to receive the lesser sentence associated with a guilty plea. This finding is consistent with guilty plea wrongful convictions documented in the United States (Covey, 2013) and Canada (Roach, 2017, 2021) and shows how sentence reductions can encourage innocent persons to plead guilty to avoid risking a harsher penalty at trial.

This also illustrates the difficulties defendants can face in challenging police evidence and the general power imbalance between the defence and the prosecution, where defendants and their lawyers are largely reliant on the evidence gathered during the police investigation and can lack the resources required to conduct their own investigation and to effectively defend their case (Findley, 2011a; Hamer & Edmond, 2019; Huff, 2004; Yaroshefsky & Schaefer, 2014). This demonstrates how errors can compound across stages of the criminal justice process and involve multiple actors, as the prosecution's case can be built upon misleading evidence, while defence lawyers fail to expose errors and misconduct within the police investigation process. Instead, by recommending defendants plead guilty rather than challenge police evidence, it demonstrates the reduced capacity of defence lawyers to protect against false guilty pleas, as their role becomes more about protecting a client from the most severe potential consequences rather than investigating innocence (Hellgren & Kassin, 2022; Helm et al., 2018b).

Although evidence gathered during the police investigation may seem compelling, it is important to recognise it can fallible, misinterpreted, or inadequate (Kassin, 2008; Thompson, 2013). However, given the difficulties in challenging police

evidence, combined with the more lenient sentence associated with a plea, this increases the risk that defendants would enter a false guilty plea rather than contest their innocence at trial and risk a harsher outcome. While only a small proportion of the errors identified in Study 1 (Chapter 4) occurred during the police investigation process, they may be more common than the quantitative data suggests, as any errors or unethical conduct in the police investigation process are less likely to be discovered and corrected in the absence of a trial (Redlich, 2010a).

### *7.3.2. Lack of Time and Resources to Effectively Investigate Matters*

The thesis also confirmed the organisational pressures associated with high caseloads and insufficient resources, where criminal justice actors lack the time and resources required to scrutinise and investigate individual matters. These organisational pressures likely contribute to the inadequate and poor police investigation, with Study 1 (Chapter 4) outlining how defendants can be charged despite available evidence demonstrating they were not in law guilty plea of the offence, underscoring how police investigations are not always thorough and objective (Lovegrove, 2016). These pressures then extend toward the prosecution process, with Study 1 (Chapter 4) demonstrating a failure of prosecutors to identify and correct inadequate investigations or erroneous charges. This is likely attributed to the high caseloads and pressures to quickly resolve cases, with Study 2 (Chapter 5) illustrating how prosecutors can lack the time or resources required to adequately investigate or scrutinise the details of individual cases. This issue is exacerbated in the Magistrates Court, with police prosecutors indicated to lack sufficient independence and impartiality from the police, supporting concerns that they are not adequately fulfilling their function as an independent review mechanism (Beck, 2006). Instead, the “sausage factory” approach to justice illustrated how police prosecutors can be under considerable pressure to

simply process cases through the system, hindering their ability to thoroughly review a case before accepting a guilty plea. Without effectively screening police decision-making and ensuring charges are appropriately made out, any errors made in the police investigation are more likely to go overlooked and uncorrected.

### *7.3.3. Systemic Barriers to Effective Legal Representation*

The thesis also confirmed the lack of access to effective legal representation, with legal professionals in Study 2 (Chapter 5) observing how the restrictive access to legal aid had resulted in increased numbers of unrepresented defendants pleading guilty, while Study 1 (Chapter 4) demonstrated how many erroneous guilty plea convictions result from legal misunderstandings and insufficient legal advice. The restrictive access to legal aid increases the risks of guilty plea wrongful convictions, with the quantitative data (Chapter 4) demonstrating how unrepresented defendants are more likely to enter a guilty plea without fully understanding the charges against them, the availability of potential defences, or the implications of a guilty plea. Study 2 (Chapter 6) also supported concerns that many defendants are likely receiving "substandard" legal advice when it comes to plea decisions (Sherrin, 2011, p. 19), as duty lawyers were explained to lack the time or resources required to effectively investigate or scrutinise matters. Indeed, the legal participants explicitly acknowledged how false or inappropriate guilty pleas can go overlooked in this environment.

Even when defendants have access to legal representation, Study 2 (Chapter 5) outlined how defence lawyers can be under efficiency-driven pressures to quickly resolve cases and how this can create a conflict between doing their role properly and ethically. This can contribute to pleading pressures, as defence lawyers can have an implicit interest in pleading clients guilty to quickly resolve matters. This underscores how high caseloads and insufficient resources can create significant difficulties for

defence lawyers to provide effective representation, limiting their intended safeguard to ensure a guilty plea are appropriate and informed.

The costs of the system's inaccuracies likely impact most extensively on the many vulnerable and disadvantaged persons that proceed through the criminal justice system, with the thesis revealing how Indigenous defendants and those with mental health issues are more likely to "slip through the cracks" of the system. While such vulnerable defendants require additional time and support to make appropriate and informed plea decisions, the thesis indicated a failure of the legal system to pick up on widespread mental health difficulties and systematic inequalities, particularly when a case is viewed as less serious. Instead, due to the lack of access to effective legal representation and the "sausage factory" approach to justice, many vulnerable and disadvantaged defendants are likely not receiving the support or assistance they require, putting them at an increased risk of falsely or inappropriately pleading guilty. With the pressures to resolve cases and the lack of access to effective legal representation, the criminal justice system likely creates an environment where many vulnerable defendants may find themselves pleading guilty in circumstances where they do not fully understand what is happening or what they are pleading guilty to.

#### *7.3.4. Pressures of Overburdened Courts*

The thesis also demonstrated how the pressures of an overburdened court system hinder judicial officers from providing an effective safeguard against false or inappropriate guilty pleas, with Study 1 (Chapter 4) highlighting how the courts often fail to ensure guilty pleas are accurate or appropriate. This study also revealed how the courts can instead contribute to pleading pressures, with magistrates and judges found to unduly compel defendants into a guilty plea. While the formal judicial role is to remain neutral, detached, and impartial (Roach Anleu & Mack, 2009), Study 2 (Chapter 5)

outlined the efficiency-driven pressures magistrates are under to quickly process criminal cases to deal with the high workload and meet administration expectations about clearance rates. The pressure experienced by the courts was recognised to extend towards lawyers and defendants within the system, indicating how magistrates may exert direct and indirect pressures on defendants to plead guilty to cope with the overwhelming caseloads. Such pressures also contribute to magistrates accepting guilty pleas from defendants who wish to merely get the matter over and done with, where the need to quickly resolve cases can be valued above the accuracy of a conviction.

