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

11150

I N A S S E M B L Y

May 20, 2010

Introduced by M. of A. LANCMAN -- read once and referred to the Committee on Judiciary

AN ACT to amend the court of claims act, in relation to claims for conviction; and to amend the criminal procedure law, in relation to the expungement of criminal records

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

Section 1. Subdivision 7 of section 8-b of the court of claims act is renumbered subdivision 8 and subdivision 4, paragraphs (c) and (d) of subdivision 5 and subdivision 6, as added by chapter 1009 of the laws of 1984, are amended and two new subdivisions 7 and 9 are added 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 did not commit any of the acts [charged in the accusatory instrument] SUBMITTED TO THE FACTFINDER or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state, and (b) he did not by his own conduct cause or bring about his conviction. A CONFESSION OR ADMISSION LATER FOUND TO BE FALSE, OR A PLEA OF GUILTY TO A CRIME THAT THE CLAIMANT DID NOT COMMIT, DOES NOT CONSTITUTE "CAUSING ONE'S CONVICTION" PURSUANT TO THIS SUBDIVISION. 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.

(c) he did not commit any of the acts [charged in the accusatory instrument] SUBMITTED TO THE FACTFINDER or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state; and

(d) he did not by his own conduct cause or bring about his conviction. CONVICTIONS RESULTING FROM ANY OF THE FOLLOWING SHALL NOT CONSTITUTE CONDUCT CAUSING OR BRINGING ABOUT HIS CONVICTION UNDER THIS ACT: (I) THE NEGLIGENCE OF HIS DEFENSE ATTORNEY; (II) A COERCED OR INVOLUNTARY CONFESSION; (III) THE UNCORROBORATED TESTIMONY OF A PERSON OTHER THAN A

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

LBD16767-02-0

LAW ENFORCEMENT OFFICER OF AN ALLEGED ADMISSION OF GUILT BY THE DEFENDANT; OR (IV) A CLAIMANT'S HAVING ENTERED A PLEA OF GUILTY, PROVIDED THAT THE CLAIMANT IS ABLE TO DEMONSTRATE THAT THE PLEA WAS ENTERED DUE TO THE NEGLIGENCE OF HIS ATTORNEY OR AS THE RESULT OF DURESS OR COERCION.

6. If the court finds that the claimant is entitled to a judgment, [it shall award damages in such sum of money as the court determines will fairly and reasonably compensate him.] THE CLAIMANT MAY ELECT AS COMPENSATION TO RECEIVE A FIXED SUM OF SEVENTY-FIVE THOUSAND DOLLARS FOR EACH YEAR THAT HE OR SHE WAS INCARCERATED, THE TOTAL TO BE COMPUTED BY MULTIPLYING THE NUMBER OF YEARS OF INCARCERATION AND FRACTION THEREOF TIMES SEVENTY-FIVE THOUSAND DOLLARS. THIS FIGURE SHALL BE ADJUSTED TO THE YEAR OF EXONERATION IN ACCORDANCE WITH CHANGES IN THE COST OF LIVING, USING THE CONSUMER PRICE INDEX (FOR ALL URBAN CONSUMERS, CPU-I, U.S., CITY AVERAGE, ALL ITEMS, 1982-84=100) PUBLISHED BY THE UNITED STATES BUREAU OF LABOR STATISTICS. THE ADJUSTMENT SHALL BE COMPUTED BY MULTIPLYING SEVENTY-FIVE THOUSAND DOLLARS TIMES THE CONSUMER PRICE INDEX AVERAGE FOR THE YEAR OF EXONERATION DIVIDED BY THE CONSUMER PRICE INDEX AVERAGE FOR TWO THOUSAND TEN, WHICH IS THE YEAR OF ENACTMENT OF THIS SECTION. IN THE ALTERNATIVE, THE CLAIMANT MAY WAIVE HIS OR HER RIGHT TO RECEIVE THE FIXED ANNUAL SUM SO COMPUTED AND, IN LIEU THEREOF, HE OR SHE MAY ELECT TO HAVE THE COURT ASSESS HIS OR HER DAMAGES, IN WHICH CASE THE COURT SHALL AWARD DAMAGES IN SUCH SUM AS THE COURT DETERMINES WILL FAIRLY AND REASONABLY COMPENSATE HIM OR HER. IN DETERMINING COMPENSATION BY EITHER METHOD, THERE SHALL BE NO OFFSET OR ADJUSTMENT TO THE TOTAL COMPENSATION AWARDED FOR ANY EXPENSES INCURRED RELATED TO SECURING OR MAINTAINING THE CLAIMANT'S CUSTODY OR ANY EXPENSES RELATED TO PROVIDING FOOD, CLOTHING, OR MEDICAL SERVICES TO THE CLAIMANT. IN DETERMINING THE RELEVANT PERIOD OF INCARCERATION, ANY PORTION OF THE PERIOD OF INCARCERATION THAT WAS ATTRIBUTABLE TO A SEPARATE AND LAWFUL CONVICTION RESULTING IN A CONCURRENT TERM OF IMPRISONMENT SHALL BE EXCLUDED. IN ADDITION TO AWARDING DAMAGES BY ONE OF THE METHODS SET FORTH ABOVE, THE COURT SHALL ORDER THE IMMEDIATE SEALING, AT THE EXPENSE OF THE STATE OF NEW YORK, OF ANY AND ALL CRIMINAL RECORDS RELATED TO THE WRONGFUL ARREST, CONVICTION, AND SENTENCE OF THE CLAIMANT. SUCH RECORDS SHALL BE MADE AVAILABLE ONLY TO THE CLAIMANT AND THE STATE IN ANY UNJUST CONVICTION AND IMPRISONMENT CLAIM UPON AN APPLICATION TO THE COURT.

