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

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I N A S S E M B L Y

(PREFILED)

January 6, 2010

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

AN ACT to amend the criminal procedure law, in relation to establishing the actual innocence justice act of 2009

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

Section 1. This act shall be known as the "actual innocence justice act of 2009".

S 2. Subdivision 1 of section 440.10 of the criminal procedure law is amended by adding a new paragraph (i) to read as follows:

(I) THE DEFENDANT IS ACTUALLY INNOCENT OF THE CRIME OR CRIMES OF WHICH HE OR SHE WAS CONVICTED. FOR PURPOSES OF THIS PARAGRAPH, A DEFENDANT IS ACTUALLY INNOCENT WHERE THERE EXIST SUFFICIENT EVIDENTIARY FACTS AND INFERENCES, PRESENTED BY SWORN AFFIDAVIT OR OTHER RELIABLE AND RELEVANT PROOF, THAT, WHEN VIEWED IN LIGHT OF THE RECORD AS A WHOLE, CONCLUSIVELY ESTABLISH THE DEFENDANT DID NOT COMMIT SUCH CRIME OR CRIMES.

S 3. Section 440.10 of the criminal procedure law is amended by adding a new subdivision 3-a to read as follows:

3-A. THE PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION TWO AND THE PROVISIONS OF SUBDIVISION THREE REQUIRING OR PERMITTING THE DENIAL OF A MOTION TO VACATE A JUDGMENT PURSUANT TO THIS SECTION SHALL NOT APPLY TO A MOTION BROUGHT PURSUANT TO PARAGRAPH (I) OF SUBDIVISION ONE; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY WHERE THE COURT, BASED ON RECORD EVIDENCE, DETERMINES THAT THE DEFENDANT'S FAILURE TO ACT OR LACK OF DUE DILIGENCE WAS THE DIRECT RESULT OF HIS OR HER INTENTIONAL USE OF DILATORY TACTICS AIMED AT OBTAINING A STRATEGIC OR PROCEDURAL ADVANTAGE IN THE PROSECUTION OF THE APPEAL OF, OR MOTION TO VACATE, SUCH JUDGMENT.

S 4. Subdivision 2 of section 440.30 of the criminal procedure law is amended to read as follows:

2. If it appears by conceded or uncontradicted allegations of the moving papers or of the answer, or by unquestionable documentary proof, that there are circumstances which require denial thereof pursuant to

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

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subdivision two of section 440.10 or subdivision two of section 440.20, the court must, EXCEPT AS OTHERWISE PROVIDED BY SUBDIVISION THREE-A OF SECTION 440.10, summarily deny the motion. If it appears that there are circumstances authorizing, though not requiring, denial thereof pursuant to subdivision three of section 440.10 or subdivision three of section 440.20, the court may, EXCEPT AS OTHERWISE PROVIDED BY SUBDIVISION THREE-A OF SECTION 440.10, in its discretion either (a) summarily deny the motion, or (b) proceed to consider the merits thereof.

S 5. This act shall take effect immediately.