Overall, by viewing guilty plea wrongful convictions as a 'system failure', this thesis outlines how various legal actors can contribute to guilty plea wrongful convictions, either by contributing to the production of errors and false guilty pleas or failing to identify and correct their occurrence. This helps inform preventive measures to reduce and prevent the occurrence of guilty plea wrongful convictions, clearly delineating checks and balances that need strengthening throughout the legal system. While policy implications are discussed in further detail below, this demonstrates a need for increased scrutiny and investigation of matters before a guilty plea is accepted, increased funding for legal assistance services, and the need to reduce the workload of overburdened courts. The criminal justice system's increased reliance on resolving cases through a guilty plea necessitates greater procedural protections and safeguards throughout each stage of the legal process to ensure guilty pleas are appropriate and accurate.

### 7.4. False Guilty Pleas as an Acceptable Outcome

While the above discussion highlights guilty plea wrongful convictions as a system failure, illustrating how errors may proceed throughout the criminal justice process without being detected and remedied, Study 3 (Chapter 6) indicates how this

failure may proceed through the post-conviction process, with Australian appellate courts likely not providing an adequate mechanism to identify and correct guilty plea wrongful convictions. This study underscored the restrictive access to appeal and the high threshold established by *Meissner,* with appellate courts routinely disregarding the inherent pressures that put innocent persons at risk of pleading guilty. Instead, defendants who argued they were pressured to plead guilty were significantly overrepresented in unsuccessful appeals, indicating a significant disconnect between what criminal defendants view as potential coercion compared to what is considered undue pressure by the legal system, with appellate courts viewing such pressures as errors that do not need to be corrected.

Similar sentiments were expressed by the legal participants in Study 2 (Chapter 5). Despite acknowledging the numerous pressures defendants are under to plead guilty, defendants were characterised as rational actors making rational "choices" to plead guilty, with the legal participants explaining that persons are *allowed* to plead guilty for reasons that extend beyond belief in their guilt. From this viewpoint, both Study 2 (Chapter 5) and Study 3 (Chapter 6) reveal how false guilty pleas are considered an acceptable outcome for the criminal justice system, where innocent persons pleading guilty are not viewed as a miscarriage of justice. Instead, the main importance is placed on ensuring a guilty plea is a free and informed decision, regardless of the defendant's guilt or innocence.

This justification has been legitimatised through the *Meissner* principle, where a high court authority established that a guilty plea does not need to be based upon actual guilt and only needs to be entered in the exercise of a free choice (*Meissner v R*, 1995). This focus on a voluntary and informed decision overlooks the context in which many guilty pleas are being made and the inherent pressures exerted on defendants to plead

guilty, which likely undermines the capability for a guilty plea to be a completely free and voluntary choice (Helm, 2019b; Helm et al., 2021). It also poses a particular risk for vulnerable defendants who are less likely to understand the implications of a guilty plea (Bressan & Coady, 2017; Peay & Player, 2018) but are frequently not provided with the support and assistance required to make appropriate and informed plea decisions.

The *Meissner* plea represents similarities with the *Alford* plea in the United States, where some jurisdictions allow the court to accept a guilty plea from a defendant who asserts their innocence (Diehm, 2015). However, by encouraging and accepting guilty pleas from persons who claim to be innocent, the Alford plea has been extensively criticised for undermining the foundations and legitimacy of the American criminal justice system (Diehm, 2015). Whilst such a principle is not recommended within the Australian context, the findings from Study 2 (Chapter 5) indicate that the Meissner plea also operates to accommodate innocent persons pleading guilty, but unlike the Alford plea, it is hidden from the courts and lacks external transparency. This create difficulties for the post-conviction process, as defendants are forced to present their guilty plea as a genuine acceptance of guilt that formally admits to all elements of the offence. This obscures the numerous pressures that can cause defendants to enter a false or unreliable guilty plea (Horne, 2016), with appellate courts often finding that the guilty plea was free and informed. This also reflects a tendency to blame the victim of the wrongful conviction for accepting a guilty plea (Roach, 2017), overlooking and discounting the structural and systemic features of the criminal justice system that contribute to the false guilty plea. While some scholars argue that innocent defendants should be free to choose to plead guilty (Bowers, 2008), a principle allowing innocent persons to plead guilty undermines the purpose of the criminal justice system and raises

concerns over the current validity of a guilty plea, which is not always a reflection of actual guilt.

## 7.5. Implications for Policy and Practice

While the criminal justice system is increasingly reliant on guilty pleas, this thesis has demonstrated a lack of effective safeguards or procedural protections in place to ensure guilty pleas are accurate or appropriate. This raises several important implications for policy and practice. First, there is a need for increased scrutiny and investigation of matters throughout each stage of the process before a guilty plea is accepted. This requires increased funding, resources, and staff throughout the criminal justice process, with many errors and false guilty pleas associated with criminal justice actors lacking sufficient time and resources to effectively scrutinise and investigate individual matters. It also underscores a need to reduce the number of cases that proceed through the courts, as the legal system is currently unable to effectively cope with the high caseload.

### *7.5.1. Decriminalisation and Expanded Use of Diversionary Strategies*

While criminal justice systems around the world have introduced trial waiver systems to cope with overwhelming caseloads, there are other policy options available to reduce the number of cases proceeding through the courts (Fair Trials, 2021). This can include the expanded use of cautioning and other diversionary strategies that address offending behaviours and diverts people away from going through criminal courts. Diversionary strategies can provide significant cost-savings to the criminal justice system, with research showing that alternative and less stigmatising responses to crime can reduce the likelihood of reoffending (Jeong et al., 2014; Mueller-Smith & Schnepel, 2020; Queensland Productivity Commission, 2019; Shirley, 2017; Wang &

Weatherburn, 2019). Others have also suggested decriminalising certain categories of crime to reduce the burden on the courts, such as minor and low-harm offences, where non-criminal options can provide a better alternative to prevent harm (Altman, 2017; Fair Trials, 2021; Natapoff, 2015; Queensland Productivity Commission, 2019).

