

5170

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. LAVINE -- read once and referred to the Committee
on Codes

AN ACT to amend the criminal procedure law, in relation to claims of
ineffective assistance of counsel in post-conviction motions

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

1 Section 1. Paragraphs (b) and (c) of subdivision 2 of section 440.10
2 of the criminal procedure law are amended to read as follows:
3 (b) The judgment is, at the time of the motion, appealable or pending
4 on appeal, and sufficient facts appear on the record with respect to the
5 ground or issue raised upon the motion to permit adequate review thereof
6 upon such an appeal UNLESS THE ISSUE RAISED UPON SUCH MOTION IS INEFFECTIVE
7 ASSISTANCE OF COUNSEL; or
8 (c) Although sufficient facts appear on the record of the proceedings
9 underlying the judgment to have permitted, upon appeal from such judg-
10 ment, adequate review of the ground or issue raised upon the motion, no
11 such appellate review or determination occurred owing to the defendant's
12 unjustifiable failure to take or perfect an appeal during the prescribed
13 period or to his OR HER unjustifiable failure to raise such ground or
14 issue upon an appeal actually perfected by him OR HER UNLESS THE ISSUE
15 RAISED UPON SUCH MOTION IS INEFFECTIVE ASSISTANCE OF COUNSEL; or
16 S 2. This act shall take effect immediately.

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

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