7. UPON THE ENTRY OF JUDGMENT IN FAVOR OF THE CLAIMANT FOR WRONGFUL CONVICTION OR A PARDON BASED ON WRONGFUL CONVICTION, THE STATE OF NEW YORK SHALL, BASED ON THE CLAIMANT'S NEED, IMMEDIATELY MAKE AVAILABLE TO THE CLAIMANT SUBSISTENCE FUNDS AND REENTRY SERVICES. REENTRY SERVICES AVAILABLE UNDER THIS SECTION SHALL BE AT A MINIMUM THE SAME AS THOSE RECEIVED BY FELONS UPON RELEASE, AND INCLUDE BUT ARE NOT LIMITED TO JOB TRAINING, EDUCATION, HEALTH CARE, AND ASSISTANCE IN ACQUIRING AFFORDABLE HOUSING AND CHILD CUSTODY.

9. IF A DECEASED PERSON WOULD BE ENTITLED TO COMPENSATION UNDER THIS SECTION IF LIVING, INCLUDING A PERSON WHO RECEIVED A POSTHUMOUS PARDON, THE PERSON'S HEIRS, LEGAL REPRESENTATIVES, AND ESTATE ARE ENTITLED TO SUCH COMPENSATION.

S 2. The criminal procedure law is amended by adding a new section 440.70 to read as follows:

S 440.70 EXPUNGEMENT OF CRIMINAL RECORDS.

IN THE EVENT THAT A DEFENDANT HAS BEEN ENTITLED TO A JUDGMENT IN HIS FAVOR UNDER SUBDIVISION FIVE OF SECTION EIGHT-B OF THE COURT OF CLAIMS ACT, THE COURT IN WHICH HIS CONVICTION WAS REVERSED OR VACATED OR IN WHICH THE ACCUSATORY INSTRUMENT WAS DISMISSED SHALL ORDER THE EXPUNGEMENT OF ALL CRIMINAL RECORDS RELATED TO THE WRONGFUL ARREST, CONVICTION,

AND SENTENCE AT THE EXPENSE OF THE STATE. SUCH RECORDS SHALL BE AVAILABLE ONLY TO A CLAIMANT AND THE STATE IN AN UNJUST CONVICTION AND IMPRISONMENT CLAIM UPON APPLICATION TO THE COURT.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.