

4472

2011-2012 Regular Sessions

I N S E N A T E

April 6, 2011

Introduced by Sen. NOZZOLIO -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to providing a statutory basis to vacate a judgment of conviction on the ground of ineffective assistance of appellate counsel

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The criminal procedure law is amended by adding a new
2 section 450.65 to read as follows:
3 S 450.65 MOTION TO INTERMEDIATE APPELLATE COURT; EFFECTIVE ASSISTANCE OF
4 APPELLATE COUNSEL.
5 1. AT ANY TIME AFTER THE ENTRY OF AN ADVERSE OR PARTIALLY ADVERSE
6 ORDER OF AN INTERMEDIATE APPELLATE COURT ENTERED UPON AN APPEAL TAKEN TO
7 SUCH INTERMEDIATE APPELLATE COURT PURSUANT TO SECTION 450.10, 450.15, OR
8 450.20 OF THIS ARTICLE, THE DEFENDANT MAY MOVE TO SET ASIDE THE ORDER ON
9 THE GROUND OF INEFFECTIVE ASSISTANCE OR WRONGFUL DEPRIVATION OF APPEL-
10 LATE COUNSEL.
11 2. A MOTION MADE PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE
12 MADE IN THE SAME INTERMEDIATE APPELLATE COURT THAT HEARD THE APPEAL IN
13 WHICH COUNSEL WAS ALLEGEDLY DEFICIENT.
14 3. A MOTION MADE PURSUANT TO SUBDIVISION ONE OF THIS SECTION IS NOT
15 AUTHORIZED AS OF RIGHT WHERE THE GROUND OR ISSUE RAISED UPON THE MOTION
16 WAS PREVIOUSLY DETERMINED BY THE INTERMEDIATE APPELLATE COURT, PROVIDED,
17 HOWEVER, THAT THE DEFENDANT MAY APPLY FOR A CERTIFICATE GRANTING PERMIS-
18 SION TO FILE A SECOND OR SUBSEQUENT MOTION PURSUANT TO SUBDIVISION ONE
19 OF THIS SECTION UPON A SHOWING OF GOOD CAUSE, WHICH SHALL INCLUDE, BUT
20 IS NOT LIMITED TO, ESTABLISHING THAT ANY PREVIOUS MOTION MADE PURSUANT
21 TO SUBDIVISION ONE OF THIS SECTION WAS MADE BY A DEFENDANT ACTING PRO
22 SE, AND WHERE THE CURRENT APPLICATION IS MADE BY COUNSEL. A CERTIFICATE
23 GRANTING PERMISSION TO FILE A SECOND OR SUBSEQUENT MOTION IS AN ORDER OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 ONE JUDGE OR JUSTICE OF THE INTERMEDIATE APPELLATE COURT IN WHICH THE
2 PREVIOUS MOTION WAS DETERMINED GRANTING SUCH PERMISSION AND CERTIFYING
3 THAT THE CASE INVOLVES QUESTIONS OF LAW OR FACT WHICH OUGHT TO BE
4 REVIEWED BY THE INTERMEDIATE APPELLATE COURT.

5 S 2. This act shall take effect on the ninetieth day after it shall
6 have become a law.