### *7.5.2. Increased Funding and Professionalism Amongst Police Prosecutors*

Providing adequate funding and staff for prosecution services can also allow prosecutors to effectively evaluate the merits of a case *before* they appear in court. This can reduce the burden on lower courts by enabling prosecutors to consider whether there is sufficient evidence to proceed to court or whether the matter is better suited to caution or diversion (Amagnya, 2023; Beck, 2006). There could also be increased professionalisation in the police prosecution service, incorporating more qualified lawyers rather than sworn police officers to prosecute criminal matters. This could improve the legal standards and quality of prosecutions in the lower courts and address the perceived lack of independence and impartiality between police and police prosecutors. As scholars have previously identified a lack of independence and legal knowledge as contributing to police prosecutions allowing weaker cases to proceed to trial (Amagnya, 2023; Beck, 2006; Corns, 1999, 2000), such reform efforts can work towards reducing the costs and burden on the courts. Providing sufficient resources can also help ensure adequate staffing, training, and supervision of police and prosecution services, which can help reduce false guilty pleas by ensuring proper and thorough police investigations and more effective prosecutorial screening.

### *7.5.3. Expanded Access to Effective Legal Representation*

While legal representation is considered the primary safeguard against inappropriate or false guilty pleas, the restrictive access to legal aid means this right is

not being consistently implemented, and many defendants are pleading guilty in the absence of effective legal advice. As such, there needs to be expanded eligibility requirements and increased funding towards legal assistance services to allow for greater access to effective legal advice. While ensuring defendants have access to effective legal advice can reduce the risk of false or inappropriate guilty pleas, it would also address the efficiency and economic concerns of the criminal justice system, as unrepresented defendants take up much more time and resources than legally represented defendants (Law Council of Australia, 2018; Walsh, 2017b). As such, the expansion of free advice would likely be "cost neutral" (Gibbs & Ratcliffe, 2019, p. 20), with increased representation allowing for more efficient and speedier court processes. Increased funding towards legal assistance services could also allow for expanded access to legal support and advocacy post-conviction, with Study 3 (Chapter 6) demonstrating the strengths and utility of legal assistance services during the appeal process. Increased access to legal representation post-conviction can help assist wrongfully convicted persons to identify the grounds of appeal and relevant materials that can best support their applications (Hodgson & Horne, 2009; Kuang & Liang, 2015).

#### *7.5.4. Additional Support and Provisions for Vulnerable Defendants*

Additional funding for legal assistance services is also needed to ensure that vulnerable defendants have access to adequate legal representation that can assist them throughout the criminal justice process. With such defendants identified as "slipping through the cracks" of the system, the thesis confirms the need for additional provisions for the assessment and identification of vulnerable defendants to ensure they receive the support and assistance required for effective access to justice. This could include creating an assessment protocol that assists police and the courts identify people with

disabilities, which can be used to help determine appropriate support and services required to help exercise their legal capacity as well as enhance their health, social, and welfare outcomes (The Australian Human Rights Commission, 2014). Legal professionals should also undergo effective training to ensure they can identify relevant vulnerabilities and provide the appropriate support. Integrated and responsive support services that can address the underlying vulnerabilities of defendants also need to be adequately resourced, such as drug and alcohol support, mental health and disability services, or other psycho-social forms of support.

There is also a need for additional funding and integrated support services to meet the complex needs of Indigenous defendants in remote and regional communities, with defendants serviced by circuit courts not receiving adequate access to justice. This should address the lack of legal support available in regional communities, with time constraints and limited contact with defence lawyers putting Indigenous persons at an increased risk of falsely pleading guilty. This could include increased funding towards culturally appropriate legal services and establishing a greater number of permanent legal service offices in regional and remote locations.

#### *7.5.5. Increased Accountability, Transparency, and Scrutiny*

Guilty plea procedures could also be exposed to increased accountability and transparency mechanisms to ensure guilty pleas are achieved through fair and just procedures. Given the lack of external transparency and scrutiny of plea negotiations and prosecutorial decision-making, this could include recording data on the plea negotiation process, documenting how often the practice occurs and how the negotiation resulted in a guilty plea (e.g., see Flynn, 2011b; 2016). This could also document instances of *Meissner* pleas, clearly recording cases where the defendant does not

formally admit actual guilt. This would ensure pleas of convenience are exposed to external transparency and scrutiny. Like the Alford plea in the United States, this could provide additional opportunities for checks and balances within the system, as judges can be required to ensure there is a strong factual basis before accepting such a guilty plea (Diehm, 2015; Roach, forthcoming).

With the courts often failing to identify false or inappropriate guilty pleas, the thesis also highlights a need for increased judicial scrutiny of plea decisions that investigates the factual basis of the plea and thoroughly reviews the accused persons' consent. This could involve increased participation from the accused, requiring them to outline the facts of the case in their own words, rather than simply accepting whether the facts alleged by the Crown are substantially correct. Increased participation and questioning of accused persons could help provide an additional safeguard against false or inappropriate guilty pleas, as it can help expose legal misunderstandings, the inability to convey a plausible story, and guilty pleas from persons who may lack the mental capacity to plead guilty (Sherrin, 2011). Increased judicial scrutiny would also require fewer cases proceeding through the courts and more magistrates and judicial staff to manage the workload, allowing them to invest more time and resources into each case (Engel & Weinshall, 2020). This would also help reduce the likelihood that judicial officers would accept guilty pleas from persons who merely wish to have the matter over and done with, as they would be less motivated to accept guilty pleas to quickly process cases and help alleviate court backlogs.

#### *7.5.6. Research and Training*

Another means of reducing the likelihood of erroneous guilty plea convictions would be to provide continuing education and training for lawyers and judges on the state of the research concerning false guilty pleas and guilty plea wrongful convictions,

as criminal justice actors are unlikely to take steps to correct or prevent false guilty pleas if they believe that such wrongful convictions are rare events (Roach, 2018). Such modules should educate legal professionals on the potential prevalence of false guilty pleas and the factors that increase their occurrence, such as pretrial detention, lack of access to legal aid, and the increased risk amongst vulnerable populations. This should also address the role that criminal justice actors can play in either contributing to or preventing guilty plea wrongful convictions, highlighting the potential for error in police investigations, charging practices, legal advice, and formal court hearings. Training could also address legal perceptions and attitudes that may contribute to guilty plea wrongful convictions, such as a presumption that defendants are generally guilty and that false guilty pleas represent an acceptable outcome. Increased education and awareness in these areas can help legal professionals be more attuned to the risks associated with false guilty pleas, placing them in a better position to identify and correct situations where defendants may be entering guilty pleas inappropriately.

