S T A T E O F N E W Y O R K

714

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. GRISANTI -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the court of claims act, in relation to enactment of the coerced confession remediation act

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

Section 1. Short title. This act shall be known and may be cited as the "coerced confession remediation act".

S 2. Subdivisions 4 and 5 of section 8-b of the court of claims act, as added by chapter 1009 of the laws of 1984, are amended to read as follows:

4. The claim shall state facts in sufficient detail to permit the court to find that claimant is likely to succeed at trial in proving that (a) he OR SHE did not commit any of the acts charged in the accusatory instrument or his OR HER acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state, and (b) he OR SHE did not by his OR HER own conduct cause or bring about his OR HER conviction, EXCLUDING ANY ALLEGEDLY INCULPATORY STATEMENT MADE OR PROVIDED BY THE CLAIMANT TO THE AUTHORITIES WHO INVESTIGATED OR PROSECUTED CLAIMANT UNLESS INTENTIONALLY MADE OR PROVIDED IN ORDER TO IMPEDE THE INVESTIGATION OR PROSECUTION. The claim shall be verified by the claimant. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.

5. In order to obtain a judgment in his OR HER favor, claimant must prove by clear and convincing evidence that:

(a) he OR SHE has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

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

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(b) (i) he OR SHE has been pardoned upon the ground of innocence of the crime or crimes for which he OR SHE was sentenced and which are the grounds for the complaint; or (ii) his OR HER judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he OR SHE was found not guilty at the new trial or he OR SHE was not retried and the accusatory instrument dismissed; provided that the [judgement] JUDGMENT of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) or (g) of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in item (A) hereof), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York; and

(c) he OR SHE did not commit any of the acts charged in the accusatory instrument or his OR HER acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state; and

(d) he OR SHE did not by his OR HER own conduct cause or bring about his OR HER conviction, EXCLUDING ANY ALLEGEDLY INCULPATORY STATEMENT MADE OR PROVIDED BY THE CLAIMANT TO THE AUTHORITIES WHO INVESTIGATED OR PROSECUTED THE CLAIMANT UNLESS INTENTIONALLY MADE OR PROVIDED IN ORDER TO IMPEDE THE INVESTIGATION OR PROSECUTION.

S 3. This act shall take effect immediately.