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

1135

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs (b) and (c) of subdivision 2 of section 440.10 of the criminal procedure law, paragraph (b) as amended by chapter 332 of the laws of 2010, are amended to read as follows:

(b) The judgment is, at the time of the motion, appealable or pending on appeal, and sufficient facts appear on the record with respect to the ground or issue raised upon the motion to permit adequate review thereof upon such an appeal UNLESS THE ISSUE RAISED UPON SUCH MOTION IS INEFFECTIVE ASSISTANCE OF COUNSEL. This paragraph shall not apply to a motion under paragraph (i) of subdivision one of this section; or

(c) Although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his OR HER unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him OR HER UNLESS THE ISSUE RAISED UPON SUCH MOTION IS INEFFECTIVE ASSISTANCE OF COUNSEL; or

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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