#### *7.5.7. Additional Post-Conviction Review Mechanisms*

Lastly, the thesis also demonstrates the need for increased post-conviction review mechanisms given the restrictive access to appellate courts for defendants who plead guilty. As mentioned, this should include increased access to legal support post-conviction to expand access to the appeal process and allow defendants to more effectively identify grounds of appeal and relevant materials that can help support a successful outcome. The *Meissner* decision should also be critically reviewed, recognising that it may unduly restrict access to appellate courts for defendants who plead guilty. This could remove the legal requirement that a guilty plea does not need to be based upon actual guilt. Rather than focusing on the integrity of a guilty plea, this would expand appellate mechanisms to also consider the factual basis of a guilty plea

and whether there is sufficient evidence to support the conviction beyond the defendant's admission of guilt. Australia should also implement a Criminal Cases Review Commission like the one established in the United Kingdom, in which an independent body has the power to investigate claims of miscarriages of justice. This would allow for increased appellate access and ensure claims of wrongful convictions are systemically investigated. Further, it would provide a forum for defendants who falsely plead guilty to have claims of innocence investigated, with the Commission being able to review evidence or arguments that may cast doubt on the safety of the conviction.

### 7.6. Strengths, Limitations, and Future Research

This thesis makes an important contribution to an understudied field of research, providing the first empirical investigation into guilty plea wrongful convictions in Australia. A key strength was the mixed-methods research design, which was able to provide a more comprehensive understanding of the issue. Most wrongful convictions scholarship tends to be limited to exoneration data, which does not reflect the true extent of the issue. By supplementing a systematically collected sample of appellate court judgments with interviews with legal professionals within the criminal justice system, the thesis was able to address this limitation and provide additional context into the conditions of the criminal justice system that contribute to erroneous guilty plea convictions.

By utilising appellate court judgements in which a guilty plea conviction was contested, this thesis was able to objectively and systematically collect a sample of relevant cases that had previously undergone legal scrutiny. However, given the legal and practical difficulties of appealing a guilty plea conviction, appellate court judgements do not represent the true extent of false guilty pleas or guilty plea wrongful

convictions, and can only capture cases where defendants chose to appeal their guilty plea conviction. This may particularly overlook many vulnerable and disadvantaged defendants, such as Indigenous Australians and those with mental health issues, as they can lack the financial or social capacity to appeal their wrongful conviction. As a secondary data source, the appellate court judgements also did not always provide the necessary data. For instance, while characteristics such as age, criminal history, and remand status are suggested to contribute to pleading pressures, these variables were not consistently apparent within the quantitative data, limiting the capacity of the thesis to explore how frequently these factors may contribute to erroneous guilty plea convictions.

While interviews with front-line practitioners addressed some of these limitations and provided an alternative method of exploring guilty plea wrongful convictions, legal participants may not always provide answers that necessarily reflect their actual practices. For instance, in his ethnographic research into the lawyer-client relationship in the United Kingdom, Newman (2013) found that lawyers "talked the talk but did not walk the walk", where the accounts provided in structured interviews were not always consistent with the observed day-to-day experiences of legal practitioners (p. 147). To provide a more comprehensive understanding of the guilty plea system, future research would benefit from supplementing the interview data with observational studies to inform us on what actually occurs during plea discussions and formal court hearings compared to the accounts of legal practitioners.

Future research would also benefit from including more diverse legal perspectives throughout Australia and other common law jurisdictions. While focusing on one jurisdiction was able to provide a more in-depth and representative account of the Queensland criminal justice system, it may limit the generalisability of the interview

data and the findings may not represent Australia as a whole. However, as many of the issues identified in this study were related to insufficient resources, high caseloads, and managerial policies, they are likely applicable throughout Australia and other common law jurisdictions that are subjected to these same pressures and constraints. The interviews also largely aligned with the quantitative data, which was nationally representative.

Future research should also incorporate the experiences and opinions of police officers to gauge their experiences and opinions on the guilty plea process. This could explore how the police investigation and practices of police officers may contribute to the production of a guilty plea, an aspect often overlooked in the guilty plea literature. While this thesis initially intended to interview police officers in addition to legal professionals, the Queensland Police Service was not receiving applications to conduct research with their staff members for the duration of the research due to the COVID-19 pandemic. This restricted access to both police officers and police prosecutors, limiting the capacity for the thesis to explore issues associated with police investigations and police prosecutions. Other legal professionals were overlooked due to the convenience sampling strategy adopted, and the thesis could have benefitted from including additional duty lawyers and judges that preside in higher courts. To provide a more complete understanding of the guilty plea process and the challenges that confront every criminal justice, future research should incorporate more diverse legal experiences throughout the criminal justice process.

Lastly, while it was beyond the scope of the current thesis, future research should also include the voices of criminal defendants themselves. Previous Australian research has identified several pressures criminal defendants can be under to plead guilty by interviewing legal professionals working within the system (Flynn, 2016;

Flynn & Freiberg, 2018a; Mack & Roach Anleu, 2000), but this has neglected the opinions and experiences of the defendants themselves. By including the first-hand accounts of the lived experiences of defendants who plead guilty in the legal system, such research would provide important insights into their personal experiences and opinions on the guilty plea process, the reasons they cite for pleading guilty, and the extent to which belief in their guilt informed their plea decisions. Conducting interviews with defendants themselves would also be able to explore their level of understanding regarding the nature of the charges and the implications of a guilty plea, and to what extent they believe their decision to plead guilty was a free and informed choice.

## 7.7. Thesis Conclusion

Despite most criminal cases being resolved by a guilty plea, most of our knowledge on wrongful convictions has been based on more serious cases following a contested trial. This thesis has provided the first empirical research to investigate guilty plea wrongful convictions in Australia, examining how the Australian criminal justice system contributes to, recognises, and responds to this issue. Taken together, the studies outline how guilty plea wrongful convictions are a 'system failure', where errors and false guilty pleas proceed throughout the criminal justice process without being identified or corrected, with system-wide pressures and constraints contributing to their occurrence. While the criminal justice system is increasingly reliant on resolving cases through a guilty plea, this thesis has demonstrated a lack of procedural protections and safeguards in place to ensure a guilty plea is accurate or appropriate. The thesis also revealed how false guilty pleas are considered an acceptable outcome, with appellate courts and legal professionals disregarding inherent pressures to plead guilty and maintaining the myth of autonomy and choice. This demonstrates the routine injustices associated with the current guilty plea system and how false guilty pleas are viewed as a

‘normal’ miscarriage of justice. This raises important concerns regarding the current validity of a guilty plea, which does not always represent a true reflection of factual or legal guilt. This has important implications for a criminal justice system in which most cases are resolved by a guilty plea and deserves much more research attention within Australia and overseas.

