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

6350

2011-2012 Regular Sessions

I N A S S E M B L Y

March 15, 2011

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 enacting the "wrongful imprisonment fair compensation 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 "wrongful imprisonment fair compensation act".

S 2. Subdivisions 5, 6 and 7 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:

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

(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] OF THIS SUBPARAGRAPH), 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,

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

LBD08332-01-1

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 acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state] AND FOR WHICH HE OR SHE WAS INCARCERATED; and

(d) he OR SHE did not by his OR HER own conduct cause or bring about his OR HER conviction, EXCLUDING ANY STATEMENT MADE OR PROVIDED BY THE CLAIMANT IN THE COURSE OF A CUSTODIAL INTERROGATION OR ANY ERROR ON THE PART OF THE CLAIMANT'S COUNSEL.

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 OR HER, WITHOUT ANY OFFSETS AGAINST THE COST OF INCARCERATING THE CLAIMANT, AND THE COURT SHALL LIKEWISE AWARD THE CLAIMANT REASONABLE FEES FOR THE SERVICES OF THE ATTORNEYS, INVESTIGATORS, EXPERTS AND OTHERS WHICH THE COURT DETERMINES WERE REASONABLY USED IN OBTAINING THE PRIOR RELIEF NECESSARY TO PRESENT A CLAIM PURSUANT TO SUBDIVISION THREE OF THIS SECTION AND IN OBTAINING THE JUDGMENT IN THIS COURT FOR WHICH THE CLAIMANT IS BEING COMPENSATED PURSUANT TO THIS SUBDIVISION. UPON THE DEATH OF A WRONGFULLY CONVICTED INDIVIDUAL, SUCH INDIVIDUAL'S CLAIM AND COMPENSATION PURSUANT TO THIS SECTION BECOMES THE PROPERTY OF SUCH INDIVIDUAL'S ESTATE.

7. Any person claiming compensation under this section based on a pardon that was granted before the effective date of this section or the dismissal of an accusatory instrument that occurred before the effective date of this section shall file his OR HER claim within two years after the effective date of this section. Any person claiming compensation under this section based on a pardon that was granted on or after the effective date of this section or the dismissal of an accusatory instrument that occurred on or after the effective date of this section shall file his OR HER claim within two years after the pardon or dismissal; PROVIDED, HOWEVER, THAT WHERE THE EVIDENCE NECESSARY TO ESTABLISH SUCH A CLAIM WAS NOT DISCOVERED DESPITE DUE DILIGENCE UNTIL AFTER THE TWO-YEAR LIMIT TO FILE SUCH ACTION EXPIRED, SUCH ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE DATE OF DISCOVERY OF FACTS WHICH WOULD REASONABLY LEAD TO SUCH DISCOVERY.

S 3. This act shall take effect immediately.