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# Appendices

## Appendix A: Study 1 Coding Dictionary

Study 1: Full Coding Dictionary

| Variable | Description | Coding |
|---|---|---|
| **Type of error** | | |
| Identification error | A victim or witness identified the wrong person as the perpetrator of a crime. Includes mistaken identifications, as well as unreliable or deliberate false accusations. | 1=present<br>0=not present |
| False confession | The defendant falsely confessed to a crime they did not commit. Includes voluntary false confessions and false confessions induced by coercive interrogation techniques. | 1=present<br>0=not present |
| Forensic error | Forensic evidence contributed to the wrongful conviction. Includes errors in the collection and analysis of forensic evidence, as well as the use of unreliable or misleading forensic techniques. | 1=present<br>0=not present |
| Inadequate investigation | Inadequate police investigation contributed to the wrongful conviction. Includes charging persons based on insufficient evidence and poor police practices that raise concerns as to the validity of the evidence gathered. | 1=present<br>0=not present |
| Official misconduct | Official misconduct committed by police or prosecutors that abused their authority or the judicial process in a manner that contributed to the wrongful conviction. | 1=present<br>0=not present |
| Charging error | The defendant was incorrectly or inappropriately charged. Includes cases where the defendant was incorrectly charged with an offence they did not in law commit, they were charged with multiple offences covering the same course of conduct, or the charges were not properly particularised or presented. | 1=present<br>0=not present |
| Inadequate defence representation | Inadequate representation by defence counsel contributed to the wrongful conviction. Includes minimal preparation and investigation of cases, failing to adequately challenge the prosecution's case, and providing insufficient or incorrect legal advice. | 1=present<br>0=not present |
| Legal misunderstanding | The guilty plea was based upon a lack of understanding or knowledge regarding the law and | 1=present<br>0=not present |

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| | the legal process. Includes a mistaken understanding of the nature of the charges, being unaware there was an arguable defence to the charge or lacking a general understanding of the legal process and the implications of a guilty plea. | |
| Mental incompetence | The case involved a mentally incompetent person who was unable to make a free and informed decision to plead guilty. Includes defendants who were either unfit to plead guilty, were not of sound mind at the time of committing the offence or entering the plea or lacked to capacity to fully understand the charges against them and the implications of their guilty plea. | 1=present<br>0=not present |
| Language difficulties | The case involved linguistic or translation difficulties for accused persons in which English is not their first language. | 1=present<br>0=not present |
| Undue pressure | The appellate court found that undue or improper pressure had been exerted on the accused to plead guilty. | 1=present<br>0=not present |
| Misleading submissions | False or misleading submissions made to the court unintentionally presented incorrect facts or laws of the case, leading the court into error. | 1=present<br>0=not present |
| Erroneous acceptance of a plea | The original court erroneously accepted a guilty plea and recorded a conviction. Includes cases where the facts or law of the case showed that the defendant was not guilty of the offence charged, had an arguable defence to the charge or had pleaded guilty to inappropriate charges. Also included cases where the judge accepted a guilty plea without adequately fulfilling the duties of the court. | 1=present<br>0=not present |
| No error | Accused plead guilty based upon their own free choice and knowledge of the consequences, with no identifiable error contributing to the wrongful conviction. | 1=present<br>0=not present |
| Other | The type of error involved does not fit in with any of the other categories listed. | 1=present<br>0=not present |
| **Stage of the criminal justice process** | | |
| Police investigation | An error occurred in the police investigation process before a defendant was charged with a criminal offence. | 1=yes<br>0=no |
| Pretrial preparations | An error occurred during pretrial preparation. This refers to the prosecution process following the | 1=yes<br>0=no |

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| | arrest or summons of a defendant. This category captures any errors that occurred in charging defendants or during informal pretrial preparations that occurred outside formal court proceedings. | |
| Formal court procedures | An error occurred during a formal court hearing. Includes hearings conducted before a case proceeded to trial (such as first mention, bail hearing, committal hearing) after a case had proceeded to trial, or during a sentencing hearing. | 1=yes<br>0=no |
| **Type of wrongful conviction** | | |
| Type of wrongful conviction | The type of wrongful conviction is based upon the reasons given by the appellate court as to why the conviction was overturned. These variables are mutually exclusive; a case can only represent one type of wrongful conviction.<br>*Factual:* Conviction was overturned on the basis that the defendant may not have committed the crime and was factually innocent.<br>*Legal:* Conviction was overturned on the basis that the defendant may not have been legally culpable of the offence for which they were charged. Includes cases where the defendant had an arguable defence to the charge, were charged with a more serious offence than the one they committed, or their actions did not constitute the offence for which they were charged.<br>*Procedural:* Conviction was overturned based on a procedural error that resulted in a miscarriage of justice (as determined by the appellate court). Includes cases where the defendant was unfairly pressured to plead guilty, where mentally incompetent defendants were allowed to plead guilty, or the defendant did not receive the support and assistance required to make an informed and appropriate plea decision. | 1=factual<br>2=legal<br>3=procedural |
| **Case characteristics** | | |
| Jurisdiction | The Australian state or territory where the appeal was heard. | 1=Western Australia<br>2=New South Wales<br>3=Queensland<br>4=Victoria<br>5=South Australia<br>6=Australian Capital Territory |

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| | | 7=Northern Territory<br>8=Tasmanian |
| Year of judgement | The year of the appellate court judgement. | |
| Original court | The court in which the defendant was originally convicted. | 1=Children's<br>2=Magistrates<br>3=District/County<br>4=Supreme |
| Criminal offence | The most serious criminal offence that was overturned on appeal. In cases that involve multiple convictions, only the most serious were coded. The offences were coded based upon the Australian and New Zealand Standard Offence Classification. | 1=homicide<br>2=acts causing injury<br>3=sexual assault<br>4=dangerous/negligence<br>5=robbery/extortion<br>6=unlawful entry<br>7=theft<br>8=fraud/deception<br>9=drug offences<br>10=weapon offences<br>11=traffic offences<br>12=offences against government<br>13=other |
| **Defendant characteristics** | | |
| Gender | The gender of the defendant. | 1=male<br>0=female |
| Indigenous status | The defendant was identified as an Aboriginal and/or Torres Strait Islander. | 1=yes<br>0=no/not mentioned |
| Another cultural background | The defendant was identified as belonging to another cultural or linguistic background that was not Anglo-Australian or Aboriginal or Torres Strait Islander. | 1=yes<br>0=no/not mentioned |
| Legal representation | Whether the defendant had legal representation at the time of pleading guilty or was self-represented. | 1=represented<br>0=self-represented |

## Appendix B: Study 3 Coding Dictionary

Study 3: Full Coding Dictionary

| Variable | Description | Coding |
|---|---|---|
| **Case Outcome** | | |
| Successful appeal | The appeal was allowed, and the defendant had the guilty plea conviction set aside. | 1=successful |
| Unsuccessful appeal | The appeal was dismissed, and the guilty plea conviction remained. | 0=unsuccessful |
| **Grounds of appeal** | | |
| Did not understand the charge | The defendant argued that they did not understand or appreciate the nature of the charge or did not mean to plead guilty to the charge. | 1=raised<br>0=not raised |
| Not in law guilty | The defendant argued that, based upon the admitted facts of the case, they could not in law be guilty of the offence. Includes cases where the facts of the case did not fulfil the required elements of the charge, that the evidence available did not support the charge or could not establish guilt, or that the offence was not known in law during the period in which it was committed. Also includes cases of duplicity or double punishment. | 1=raised<br>0=not raised |
| Induced to plead | The defendant argued they were unduly pressured to plead guilty or that the guilty plea was obtained by inducement, fraud, intimidation, or other impropriety. | 1=raised<br>0=not raised |
| Available defence | The defendant argued they had a relevant defence to the charge, that they were denied the opportunity to defend the charge, and that there was an issuable question of the defendant's guilt or a real issue to be tried. | 1=raised<br>0=not raised |
| Erroneous acceptance of a plea | The defendant argued that the court erroneously accepted the guilty plea and recorded a conviction. Includes cases where the plea was equivocal, the facts or laws of the case showed that the defendant was not guilty of the charged offence, the court did not conduct necessary inquiries into the case or did not have the jurisdiction to convict the defendant. | 1=raised<br>0=not raised |
| Inadequate legal advice | The defendant argued that they plead guilty based on inappropriate, inadequate, or incorrect legal advice. | 1=raised<br>0=not raised |
| Unfit to plead guilty | The defendant argued they were unfit to plead guilty, due to cognitive impairment or a mental illness. | 1=raised<br>0=not raised |

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| New/fresh evidence | The defendant argued that new or fresh evidence demonstrated they were not guilty of the offence or raised a reasonable doubt as to their guilt. | 1=raised<br>0=not raised |
| Erroneous ruling | The defendant argued that there was an erroneous ruling in the original proceedings, such as an erroneous decision to admit evidence, refusing to adjourn proceedings, or rejecting an application to withdraw the guilty plea. | 1=raised<br>0=not raised |
| Procedural error | The defendant argued that the case involved a procedural error or irregularity. | 1=raised<br>0=not raised |
| Misconduct/ abuse of process | The defendant argued that the case involve misconduct or an abuse of process by the police or prosecution. | 1=raised<br>0=not raised |
| Other | The defendant raised another ground of appeal that does not easily fit within the categories above. | 1=raised<br>0=not raised |
| **Defendant characteristics** | | |
| Gender | The gender of the defendant. | 1=male<br>0=female |
| Indigenous status | The defendant was identified as an Aboriginal and/or Torres Strait Islander. | 1=yes<br>0=no/not mentioned |
| Born overseas | Whether the defendant was born outside of Australia. | 1=yes<br>0=no/not mentioned |
| Cognitive impairment | Whether the defendant had a cognitive or intellectual impairment. | 1=yes<br>0=no/not mentioned |
| Mental health issues | Whether the defendant had a history of mental health issues (including substance dependence and abuse). | 1=yes<br>0=no/not mentioned |
| Criminal history | Whether the defendant has a previous criminal conviction. | 1=yes<br>0=no<br>99=unknown |
| Age (Years) | The age of the defendant at the time of pleading guilty (in years). | |
| Age (Grouped) | Whether the defendant was an adult (+18) or a minor (17 and under) at the time of pleading guilty. | 1=adult<br>0=minor |
| **Case characteristics** | | |
| Year convicted | The year the defendant was convicted (for the offence argued at appeal). If appealing multiple offences, the earlier date is coded. | |
| Jurisdiction | The Australian state or territory the appeal case was heard. | 1=Western Australia<br>2=New South Wales<br>3=Queensland<br>4=Victoria<br>5=South Australia |

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| | | 6=Australian Capital Territory<br>7=Northern Territory<br>8=Tasmanian |
| Original court | The original court in which the defendant was convicted. | 1=Children's<br>2=Magistrates<br>3=District/county<br>4=Supreme<br>5=Specialist |
| Offence type | The type of offence the defendant was contesting on appeal:<br>*Summary*: Less serious offences typically prosecuted in the lower courts and carry less than 3 years imprisonment.<br>*Indictable*: More serious offences typically prosecuted in the higher courts that carry over 3 years of imprisonment. | 0=summary<br>1=indictable |
| Primary offence | The criminal offence the defendant contested on appeal. If contesting multiple offences, code the most serious offence:<br>*Homicide:* includes murder, attempted murder, manslaughter & driving causing death.<br>*Violent offence:* includes assault and other acts intended to cause injury.<br>*Sexual offence*: include sexual assault and non-assaultive sexual offence.<br>*Property offence:* offences that involve the personal property of another person. Including theft, burglary, vandalism, arson, fraud, and deception.<br>*Drug offence:* includes possession, manufacturing, dealing or trafficking drugs.<br>*Traffic offences*: include regulatory driving offences, driver license offences, and vehicle registration and roadworthiness offences.<br>*Offence against the government:* includes offences against justice procedures, government security and government operations, such as perjury, contempt of court, or breaches of government orders.<br>*Other:* any offences that did not fit easily into the above categories. | 1=homicide<br>2=violent offence<br>3=sexual offence<br>4=property offence<br>5=drug offence<br>6=traffic offence<br>7=offence against government<br>8=other<br>99=unknown |
| Type of sentence | The sentence that the defendant received in the original proceedings: | 1=imprisonment<br>2=community<br>3=fine |

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| | *Imprisonment:* The defendant was sentenced to a term of imprisonment (including life imprisonment).<br>*Community:* The defendant was given a community-based sanction, including a suspended sentence, community corrections order, probation, good behaviour bond, etc.<br>*Fine:* The defendant received a monetary penalty.<br>*Not yet sentenced*: The defendant was appealing their guilty plea conviction before their sentencing hearing.<br>*Other:* The defendant received another type of penalty not listed above (e.g., suspended license, conviction recorded with no other punishment). | 4=not yet sentenced<br>5=other<br>99=unknown |
| Legal representation at the time of the plea | The type of legal representation the defendant had at the time of pleading guilty:<br>*Private:* The defendant was legally represented by a private firm.<br>*Legal aid*: The defendant was represented by a duty lawyer, legal aid, or pro-bono.<br>*Self-represented:* The defendant had no legal representation and appeared self-represented. | 1=private<br>2=legal aid<br>3=self-represented<br>99=unknown |
| Remand status | Whether the defendant was held in remand at the time of pleading guilty. | 1=yes<br>0=no<br>99=unknown |
| **Appeal characteristics** | | |
| Year of judgement | The year of the appellate court judgement. | |
| Appeal court | The court in which the appeal was heard. | 1=district/county<br>2=supreme<br>3=court of appeal |
| Appeal decision | The decision handed down by the court for cases in which the guilty plea conviction was set aside:<br>*Acquitted*: Conviction was set aside, with an acquittal entered.<br>*Quashed*: Conviction was set aside, with no acquittal or retrial entered.<br>*Retrial*: Conviction was set aside, and the matter was set for retrial or remitted back to court.<br>*N/A:* The appeal was dismissed, and the guilty plea conviction remained. | 1=acquitted<br>2=quashed<br>3=retrial<br>97=N/A |
| Legal representation on appeal | The type of legal representation the defendant had on appeal:<br>*Private:* The defendant was legally represented by a private firm. | 1=private<br>2=legal aid<br>3=self-represented<br>99=unknown |

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| | *Legal aid*: The defendant was represented by legal aid or pro-bono.<br>*Self-represented:* The defendant had no legal representation and appeared self-represented | |
| Prosecution conceded | The prosecution/State conceded the appeal and recommended setting aside the conviction. | 1=yes<br>0=no |
| Dissenting judgment | There was a dissenting judgement, with one judge disagreeing with the majority verdict regarding the case outcome. | 1=yes<br>0=no<br>97=single judge |
| Tried to previously withdraw plea | The defendant had previously attempted to withdraw their guilty plea prior to receiving a conviction | 1=yes<br>0=no |
| Type of innocence argued | The type of innocence argued by the defendant in the appellate court judgement. This does not need to be associated with the ground raised but is argued or mentioned by the defendant within the judgement:<br>*Factual innocence:* The defendant argued they did not commit the offence and were factually innocent.<br>*Legal innocence:* The defendant did not dispute they committed the actions but argued they were not legally culpable for the offence. This may be because the defendant has a legally relevant defence, or their actions did not fulfil the elements of the charge against them.<br>*Procedural error:* Defendant does not claim to be factually or legally innocent but argued there was a procedural error or unfair proceeding that should allow for a successful appeal (e.g., they were mentally unfit to plead guilty, they were unfairly pressured to plead, or convicted in the wrong jurisdiction). | 1=factual<br>2=legal<br>3=procedural |
| Fresh/new evidence | The case involved new or fresh evidence that was not introduced, available or discovered in the original conviction, but was later identified as being material to the issue in dispute.<br>*Accepted:* New/fresh evidence was adduced & accepted by the court.<br>*Rejected:* New/fresh evidence was adduced by the defendant but was rejected by the court, or not considered ‘new’ or ‘fresh’.<br>*No evidence*: No new/fresh evidence was adduced | 1=accepted<br>2=rejected<br>0=no evidence |
| Additional evidence | The case did not involve new or fresh evidence relevant to the offence, but the defendant introduced evidence or material relevant to the proceeding out of which the appeal arose. Often includes evidence surrounding their plea decision. | 1=yes<br>0=no |

| | | |
|---|---|---|
| Type of evidence | If the defendant introduced new, fresh, or additional evidence, code the type of evidence introduced: | |
| *Forensic evidence* | Forensic evidence relevant to the case was discovered or re-tested (e.g., DNA analysis, fingerprints, drug testing, etc.). | 1=introduced<br>0=not introduced |
| *Official police inquiries* | Official reports into police misconduct reveal new evidence relevant to the case (e.g., Crime Corruption Commission, Police Misconduct hearing, etc.). | 1=introduced<br>0=not introduced |
| *Confession/ conviction* | Another person confessed to the crime, or another person was convicted of the crime for which the defendant had pleaded guilty. | 1=introduced<br>0=not introduced |
| *Psych report* | A psychological or psychiatric report was admitted regarding the defendant's mental health or cognitive capacity. | 1=introduced<br>0=not introduced |
| *Expert witness* | Evidence from an expert witness (not a psychiatrist or psychologist) provided an expert opinion relevant to the case. | 1=introduced<br>0=not introduced |
| *Witness statement* | The defendant introduced witness statements. Includes testimony from persons at the time of the crime, witnesses/victims that recanted their statement that incriminated the defendant, or witness statements supporting the defendant's claim as to why they pleaded guilty. | 1=introduced<br>0=not introduced |
| *Defendant affidavit* | The defendant submitted an affidavit of their account explaining why they entered the guilty plea. Include written statements or oral evidence given at court. | 1=introduced<br>0=not introduced |
| *Defence lawyer affidavit* | The defendant's lawyer from the original proceedings submitted an affidavit to support the defendant's version of events. Include written statements or oral evidence given at court. Does not include cases where the defendant's lawyer contradicts the defendant's claim/argument. | 1=introduced<br>0=not introduced |
| *Other* | The defendant introduced other supporting evidence, documents, or material. | 1=introduced<br>0=not introduced |

**Appendix C: Participant Information Sheet**

GU Ref No: 2020/370

## Pleading guilty: The practices and organisational factors involved in finalising a case through a guilty plea.

PARTICIPANT INFORMATION SHEET


| | | |
|---|---|---|
| **Research team** | Ms Caitlin Nash | Chief Investigator |
| | Dr. Rachel Dioso-Villa | Principal Supervisor |
| | Dr. Louise Porter | Principal Supervisor |

Griffith University
School of Criminology and Criminal Justice
(07) 3735 5627
Contact email: c.nash@griffith.edu.au


### Why is the research being conducted?

Although research suggests that most criminal cases are finalised by the accused pleading guilty rather than proceeding to a contested trial, relatively little is known about the Australian guilty plea system and the processes involved in finalising a case through a guilty plea. Based on the experiences of those directly involved in the process, this research is interested in exploring the processes involved in finalising a case through a guilty plea, including the complex role of criminal justice professionals involved in the process, the structural and organisation conditions that criminal justice professionals work within, and any issues or challenges that they may encounter.

### What you will be asked to do

Participation will involve a one-on-one semi-structured interview that will last approximately 30 to 60 minutes. The interview will be conducted at time and date that are mutually agreed upon and can be either conducted in person or over a video chat software of your choice (e.g., Microsoft Teams, Zoom, Skype). The interviews will explore your experience and role in finalising a case through guilty plea, any challenges at the organisational level that you may encounter in conducting day-to-day activities, and your experiences and opinions on why defendants plead guilty. The interviews will be audio recorded and transcribed for research purposes. The audio content of the interview will be transcribed and will be erased once analysis is completed. All transcribed information will be de-identified. Access to the de-identified recordings and transcriptions will be strictly limited to the named researchers.

**The expected benefits of the research**

Your participation in the research will help to provide important insights into processes and practices involved in finalising a case by a guilty plea, and how organisational and structural features of the criminal justice system may impact on daily routine operations. It is hoped that this research will improve our understanding on the guilty plea system and inform potential reform strategies for criminal justice professionals working in the area.

**Risks associated with participation in this research**

No specific risks have been identified with this research. You will not be asked questions on sensitive topics and you may decline to respond to a question at any time during the interview. If you feel uncomfortable whilst participating in this research, you can decide at any time to withdraw from the study.

**Your confidentiality and anonymity**

The interview will be recorded and transcribed. To protect confidentiality, you will be allocated a pseudonym, and your responses will be kept confidential. Only the researcher will have access to the interview data and all identifying information will be

removed from the stored data. All audio recordings will be erased after transcription. Other research data (interview transcripts and analysis) will be retained in a password protected electronic file at Griffith University.

**Your participation is voluntary**

Participation in this research is voluntary. You are free to withdraw from the study at any time without comment or penalty. If you do not want to continue, please inform the interviewer and they will immediately terminate the interview.

**Questions / further information**

Should you require any additional information about this research, please contact Caitlin Nash, Griffith University School of Criminology and Criminal Justice, on ph: [redacted]

**Feedback to you**

The research will be submitted for publication in academic journals. Please contact the researcher if you wish to be notified when these publications are available.

**The ethical conduct of this research**

Griffith University conducts research in accordance with the National Statement on Ethical Conduct in Human Research. If potential participants have any concerns or complaints about the ethical conduct of the research project they should contact the Manager, Research Ethics on 3735 4375 or research-ethics@griffith.edu.au. Ethical clearance from Griffith University was granted for this research in May 2020, Protocol number 2020/370.

**Appendix D: Participant Consent Form**

GU Ref No: 2020/370

## Pleading guilty: The practices and organisational factors involved in finalising a case through a guilty plea

PARTICIPANT CONSENT FORM


| | | |
|---|---|---|
| **Research team** | Ms Caitlin Nash | Chief Investigator |
| | Dr. Rachel Dioso-Villa | Principal Supervisor |
| | Dr. Louise Porter | Principal Supervisor |

Griffith University
School of Criminology and Criminal Justice
(07) 3735 5627
Contact email: c.nash@griffith.edu.au


**Please return your consent form to Caitlin at c.nash@griffith.edu.au**

By signing below, I confirm that I have read and understood the information package and in particular have noted that:

- I understand that my involvement in this research will include taking part in a semi-structured qualitative interview, lasting between 30 to 60 minutes
- I understand that the research may include audio recording of my participation
- I have had any questions answered to my satisfaction;
- I understand the risks involved;
- I understand that there will be no direct benefit to me from my participation in this research
- I understand that my participation in this research is voluntary

- I understand that if I have any additional questions I can contact the research team;
- I understand that I am free to withdraw at any time, without explanation or penalty;
- I understand that my name and other personal information that could identify me will be removed or de-identified in publications or presentations resulting from this research;
- I understand that I can contact the Manager, Research Ethics, at Griffith University Human Research Ethics Committee on 3735 4375 (or research-ethics@griffith.edu.au) if I have any concerns about the ethical conduct of the project; and

☐ I agree to participate in the research.

☐ I consent to the use of my de-identified interview transcript in the future.

**Demographic questions**

These questions are optional, but they help us better understand the nature and context of our participants.

1. Gender:
2. Age:
3. Job title:
4. How long have you been employed in this role?
5. Total years of experience working in the criminal justice system:

| | |
|---|---|
| **Name** | |
| **Signature** | |
| **Date** | |

## Appendix E: Interview Schedule

*Processes Involved in Resolving a Case by Guilty Plea.*

1. What are your experiences and thoughts on resolving a case through a guilty plea?
2. Tell me about a case of yours that was finalised by the defendant pleading guilty (or a generalised example) - Walk me through the processes or procedures that are involved, from start to finish.
3. What is your role or responsibility when a defendant indicates they want to plead guilty?
4. Have there been cases where a judge did not accept a guilty plea?

*System or Structural Issues*

5. What are the biggest challenges you face at the organisational /structural level when dealing with cases?
6. How does this impact on how you conduct your work? How do you manage this?

*Reasons Why Defendants Plead Guilty.*

7. Based on your experience, do you feel that accused persons sometimes plead guilty even if they are innocent or have a valid defence?
8. What safeguards do you believe are in place that prevent defendants from making an inappropriate plea? Do you believe that these safeguards are adequate?

*Appealing a Guilty Plea*

9. Do you have any experience with cases (or are aware of any cases) where defendants have tried to appeal a guilty plea conviction?
10. Based on your experience, why do you think defendants would appeal a guilty plea conviction?

11. Do you believe that appeals court provide an appropriate mechanism to identify and correct inappropriate guilty plea conviction?

*The End*

12. Is there anything further you would like to add or clarify in relation to anything that we have discussed in this interview? Or any other issue you would like to raise?